STREAMLINING THE PRINCIPLE PROHIBITING DUAL PUNISHMENT IN THE ISLAMIC REPUBLIC OF IRAN'S PENAL CODE

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ABSTRACT:

The principle prohibiting dual punishment is one of the most accepted and stable principles in most penal systems of the world. The laws governing calculation of punishments is one of the results of that principle, according to which a foreign national punished in the country where the crime was committed, will not face any criminal charges in his/her own country for the same crime. This article intends to review the position of the law governing in Iran, in relation to aforementioned principle, in order to prove whether or not it honors and accepts the criminal sentences of other countries.

Keywords: Iran; Punishment, Penal code

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INTRODUCTION:

Criminal laws are basically internal, meaning that if a person, citizen or foreigner, violates the laws of any given country within that country's territories, will be subject to those laws. Article 3 of the Islamic punishment signed in 1991 is as follows:

"Criminal laws will be enforced for crimes committed within the Islamic Republic of Iran's territories (land, air, maritime) …"

This article endorses the positive aspect of the penal code, namely being of an internal nature. However it has some setbacks and negative points as it does not cover the country's penal code regarding those crimes committed outside its' territory. There are some exceptions to this principle, as it only defines crimes committed within its' territory. The territorial nature, as mentioned in "*Ma man amon ella va ghad khass*" [1] brings some exceptions to the rule when it comes to laws pertaining to the punishment of criminals both for internal and international penal codes. For example, foreign diplomats who are entitled to diplomatic immunity will not be subject to prosecution in Iran should they commit a criminal act within its' territories[2]. Furthermore, most penal systems will prosecute and punish crimes that compromise the country's independence and security, even though they were committed outside the country's borders[3].

The international criminal laws have two distinctive rules. The first rule is about "prohibiting repetition of punishment" and the other one "prohibiting the criminal from evading punishment". The definition of the first rule, also interpreted as the prohibitory punishment, that has led to the rule of "calculation of punishments" is that if a criminal is prosecuted and punished in the country where the crime was committed, will not be punished again in his/her own country and in any third country for the same crime. In legal and technical terms this means that the criminal orders in foreign countries will be absolute or sometimes relatively be eligible to finished case. The objective of passing such law was that if a criminal flees the country where the crime was committed and returns to his/her own country or goes to a third country, he/she will still be subject to prosecution.

[1] There isn't general that it isn't specified

[2] Contradicts Article 6 of the Islamic penal code

[3] Punishment per Article 5 of the Islamic penal code

In this hypothesis the usual process is to utilize the laws governing extradition of criminals or extradition of fugitives from the third country. But if the criminal flees to his/her own country, requesting an extradition will be in violation of the international laws [1] which do not require the extradition because they will be subjected to some form of punishment in their own country anyway.

1. In an effort to explain the method in which the Iranian laws on "prohibiting the repetition of punishment" work and whether or not this country honors the law or not, this article has selected two topics: 1) Feasibility of second trial of the criminals and 2) The laws governing calculation of penalties in Amended penal code of 1973. Later on, this article will cover the amendment to the Islamic penal code signed in 1973, Islamic penal law signed in 1982, Islamic penal law of 1991 and finally there will be a conclusion summing up these different topics.

2. Feasibility of Second Trial

As mentioned in the foreword, the principle is about "prohibiting a second trial" in an effort to prevent dual sentencing, which makes sense both from rational and legal viewpoints, as a person should only be sentenced once for the same crime.

I would like to mention the crime mentioned in Article 519 of the Islamic Penal Code approved in 1991, to clarify that there is a possibility of a second trial for a person both in the country the crime was committed and in Iran. According to this Article: "If a person commits fraudulent act, by shaving, cutting, or any other act to reduce the quantity of Iranian or foreign gold or silver coins or knowingly or unknowingly promotes the distribution of such coins, will be sentenced to one to three years of prison."

This Article clearly indicates that the individual committing the fraud might be a foreign national who engages in making gold and silver coins of both Iranian and foreign origins. This individual will not only be tried in Iran, he/she might also be subject to trial in his/her country as well. In this hypothesis, the second country should take into consideration the punishment that

[1] Rule 8 of the law regarding extradition of criminals signed in 1961 is as follows: "Extradition will not be accepted in the following cases: (1) if the person being extradited is of Iranian citizenship…

was imposed upon the person in Iran. The opposite will also hold true, if an Iranian national commits a crime in a foreign land that is configured in Article 519 of Islamic punishments, might face a dual trial because the fraud will be subject to Section 4 of Article 5 of Islamic penal code approved[1] in 1991.

Basically if the Iranian legislator looks into this law from a respectful and acceptable point of view, he/she must take into account the punishment that the criminal has faced in another country, while putting him/her to a second trial and charging a punishment. In such cases and if the punishments are similar, there will be three scenarios:

First scenario: The punishment provided for in the criminal laws of the country where the crime was committed is identical to those in the homeland. If the criminal is put on trial before, the court might decide not to put the person on trial again and might take the punishment of the other country into consideration.

