The principle of Territorial Jurisdiction and Beyond the Territorial Jurisdiction in International Criminal Law

Mehdi Rezaei Moghadam

Department of Law, Payame Noor University, Tehran, Iran

Abstract

The principle of personal jurisdiction, beyond the territorial jurisdiction of one of the most important principles of the country of origin of the offender or the victim's nationality based on the element of truth in the criminal investigation is made abroad. In criminal law Iran ratified before the 1392 Penal Code only personal jurisdiction based on the nationality of the offender, it also without paying attention to some important principles International criminal law was adopted. Fortunately, with the approval of act 2014, great strides on the implementation of the principle of personal jurisdiction with accepted principles of international criminal law was removed, Including these developments; Non-compliance can retrial and jurisdiction based on the nationality of the victim among others. However, the law also included some drawbacks Non-compliance with the prohibition of retrial in our religious offenses because of, avoidance of opposition lawmaker with Islamic principles. While this article for library and analytical method after explaining the strengths and weaknesses penal Code 2016 according to international documents, outlines new regulations jurisdiction based on the nationality of the victim been considered.

Keywords: Principle of Personal Jurisdiction, International Criminal Law, Territorial Jurisdiction, Beyond the Territorial Jurisdiction
Introduction and Problem Statement:
Principle of personal jurisdiction and juridical term, which means a given area around some immovable properties that for complete utilization of their owners, others seizures have been forbidden in that area. Colloquial meaning of criminal in jurisprudence and law is close to its lexical meaning and its aim is a specific area surrounding an immovable field (such as house, well, aqueduct) that to partially or fully use it is dependent on the seizure in it. For instance, criminal in law context in the 22, 23, and 25 principles of Islamic republic of Iran’s constitution and in 135 to 139 clauses of civil law is clearly stated, but the legislator have not clearly explained nor clarified its meaning and today in addition to the traditional instances of criminal such as well criminal, route criminal, aqueduct criminal, river criminal, we are observing new collocations of this word such as city criminal, criminal, information criminal, criminal in virtual space and criminal of legal entities, which each of them can be discussed and investigated separately.

Research Purposes:
Main purpose:
Determining rulings and effects of criminal in Iran’s criminal rights.
Minor purposes:
1-Identifying the concept of Iran’s criminal rights and its major headings and investigating the aspects of victim in them.
2-Determining criminal`s concept and related rulings and effects.

Research Hypotheses:
The requirement for recognizing aspects of criminal in Iran’s criminal rights is the recognition of Iran’s criminal rights’ aspects.
There are various viewpoints in ownership or rightfulness of criminal.
We imagine some exceptions for criminal.

Research Methodology:
Research method here is descriptive-analytic and its purpose is practicality.

Criminal Effects and its limitations in Jurisprudence
Some victim according to a number of citations have stated that the criminal’s basis and the reason for its sanctity is preventing any loss for an owner that to use his property requires the surrounding fields. If such a right is not recognized for him, he cannot completely utilize his property. And if someone seizes someone’s property in a way that prevents the owners from using it, he is practically wasted the profits of his land. Profit unanimously among all juridical religions, is treated as the real property, which only victim of Hanfiyeh habe objected. This issue seemingly is collective among victim and therefore includes “No loss” principles. Victim has utilized “no harm” principles in two ways: the first group explicitly consider the principle the basis of criminal and consider it applicable to all instances of criminal, the other have utilized the principle case based.
Hydro facilities criminal starts from the fields surrounding pipelines, criminal sewerage collecting lines from existing network to the beginning, Dams branching pipes, pipings, and their production and distribution devices, which is created by the government or deduction of finances between government and criminal sector, or criminal sector itself for public use. Such as facilities that is related excavating underground water (such as facilities that are near aqueducts and wells and are owned by individuals) or urban and industrial water supply facilities that are required for its optimum exploitation and safekeeping.

**Strong Points of Regulations Regarding Criminal**

According to fiftieth principle of Islamic Republic of Iran`s constitution, “Protecting the environment within which the current and next generation should have a progressive social life is considered a public duty. Therefore, economic and non-economic activities that coincide with environment pollution or irrecoverable damage are forbidden.” Therefore, planning for removal of the pollution of underground water sources and to this end, specifying qualitative criminal to prevent pollution, is considered one of the related principles of fiftieth principle of constitution.

