

Iran's Criminal Policy Regarding Double Punishment in International Criminal Law

Abolhasan Shakeri¹ and Mohammad Saeedi^{2*}

¹PhD, Associate Professor of Criminal Law and Criminology, Mazandaran University, Mazandaran, Iran

²PhD Student of Criminal Law and Criminology, Mazandaran University, Mazandaran, Iran

Received: March 8, 2015

Accepted: May 10, 2015

ABSTRACT

Different nations' tendency to expand their judicial and legislative territory outside their ruling kingdom has caused conflicts in the criminal qualification and the coming into existence of legal bad effects. Among these bad effects is the double or additional punishment of someone who has been tried and received their penalty in another country before, which is at odds with the principles of fair judgment and is regarded as being in contradiction with the human rights emphasized by international criminal law. In order to prevent the harmful consequences of these contradictions, and to guarantee the right of the accused and the convict, and also to protect people's legal security, and to guarantee a fair judgment alongside other conditions, the law of prohibiting the double punishment of the convict was formed. According to that, the convict should not be prosecuted due to a criminal act he has done previously in another country and due to which he has been punished, unless under specific conditions which would be explained in the course of the study. In this research, besides going through the opinions of the theorists of Islamic and conventional retributive law, the situation of the mentioned law in Iran's criminal law using the new Islamic punishment law (approved 1392) is studied. The new Islamic punishment law has had some significant steps concerning the recognition and following the mentioned law, but there are still many points remaining to be studied.

KEYWORDS: verdict, punishment, the prevention of double punishment, international criminal law, qualification

INTRODUCTION

In international criminal law, there could be contradictions among different countries' approach towards a single criminal subject. Meaning that, countries qualify themselves to deal with the mentioned crime according to the nationality of the accused (personal qualification) or the place of the crime done (local qualification). Regarding the principal benefits of the states, there is no law that deals with the contradictions concerning qualification, thus, concerning some crimes and in some cases, nations attempt to expand their judicial and legislative domain and qualification unilaterally. Therefore it is possible that the third country prosecute a criminal without taking into account the previous condition of the convict, concerning his trial and punishment in the country in which the crime is done or in another country based on positive or negative personal qualification, and does not authenticate the verdicts of other countries even in a limited way.

Punishing a criminal twice for one crime is not fair. The law of the prohibition of double punishment for a single criminal act among whose effects is the prevention of additional punishment, is equivalent to the law of the validity of an ended retributive act in internal criminal law which is anticipated in international criminal law in order to prevent the negative effects of the contradictions in nations' retributive qualification. While in a territory there is no problem in accepting the law of the validity of an ended retributive act by another court in the same territory due to the relationship between courts and the government, if a foreign element is involved in the criminal act, taking into account its relation with different governments, there would be doubts, vagueness, and challenges concerning the acceptance of the mentioned law in the form of the prohibition of double punishment. Thus different countries have different approaches in accepting this law according to the bases and sources of their criminal law. On the one hand, there are doubts and conflicts regarding the acceptance of this law, and on the other hand, the conditions of applying the law in the case of acceptance are discussable in order that the doubts, vagueness, and challenges be surmounted. Therefore in this research, after studying the concept, basis, and conditions of the law of prevention of double punishment in the first part, we will discuss its situation in international criminal law in international documents and in Iran's criminal law specifically in the newly approved Islamic punishment law.

First Part: the concept, basis, and the conditions of the law of prevention of double punishment

A. The concept of the law

Every nation supports and respects some values. The violations of some of these values are known as crime by those nations and are to be answered by retributive execution of law. Answering a crime should be based on the principles of criminal law and fair judgment in which the rights of the litigants. Following justice and seeking the legal security of people is the basis of the fact that a person should be prosecuted and punished for a criminal act only once. This issue is recognized not only in Iran's criminal law, but also international criminal law. In the territorial criminal law it is known as the ended retributive act (based on three conditions 1. The unity of subject; 2. The unity of the litigants; 3. The unity of cause) and in the international criminal law as the law of prohibition of double punishment. Double punishment means that a convict be prosecuted and punished twice for a single crime, the result of which may be the verdict of acquittal or conviction. If the result of the second trial be the conviction of the accused, a double punishment is imposed on a single convict. Thus if a person commits a crime in a country which is not his own, he can be prosecuted based on the rule of territorial qualification in the country in which the crime is committed, and based on the rule of personal qualification in his own country.