Second scenario: The punishment in the country where the crime was committed is harsher than that of the homeland. In this case there will be no need for a second penalty.

Third scenario: The punishment in the country where the crime was committed is much less than that of the homeland laws. In this case the accused will face justice and will be subject to additional penalty in the homeland.[2]

When the punishments are not comparable, the subject will become more complicated. For example if the criminal has been sentenced to prison and has served the prison term, or if he/she has paid a cash penalty in that country, but the homeland laws require punishment by lashes, it would be more complicated to answer the question of accounting for the time, because lashing is considered *hodood:* gods' punishment.

3. The laws governing calculation of penalties in Amended Penal Code of 1973

[1] Article 5 – g.m. 1: Every Iranian or foreigner who will commit one of the following crimes outside the Iranian territories, who is either arrested in Iran or being extradited to Iran, will be punished according to the Iranian Penal Codes… Article 4: Forgery of Iranian paper money… or imitation and any fraud in gold and silver coins inside Iran.

[2] In the third scenario we should add here that because retrial for the same crime is banned, therefore a ruling for "additional punishment" has no legal explanation. The judicial term for all three scenarios will be "endowments to pursue"

The 1973 legislator calls for retrial and criminal pursuit of certain crimes committed by an Iranian or foreign national.

Section C of Article 3 of year 1973 law is as follows: "Every Iranian or foreigner who commits one of the following crimes outside the Iranian territories will be punished according to the Iranian penal code. If he/she has been sentenced and served the punishment outside Iran, that punishment will be taken into consideration while being put on trial in Iran.

I. Activity against the Constitutional System of the Monarchy and internal and external security and territorial sovereignty or independence of Iran.

II. Forging the order, hand writing, seal or signature of the country's leader or using them.

III. Forging the official writing of the Prime Minister or any of the heads of the Parliament and the Senate or any of the ministers and using them.

IV. Forging Iran's current paper money or National Bank documents such as issuing drafts acceptable by other banks, checks issued by banks, documents of undertakings by banks, forging treasury documents and government bonds issued or endorsed by the government, or forging any coins currently used in Iran.

Section D of article 3 concerning the crimes committed by diplomats or foreigners working for the government was as follows: "If government employees or foreign nationals working for the Iranian government commit misdemeanor crimes or manslaughter, which might relate to their employment or their responsibilities, or any misdemeanor crimes or manslaughter committed by Iranian government diplomats or consular employees who have political immunity, will be subject of regulations set forth in Section C.

Therefore if the hypothetical criminals mentioned in Section D of Article 3 engage in any criminal activities outside the Iranian territories, they will be tried in the country where the crime was committed and the punishment will be honored by the Iranian courts and accounted to their advantage.

As we can see the principle of prohibiting dual punishment or the rule of those punishments being accounted for, was lawfully enforceable as per the provisions of Sections C and D of Article 3.

Section 5 of the above Article provided for punishment for some other types of crimes (in addition to what was included in Sections C and D). According to this Section: "Other than cases covered in the above Sections C and D, any Iranian who commits a crime outside Iran and then travels to Iran will be put on trial according to the Iranian Penal Code on the following conditions:

1) The maximum punishment provided by law exceeds one year imprisonment,
2) The punishment is in accordance with the law of the country where the crime was committed,
3) The individual was not put on trial or was acquitted in the country where the crime was committed, or if committed, justice was not completely served or the sentence was only partially fulfilled,
4) As per the provisions of the Iranian law and those of the other country, there is no provision banning or stopping the prosecution or punishment.

Taking into account the alternative of Article 3 of the Amended Penal Code of the year 1973, it becomes clear that: "Prohibiting of dual trials" and "preventing the criminal from being punished" has been valid and enforceable to those legislators who approved the law in 1973.

There is a difference on the possibility of investigation by the Iranian courts between the criminals subject of Section C and D on the one hand, and the criminals subject of Section 5 of Article 3 on the other hand. Namely in the first group of crimes, if the criminal was not found in Iran, an extradition would be processed through the criminal extradition law. If this was not successful, such criminals would be tried in absentia. But regarding the crime subject of Section 5, the criminal had to be physically present in Iran and there was no possibility of trial in absentia.

4. Calculation of Punishments per Islamic Penal Code of 1982

In the law of 1982, Article 3 was specific to the locality of the crime. In Section B of this law which has replaced Section C of Article 3 of the Amended Penal Code of 1973, it is indicated as follows: "Any Iranian or foreigner who commits one of the following crimes outside the Iranian territories will face a punishment per the Islamic Penal Code."

The crimes mentioned in the four alternatives to this Section, with a little modification, are more or less identical to those crimes mentioned in alternatives to Section 6 of the Islamic Penal Code, which will be discussed later in this article. As it is obvious from this Section, the Law of 1982 does not include any calculation of punishments to those who might have committed such crimes outside the Iranian territories. Section C of Article 3 of this law which is another interpretation of Section "D" of Article 3 of the Amended penal code for the Iranian diplomats who have immunity, puts such criminals under Section B and has no reference to calculation of the punishments.