The authorities that legislator has given in the case of property criminal goes so far as to consider criminal as a property of the owner and does not approve of seizing what is against criminal and is done without the owner`s permission. Therefore, no one can dig a well or aqueduct in another`s criminal. But the seizures that do not cause harm to the owners are approved. We conclude from the before mentioned statements that criminal is for completing exploitation, obtaining profit, and loss excretion, weather potential or hypothetical. Therefore, activities like underground water pollution around the well that can cause harm to criminal owners (well owners) can be accounted in this principle.

People`s lives criminal including corporeal, spiritual, and ideological are to be respected and according to the constitution no one is allow to invade them. Ideologies inspection and unnecessary delving regarding personal ideologies, is considered an obvious example of invading human rights. Due to this reason ideology inspection was forbidden centuries ago and governments have stated its prohibition in their regulations. Iran`s constitution too have absolutely supported ideology freedom and the prohibition of ideologies inspection and have not considered any exception, even with rule of law. Due to ideology freedom in religion is an inviolable concept, as god in his holy book Quran has continuously discouraged men from ideology inspection of his kind. And its reason can be surveyed in preventing violation of human dignity and creating an obstacle in diminishing human`s transcendental personality.

Albeit Islamic Republic of Iran`s constitution has stated some generalities in 23rd principle and has considered individual`s criminal inviolable from invasion. And this is the duty of general and specific laws to address its details and restrict violating factor of criminal. For instance, we know that each person`s political ideology is pertinent to himself and is considered an instance of criminal and any interference from governments or parties must be prevented. However, we that it is no so in practice and parties easily access information banks and delve individuals’ ideologies, which are violating individuals’ criminal. In order to protect citizens political and ideological orientation from parties` access and rapine, every country`s regulations must support citizens` political criminal. Most countries have officially recognized inviolability of individuals` political thoughts against any individuals or public entities intervention. However, Iran`s constitution has not specifically and in a proprietary principle addressed the concept and has supported criminal and inviolability in general.
Additionally, Iran`s constitution emphasizes inviolability of respect and reputation of individuals that are arrested or jailed and points out that: desecration of the people who are arrested, jailed, or exiled with the rule of law in any manner is prohibited and due for punishment. Indeed people`s respect and reputation is inviolable. Even if those individuals are convicted, jailed, or exiled with the rule of law. Correspondences and communications of these people with their lawyer, family and other individuals are considered instances of their legal rights and criminal and inviolable to intervention and are controlled under certain circumstances. In principle regulations and principles must on the path that protects society`s respect and reputation even in most critical situations such as arresting, due to committing a crime.

**Discussion and Conclusion**

All the discussions related to criminal that we enter we see that Islamic Republic of Iran`s constitution has regulations regarding protecting people`s lives and properties, but how serious these regulations in maintaining this criminal and how effortful governmental and national factors are in preserving them are, we should look for instances inside society. Cases that occur in humans` everyday lives, Today criminal is on the pivot of rights discussions and individual support in special fields and creating restriction and prohibition of people`s entrance in other peoples` lives. The existence of such distance brings about peace in individuals` lives.

We stated that what is of significant importance in this respect is determining standards that can accurately draw the borderlines of this right, so in addition to defending this right, it can prevent violation of other rights and rights of other citizens. At any rate it must be noted that criminal, weather in terms of property or individuals` right, must be accepted, it must be respected. In the following we concluded that any change in the territory of this concept can occur according to crimes generative nature of contrary behaviors and theoretical basics of this right. The existence of such an image can create the administrative basis for other rights.

We stated that Islamic Republic of Iran`s constitution which was established in 1358 has considered criminal and individuals personal lives inviolable by individuals public entities intervention in various principles such as 22,23,25, and 39 principles and supports and protects it. Albeit it can be said that other principles such as principle 24 which is about press freedom has a close relationship with individual`s criminal.