Now if the committed act of the accused be considered as criminal in the country in which it is done, the decisions be made, and the verdict be given, and the accused be punished, according to the mentioned law, the convict's own country is prohibited from the prosecution, trial, and the punishment of the convict, unless the principles of judgment in the country in which the crime has been committed turn out to be unjust, or the mentioned country collude with the convict to impose a softer punishment while it is harsher in his own country. The concept of the law of prohibition of double punishment is implied in the law of prohibition of double trial, and by using one the other is imaginable. However double punishment and trial is prohibited by the international law, but due to the difference of legal systems around the world, the application of double punishment is inevitable in some countries.

B. The principles of the law

Since this law has some proponents and opponents around the world, the principle would be brought here according to the opinions:

1. The principles of accepting the law

1.1. Personally

Some jurists believe that the necessity of supporting the personal rights of the accused and the convict causes the fact that someone who is previously tried in the criminal court of another country (whether national or international) and has been given a verdict, whether an acquittal or conviction (if executed) shall not be prosecuted because of that subject again, since the stress caused by that and the necessity of providing defenses for the second time, would deprive the individual of calm and security from the point of view of law [1].

1.2. Socially

Peace, security, and cooperation are the basis of societies. Acceleration of the procedure of dealing with a crime accurately and honestly, by following justice, and according to the principles of fair judgment, and preventing the re-attendance of a single criminal act are among the necessities of social life and has a close relationship with social discipline. Thus, the criminal cases should be ended somewhere and the litigants succumb to the final verdict and respect its elements and execute it [2].

1.3. The necessity of fair judgment

Criminal justice causes the fact that an individual be punished for a criminal act once only, and his prosecution for the previous criminal act, which is handled in the country in which the crime is done or in international just courts, is unfair and not based on the principles of fair judgment. Some believe that the law of prohibition of double trial belongs to all nations and a universal right. The prosecution and trial of an accused person in several countries due to a single criminal act is unfair and at odds with the believed justice, and is hated by all people [1].

1.4. The verdict of law

Some believe that the law of the validity of an ended criminal case which is valid in Iran's criminal law could also be seen in international stages. In other words, the prohibition of double punishment is a reflection of the law of the validity of an ended criminal case, and the verdicts given by the courts of other countries concerning criminals shall be respected and valued. They also believe that this law (the prohibition) is approved by the international documents, which are recognized as laws themselves, like the international political and civil law pact, and the statute of international criminal bureau [3].

1.5. Preventing the legal tyranny of governments

Citizens' legal security by supporting the prevention of the double handling of a single criminal act which is handled in another country before, not only respects the citizens' human rights, but also prevents the legal tyranny of governments in the double trial and punishment of the accused.

1.6. The hypothesis of the validity of the verdicts

According to this, the validity of the given verdict by the court should be preserved, whether it is an acquittal verdict or conviction. Thus, according to this hypothesis, a fact which is approved as a verdict in a court should be considered as corresponding to reality and valid. Therefore, the judgment done in a just court legally by an unbiased judge, according to the rules of fair judgment, should not be heard again [4].

Thus, in short, the principles of accepting the law of prohibition of double punishment, which are proposed by the proponents of the law, emphasize its acceptance and application, and consider it to be among the principles of criminal judgment and international criminal law.

2. The principles and reasons for not accepting the law

So far we have discussed the argumentative principles of the proponents of the law of the prohibition of double punishment or trial. Now we are going to turn to the opinions of the opponents of the mentioned law. Regarding this, it should be mentioned that these jurists are totally against accepting the law, or accept it only under specific conditions or in a limited way.

2.1. Distrust of exotic courts

The opponents believe that the verdicts given by foreign courts are unable to provide the public security inside the country, since there is always the anxiety that foreign courts are not as sensitive as national courts towards the crime and the criminal, and the determined verdict in a foreign court is not adequate for the committed crime [1].