The legislator as per Section D of this Article, in addition to Articles mentioned in Sections B and C, considers other Iranian nationals to be subject to the internal Penal Code and has put no condition or constraint on this eligibility. The phrase "to be physically in Iran" which has been used in this section and cannot be found in other sections, can be construed that in the case of those criminals subject of Sections C and B, if they are not physically present in Iran, a request can be made for their extradition. In case they are not extradited, the court will try them in absentia. But in the case of those people who are subject of Section "D", in case they are not physically present in Iran, the Iranian courts have the right to put them on trial and therefore the government of Iran will not be able to seek their extradition according to the provisions of the extradition laws.

As you can see in all of the above scenarios, the law of 1982 has no reference to the calculation of punishments. In other words it does not consider those rulings against an Iranian citizen by other countries as valid and final.

5. Calculation of punishments in the Islamic Penal Code of 1991

Article 5 of this law which almost covers changes to the phrase vicarial to Section C of Article 3 and Section B of Article 3 of the years 1973 and 1982 respectively indicates:

Each Iranian or foreigner committing any one of the following crimes either within the Iranian territory or extradited to Iran, will be punished according to the Penal Code of the Islamic Republic of Iran:

1. Action against the government of the Islamic Republic of Iran, its' internal and external security and its' national sovereignty or independence.
2. Forgery of the decree, hand writing, seal or signature of the Supreme Leader or use of those.
3. Forgery of the writings of the President, Head of the Islamic Parliament, Head of the Guardian Council, Head of the Legislative Force, as well as deputies to the President, Supreme Court Judge, Head of Judiciary, any cabinet member and use of those.
4. Forgery of the Iranian official paper money, bank documents such as drafts accepted by banks, checks issued by banks or legally binding bank documents, forgery of treasury documents, government issued or guaranteed bonds, copying or forging the country's currencies in shape of coins.

The legislature of the year 1991 has defined in Article 6 which is vicarial to Section D, Article 3 of year 1973 and Section C, Article 3 of the year 1982 defines those types of crimes committed by Iranian diplomats or foreign nationals working for the diplomatic corps as such: "Any crime committed by foreign nationals working for the government of the Islamic Republic of Iran or by the employees of the Iranian government whose responsibilities and job duties are being performed beyond the Iranian territories, and crimes committed by Iranian diplomats, consular and cultural staff with diplomatic immunity will be punished based on the Islamic Republic of Iran Penal Code."[1]

[1] The Iranian legislator has accepted that acts committed by diplomats, etc… to be considered as crime.

In addition to the provisions of Articles 5 and 6, the legislator has included other crimes committed by the Iranians abroad to be within the framework of the Iranian Penal Code punishable by law. Per Article 7 of the said law, in addition to the cases mentioned in Articles 5 and 6, Any Iranian committing a crime abroad who is found within the Iranian borders will be punished in accordance with the Islamic Republic of Iran's Penal Code.[1]

The difference between this Article and Articles 5 and 6 is only on the methods of investigation. Those criminals subject of Article 7 will be put on trial and punished within the Iranian territory, if found in Iran. However it would be impossible to punish those individuals based on extradition request. But in the case of those criminals subject of the other two Articles, if they are not found in Iran, an extradition procedure can be put in place. If the extradition is not possible, the Iranian courts will put the criminal on trial in absentia.

As we can see from Articles 5, 6 and 7 of the Islamic Penal Code, the present Iranian legislator does not consider as final those punishments that have been decided by courts outside the Iranian borders against the Iranians committing those crimes, even though nothing is mentioned about calculation of the punishments in any of the said Articles.

CONCLUSION:

This review of the provisions of the Islamic Penal Codes of the years 1982, 1991 and their comparison to the Penal Code of 1973 clarifies that the Islamic legislature, unlike its predecessor, has totally ignored the basic law of "prohibiting dual punishment" and is fully compliant with the law concerning "avoiding non-punishment of a crime". The legislature of 1973 had not accepted the aforementioned principle absolutely and to give an example, did not consider crimes subject to punishment of less than one year sentencing to be punishable by the Iranian laws.

It seem as though the post Islamic Revolution of Iran's legislature, due to considering the punishments enforceable by the sharia law, has not been able to integrate "prohibiting dual punishment" and "calculation of punishments" into the penal code. But since this principle is accepted by the majority of criminal legislature and as logic, fairness and justice also require that

[1] This Article refers to individual rights to criminal laws.

such a principle be honored, considering that the existence and acceptance of such a principle in the internal Penal Codes will be to the credit of the internal laws vis-à-vis the foreign ones, it is necessary that the legislature should at least consider omitting bodily punishments from the suspended sentences and to only sentence those criminal to prison. This will open the grounds for clearing the aforementioned shortcomings. It goes without saying that the legislator has changed positions while deciding the legislature of 1978, but this body needs to take very brave steps in an effort to reach the desired results.

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