In the following we saw that 22nd principle of constitution is the clearest principle of the constitution in supporting individuals personal security and criminal and considers them inviolable by stating: reputation, life, property, right, housing, and people`s jobs are inviolable, except when law prescribes, and brings them under protection. According to this principle, any activity that distorts individuals` reputation and violates their life, property, rights, housing, and jobs is prohibited and is deserving of legal strike. Indeed it can be said that, these principles of constitution, supports individuals` physical and bodily criminal.

This branch of criminal is related to every emotion and though of individuals and includes all the behavioral aspects of individuals, especially religious ideologies, political activities and all the activities that are concerned with individuals thoughts and ideologies. Just as individuals need to maintain physical and bodily criminal, to protect their security and reputation, they require guarantee spiritual and intellectual criminal right, since humans` highest emotions and thoughts crystallizes in their spiritual solitude and certainly these emotions and thoughts require law`s protection and support against violation.
Islamic Republic of Iran’s constitution has states some generalities in 23rd principle and considers individuals’ criminal inviolable, and it’s the normal and special regulations duty to address the details and restrict violating factors of criminal. We see that it is not so in practice and parties easily access information banks and delve into individuals’ identity, which is violation of criminal. In order to safe keep ideologies and political orientation of the citizens from access and rapine, countries regulations must address and support citizens’ political criminal rights. Most of the countries have officially recognized inviolability of individuals’ political thoughts regarding any intervention from individuals or public entities in their constitution or other regulations. However, Iran’s constitution has not addressed this concept specifically and in a specific major frame. And supports ideology freedom and considers it inviolable in general.

Communicational criminal, is individuals’ orientation to establish communication through various devices, which these relations and communications must not be controlled by other individuals or organizations. In other words, individuals usually establish communications with other their surrounding environment and other individuals through various devices, which their field and territory is criminal and they do not like to be controlled by other individuals or the government.

One of the new subjects and a challenging case in individuals’ criminal field is contrast between criminal and principles such as freedom of speech, press freedom, society’s right to know. 24th principle of constitution states that: press and publications are free to to express. unless they disturb Islam’s basics or public rights. Law states its explanation. In truth press freedom, information freedom, in freedom of speech in general requires boundaries and limits, which is addressed in all national and international regulations and wherever freedom of speech and similar concepts are talked about. There is a second clause for its exceptions. An obvious example is European Convention of Human Rights, which in its article 10 from freedom of speech principle exceptions such as territorial integrity, and public security are emphasized.

Albeit the important issue in these exceptions is the clarity of its domain which does not make the principle invalid. One of the exceptions that can be considered for freedom of speech and press freedom is individuals’ criminal right. Criminal right and freedom of speech are two sides of the same coin and both are fundamental human rights. In the conflict and contrast of these rights European court of human rights established a balance between these two concepts by separating ordinary people’s criminal from politicians and ordinary peoples’ criminal is in question the vote is for criminal, and wherever politicians and government officials criminal (as individuals that their behavior bust be judged by public) is in question the vote is for freedom of speech and press freedom. Albeit this narrow interpretation of exceptions must be officially recognized in Iran as well, so that neither individuals criminal are not violated through freedom of speech, nor freedom of speech and press freedom are restricted through criminal.

References:

Ashouri, Mohammad. Penal Hearing Ethic. Sam publications, 7th edition
Imam Zeynolabedin. Translated by Elahi Qomshei, Mahdi. Divan publications. 1st edition. 1386
Islamic Republic of Iran’s constitution. Islamic guidance and culture organization.
Katourziyan, Naser. Law science introduction and the study in Iran’s law system. Tehran. Publications with collaboration of Bahman Barna company.
Mohammadi Reyshahri, Mohammad. Mizanolhekmeh. Publication of Darolhadis print and publication organization. 8th edition. 1386
Naser, Katouziyan. 1384. Civil regulation in current right order. Tehran, Majd publications,. 2nd edition
Professional behavior of court lawyers (Canada) Translated by Mohammad Ali Nouri. Ganj Danesh.
Savabolamal. Mohammad ebn Ali ebn Babouye. Translated by Sadeq Hassanzadeh