2.2. The principle of congruence of crime and punishment

According to this, even if the verdict of conviction be given by the courts of other countries, due to the belief that the verdict is not congruent with the criminal law of the country concerning the same crime, the law is not obeyed. Meaning that, it is possible that a person who is guilty of a crime and sentenced to death in his own country, be sentenced in another country to a softer punishment. They also believe that the mentioned law, at least in crimes with harsher punishments from the point of view of a country which has a softer punishment in a foreign country, is not accepted.

2.3. Ideological principles

Some criminal behaviors, however common criminal description they have among different nations, treat the criminal differently according to the attachment to or detachment from the ideological religious principles. For instance, the punishment for incest in Islamic countries is stoning. But if a citizen of these countries commits that crime in a foreign country, the punishment is not stoning, according to that country's law of punishment, and may be life imprisonment for example. Thus according to the religious beliefs of Muslims, especially Shias, the criminal shall be tried and punished according to the law on his return to his own country.

C. The conditions of applying the law

Applying the rule of prohibition of double trial and punishment can be discussed from two aspects; first, if the court, during the study of the retributive act, and in the course of studying the convict's dossier notices an absolute verdict concerning the crime, should stop the investigation. Second, the convict can ask the second court, which is now prosecuting him, for obeying the law of prohibition if he can refer to an absolute verdict from a previous court. In order to obey the mentioned law, there are some conditions:

1. The unity of the subject of crime

Some jurists, define the subject of crime as a criminal event, and believe that it is not possible to prosecute a single criminal for a criminal event twice, regardless of the fact that the criminal event has several criminal descriptions or not [5]. Others believe that the unity of subject means the previously investigated public litigation which is now handled again, and believe that in comparing the two acts the nature of the act is significant, not the retributive description accorded to that [1]. Therefore not only the double prosecution of the crime but also the double prosecution of the act is prohibited. The issue at stake here is the fact that regardless of the accusing subject selected for the criminal act, an individual does not be tried for a single act. This subject is not problematic in the nations' criminal law, but on the international level causes some contradictions, when for example a criminal act in a country has a different criminal description in another country, and with a change in the criminal description, the punishment should be changed too.

2. The unity of the cause

The cause of dealing with the social aspect of a crime lies in the purpose for which the criminal is prosecuted and tried, and that purpose is supporting the society's rights and to claim the spoiled discipline of the society, which is achieved through applying punishments or by means of supporting and pedagogical methods. Therefore, running a case for someone who has been punished or acquitted before, for the same cause, is prohibited [5].

3. The unity of the company of the case

A case consists of the accused, the plaintiff, and the judge. If the subject of the crime is previously prosecuted and handled by one of these elements in a just court, the plaintiff cannot prosecute or ask for handling the case, against the accused, for a second time. Therefore, if either the plaintiff or the judge, prosecute the accused, another case could not be run against the accused for a second time.

4. Giving a primary vote by a foreign qualified court

By a qualified foreign court, we mean a court in a foreign country, or an independent state, or an independent international reference, which has no attachments to the country in question [Ibid]. The primary verdict should be given by a court outside the ruling kingdom of the country in question, with an independent government, without any attachments to the country in question, and with qualification for handling the case.

Qualifying a foreign court is based on the principles of international and national criminal law. The main criteria in qualifying a foreign court are those accepted by the domestic court handling the case; since one should not expect a foreign court to qualify itself according to the criteria accepted by our law, and these factors may even be unknown for them [1].

5. The previous verdict should be absolute

After investigating the case by a just foreign court the verdict is given. The verdict is considered as absolute when there has been the possibility of objection to the verdict and these objections have been investigated by the court, or the deadline for objecting to the verdict is passed. If after giving the primary verdict, and after the mentioned procedure is followed, the verdict becomes absolute, it won't be possible to handle the case in the court of another country under the same subject, but if these procedures are not followed yet it means that the case is not finished yet. Thus investigating the subject of the same crime in another country is not to be considered as not following the law of prohibition.

According to the legal system of Camen La, articles 81 to 84 of the international criminal courts statute are exceptions to the law of prohibition and delimit and degrade the law, but according to the Roman – Germanic legal system these are not exceptions [6].

6. The condition of undergoing the punishment in the previous verdict

The law of prohibition could be applied if the accused is not acquitted by the foreign just court previously. If the previous verdict contains the punishment of the accused, there is a difference in international and national criminal law. In the national criminal law, since the courts are related to an independent government, the second court is prohibited from handling the case, and unless the verdict is not executed, a new one would be given. In the international criminal law, the first and the second courts are under the authority of independent countries, and the law of the independence of countries' authority prevents the execution of a country's criminal laws in another one. Thus in order to prevent the double trial in the second country, it is necessary that the accused undergo the punishment accorded by the first court. This condition is due to achieving the purpose of international criminal law, which is not to let the criminals escape punishment.

If the punishment stated in the verdict given by a country is not executed under headings like reprieve, remittance, or conditional freedom, it is not possible for another country to prosecute, and is considered as the execution of the verdict. But there are differences in approaches towards the question that are all the legal reasons for reducing the punishment in the country that has given the verdict enough for prohibiting another country from prosecution?

The second part: the situation of the law in international documents and Iran's international criminal law

In order to support the human rights, the international community, attempts to make the world countries avoid the double trial and punishment. This law is accepted by many international documents and Iran is also a member of some of them. Nevertheless, this law has faced many problems in Iran's criminal law, and has recently been noticed by the legislators in the Islamic punishment law 1392.

A. International documents:

International community, in the form of international or territorial documents, has approved the law of prohibition of double trial and punishment. Among these are:

1. The international statute of civil and political law

The law of prohibition of double trial and punishment has been recognized and approved by the international statute of civil and political law (which was signed by the members in December 19th 1966 and which Iran joined in Aban 23rd, 1351 with the approval of the national parliament). The law is brought as follows in the clause 7 of article 14 of the statute: "no one is to be prosecuted or punished due to a crime for which he has been tried, punished or acquitted, in the court of his country and according to the law of that country." The article only mentions acquittal

and conviction verdicts, and undergoing punishment by the accused is not mentioned. Nevertheless, the human rights committee of the UN, which is established due to the article 28 of the statute gives its opinion concerning the clause 7 of the mentioned article: “the provisions of clause 7 of article 14 of the statute, prohibits giving double conviction verdicts for a single act, only for those who are tried by a specific government.” This means that the first verdict should be given by the courts of the country which is currently prosecuting and handling the case for the second time, in order to apply the law of prohibition. Some jurists believe that the opinions of the committee concerning this issue are unpleasant [1].

2. International criminal courts

One of the ambitions of the international community was to establish international criminal courts to try and punish important universal crimes. This was fulfilled almost at the end of the twentieth century. First, the UN Security Council, in 1993, established the former Yugoslavia international court in order to deal with some international crimes done in that country. Then, the Security Council, in 1994, established another court in Ruanda to deal with the crimes committed there. In 1998, and according to the convention of Rome, besides establishing an international criminal bureau to investigate the most important international crimes, its statute was also presented. In the mentioned courts, the law of prohibition of double punishment was approved and entered the statute. Though the approval of this law is explicit in these courts, it is still not accepted absolutely, and there are some limits and exceptions.

2.1. The former Yugoslavia and Ruanda courts

This law is approved in the article 10 of the statute of the court of former Yugoslavia. The article has prohibited the trial and punishment of the criminals who have violated the international notion of human rights, and have been tried by the international criminal court of former Yugoslavia, in the national courts, whether they have been punished or acquitted. But if the national court prosecutes a criminal, and the crime is among those that the international criminal court of former Yugoslavia is qualified to investigate, the court can ask the government for the suspension of the case due to the violation of the article 10 of the statute, and the national court is obliged to do what the international court has asked [7]. According to the article 9 of the same statute, the international court has priority over national courts and therefore in each stage of the investigation, the international court can ask the national courts to hand the case to the international court according to its laws, reasons, and provisions [7].

Provisions like those of articles 8, 9, and 10 of the international court of former Yugoslavia can also be seen in Ruanda’s international court statute that was established in 1994 by the Security Council of United Nations.

2.2. The statute of the permanent international criminal bureau

In article 20 of the statute of the international criminal bureau, the law of prohibition of double trial and punishment is approved [Ibid]. The statute of this court has prevented allowing a second trial for a crime in clauses 1 and 2 of the article 20, that supports the law of prohibition of double trial, and clause 3 that allows trial in the permanent court under specific conditions. In clause 5 of the article 42, the rule of accounting the amount of punishment undergone by the accused in the national court is recognized and approved. It could be seen that the permanent court has prohibited the double trial and punishment for a single crime, but under specific conditions, trying and punishing a criminal is allowed if the amount of punishment applied by the national court has been taken into account.

B. European Conventions

The international documents signed by the European nations which are established based on common interests and benefits, have priority over the national rules of the members, and consequently, the discipline of the law of European nations, if the constitutions of the nations correspond with them, is preferred over the discipline of the national law [7]. Obeying the law of prohibition of double trial and punishment is accepted not only in Schengen’s convention which was approved by the signing nations in 1990, but also in two other conventions. One of these conventions is the European community’s convention of 1970 which deals with the international validity of criminal laws, and the other is Brussels’s 1987 convention concerning the mentioned law which is signed by European nations. In the above mentioned conventions there are similar statements emphasizing the obedience of the law in question. “It is not possible that someone who is tried by a nation-member be prosecuted by another nation-member for the same crime, unless, in the case of conviction, the punishment is undergone or under execution, or if due to the laws of the nation that has given the verdict its execution is not possible anymore [1].

C. A survey of the law of prohibition in Iran’s criminal law

1. The situation of the law in Iran’s criminal law

The law of prohibition of double trial and punishment has undergone changes during the history of Iran’s criminal law. Iran’s criminal law has two different approaches in two historical periods towards the validity of

criminal verdicts of foreign courts. There are different approaches in different periods including the period before the Islamic revolution of 1978, the period in which the public criminal law was reformed in 1973 up to 1978, the changes in the criminal laws which was under the influence of the religious authority up to the approval of the Islamic punishment law in 1991, and finally its approval in 2013.

1.1. From 1925 up to the Islamic revolution

The public punishment law, approved in 1925, lacked provisions concerning the local territory of Iran's criminal law. In fact the limits of Iran courts' qualification to deal with the cases in which there existed a foreign element were unknown. In 1973, the legislators attempted at providing provisions regarding the legal territory qualification according to the article 3 of the law, besides reforming the public punishment law. According to this, and taking into account the amorphousness of judicial and legal territories, Iran's legal territory qualification concerning the crimes done in foreign countries was determined, and the validity of the criminal verdict given by the courts of other countries was recognized in two clauses of the mentioned article. According to the mentioned law, if the crimes are committed in Iran's authorial territory (the principle of territorial qualification), or if the crime is committed outside Iran's authorial territory and in opposition with the national interests (the principle of real qualification), or if the crime is at odds with the common interests of the nations (the principle of universal qualification), handling the case in the foreign courts does not prevent the national courts from investigating the case. In other words, the law of prohibition of double punishment could be violated in this condition. But if the contradiction of qualification in crimes in which a foreign element is involved be based on the criminal's citizenship in Iran's court qualification, applying a legal qualification on the foreign verdict, when the criminal is tried and acquitted in a foreign court or when he has undergone the punishment, is not allowed. Otherwise it is possible to try and punish the criminal, under specific conditions, in Iran's courts.

2. The approved punishment law from 1982 to 2013

After the Islamic revolution, Iran's legislators, inspired by Islamic teachings, attempted at reforming the former public punishment law (approved in 1973). The clause C of the article 3 of that law, which was concerned with accounting for the amount of punishment undergone based on the verdict of the first foreign court, was omitted. In 1991 and in the article 3, the legislators determined the legal territory of Iran's criminal laws, and in articles 5, 6, and 7 besides explicitly accepting the principle of personal qualification regarding the criminal's citizenship, regarding the law of prohibition of double punishment there is a gap in the law in order to let the courts decide for the double trial and punishment of criminals. In fact article 5 of the Islamic punishment law, regarding the principle of real qualification, absolutely negates the law of prohibition due to a preference for the national interests which is related to the principle of nations' authority.

Studying the Islamic jurists' theories and the texts of Islamic punishment law approved in 1982 and 1991, it could be concluded that in punishments like retaliation foreign courts' verdicts are not valid according to the Islamic theories of Iran's legislators. Thus handling a case for a second time and applying punishment related to these crimes is done regardless of the law of prohibition of double punishment. That is because, based on the opinions of Islamic jurists, the punishment for these crimes has been brought in Koran's text and a contrary verdict is not valid. But regarding crimes whose punishments are preventive ones and the like, Iran's legislators can provide laws according to the international criteria and principles. For example they can validate the verdicts of foreign courts' verdicts, or accept the law of accounting the amount of punishment undergone, or regard the law of prohibition of double punishment. In what follows we will discuss the newly approved and reformed Islamic punishment law that was done in 2013.

3. The Islamic punishment law of 2013

The new Islamic punishment law, whose project was started in 2007 by the bureau of codification of bills in the judicature, was approved in 2013. In this law, and in its first part which deals with the general matters of the article 3, Iran's legal territory is determined. According to this article the territorial qualification has priority, unless it is not enough due to some reasons.

One of the exceptions of the principle of territorial qualification is the nations' tendency to expand their judicial and legal territory. Iran's legislator, in articles 5, 6, 7, and 8 attempts at expanding its judicial and legal qualification of, which manifests itself in a widespread manner in articles 5 and 6 and in a limited way in articles 7 and 8. The article 15 of this law is concerned with the real qualification. If the crimes mentioned in the article are committed outside the legal territory of Iran, the legislator allows the Iranian courts to prosecute and try the criminal, and if the criminal is tried and punished or acquitted in foreign courts, it is not considered as valid and the only thing that is taken into account is the amount of punishment undergone previously by the criminal. However

the legislator has not accepted the law of prohibition of double punishment, but it has taken into account the amount of punishment undergone in the new verdict. Article 6 of this law deals with the principle of specific personal qualification, and in this type of crimes, due to the particular condition of the criminals, the country of which the criminal is a citizen is qualified to handle the case according to the international laws which are accepted by most of the countries. Therefore in these crimes, neither the principle of territorial qualification nor the law of prohibition of double trial is accepted. Article 7 and 8 of the new law are codified explicitly for the principle of personal qualification. Article 7 deals with the principle of personal qualification (positive personal qualification) based on the criminal's citizenship and article 8 deals with negative personal qualification. Article 7 of the new law has accepted the law of prohibition of double punishment for Iran's citizens under specific conditions.

Comparing articles 7 and 8, it could be said that these two articles could be summed up. We can conclude that if an Iranian citizen commits a crime in a foreign country, or if a non-Iranian commits a crime against an Iranian citizen or against Iran, he should be tried under Iran's criminal laws based on these conditions: first, the action should be considered as a crime according to the law of Iran, second, the criminal should not have been tried and acquitted in the place of the crime or, in case of conviction the punishment should not have been entirely or partially applied. Third, concerning an Iranian criminal, according to the law there should not be any obstacles in the way of prosecution.

CONCLUSION

When a foreign element is involved in the crime, the international criminal law is posed, and the qualifications of several countries that handle the case are considered. If each country, according to the claimed qualification, attempts at prosecuting the criminal, the accused is tried and punished in several countries for a single crime. In order to prevent the double trial and punishment of a criminal for a single crime, the international criminal law has prohibited the double trial and punishment which is reflected in international documents. The law of prohibition is considered to be one of the principles of international criminal law and fair judgment, which is to support the individual and social freedom and rights. This international law is equivalent to the establishment of the law of validity of an ended criminal case in Iran's criminal law.

In Iran's legal system, the law was accepted - during the period of reforming the general punishment law that was started in 1925 – in 1973 up to 1982 under some conditions. After the Islamic revolution, and by approving laws concerned with Islamic punishment, the law underwent some changes. In 2013, the parliament besides approving the new Islamic punishment law, filled the gaps in the law concerned with the involvement of a foreign element in crimes, and had some important steps towards following the mentioned law. The legislator of the 2013 punishment law has recognized the conditions under which the law of prohibition could be accepted and followed in articles 7 and 8. The above mentioned law is not accepted for retaliatory crimes, those crimes that involve blood money, or those that are against the interests and benefits of the nation, but it can be said that the retaliatory crimes on which suspending punishment is applied the law in question can be accepted in the form of articles 7 and 8.

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