

Studying the evolutions of Islamic penal code 2013 in the local domain of criminal law

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ABSTRACT: This paper evaluated changes in the Penal Code in 2013 in the field of criminal law designated place. New Islamic penal was finally approved by legal and juridical commission of the Islamic consultative Assembly in 2013 and accepted by the council of Guardians. The type of research, analytical and library tools have been done, the problem is that the new law is that the return to the previous years, such as 1991? Which is entitled "The scope of the criminal law enforcement in place" In fact, the determination of "territory where the credibility of the criminal law" Iran, the Islamic Penal Code of 1991 and the changes that can be made from them named as new developments in the law Took. Results showed that the most important innovation of the new law is the personal jurisdiction reactive (negative) for crimes committed against Iranian citizens abroad.

Keywords: Enforcement Jurisdiction of Criminal Law, Personal Jurisdiction, The Actual Jurisdiction, Universal Jurisdiction.

INTRODUCTION

The new legal sections of Islamic penal code that includes changes about the formers law is the second chapter of the first book of this law about generalities as "the realm of criminal law enforcement in place".

This chapter includes seven articles, from article 3 to 9 about "International criminal law" of Iran law. In international criminal law that is field of domestic law, legislator unilaterally determines local domain of the credit of his rules or consider the domain of legal competency and his courts about crimes that one foreign element "such as nationality of the committed alien" that involve in it. In this common was, legislator declares one time for ever where obligations resulting from his approved criminal law develop and in what realm they implement. In the other words, In what cases the law and the national courts have these jurisdictions. Thus, these rules are usually expressed in the generalities or criminal law as "The realm of criminal law enforcement in place" or "criminal jurisdiction". Islamic penal code 2013 accepted this article, it is discussed without the need to study all the issues related to the local domain of implementing criminal law criminal jurisdiction. The goal of this writing is to familiarize with his resulted evolutions.

Research objectives:

1. To find the evolutions of Islamic penal code 2013 in the local realm criminal law.
2. To determine of the scope of criminal law enforcement.

The realm of criminal law enforcement

The principle of territory is the main principle dominant on international punishment. In our country, Islamic penal code identifies the limits of law implementation in the country and for peoples and citizens. In the Article 3 of the current Islamic penal code, legal law is implemented for all people who commit a crime in the land, see and aerial domain, unless otherwise stipulated by law.

The realm of criminal law in place:

The limits of criminal law enforcement in the territory of state in the outside of country and how to implement it about the foreign nationals resident in the country are the issues that cause to propose the subject of state governance about the criminal law. Penal code is inland rules namely; it is implemented for all people including foreign nationals.

Criteria for criminal law enforcement in place:

Determination of limitation of implementing the criminal law depends on one or few principles:

Principle of domestic land of criminal law penal code is applicable for all residents of the country including foreign or domestic nationals, but it is not applicable outside of the country.

The mentioned principle has two positive and negative features, because on the one hand, all resident of one country namely foreign and domestic nationals are subjected to the penal code of country and on the other hand this principle is not applicable for people who live outside of country and also for domestic nationals who live in another country.

Territorial principle of criminal law has the advantages as follows:

1. Implementing foreign law in the country and as a result, establishing capitalization is no longer probable.
2. Measures related to diction of crime, prosecution, investigation are implemented better and easier by judges that know their country's rules.
3. From the national and international law, government is responsible for conserving security and discipline and establishing peace in each country and it defines its sovereignty right by punishment of offenders.

Personal principle of criminal law

According to the mentioned principle, criminal law is exclusively applicable about the nationals of one country including these nationals live inside country or another country. The acceptance of this principle is complementary of domestic land principle of the criminal law. Because good moral of the foreign nationals outside of the country can cause the reputation and prestige of that country and in contrast, committing crime harms prestige and reputation of country. In addition, domestic nationals who enjoy the helps of their country embassy must avoid committing acts that is crime outside of country according to their country rules.

Crimes: committed in the territory of Iran sovereignty

Before we mention the manner of implementing the criminal law in the territory of state and its exceptions and also implementing the mentioned law about the committed crimes outside of country, we must see what are country realm and its limits?

Country realm means its upper and lower space and land (to the extent that it continues), coastal waters, occupied lands, under supervised land, ships, plans and special vehicles.

Government implements sovereignty at the mentioned realm.

Crimes committed outside territory of state

Criminal law is imposed to maintain discipline and security in the country. Therefore, they should have practical and legal credit only within the boundary of the country.

Iranians committed crimes abroad

According to the personal principle of criminal law, Iran penal code considers committing a crime as crime outside territory of state by Iranian people.

Crimes committed by foreigners outside the territory of state

Foreigners operations and measures outside the territory of state may oppose foreign security and domestic discipline and danger the vital and economical interests. Thus, legislator obliges punishment for offender according to Iran Islamic republic penal code following the principle of real jurisdiction of criminal law.

Principle of territorial jurisdiction of the criminal law article 3 Islamic penal code states:

Iran criminal law is applicable for all people who compile a crime in the territory of land, sea and aerial sovereignty, unless otherwise is stipulated by the law.

According to this Article its legal element is for all person, namely, Islamic penal code approved 2013 is applicable for all people whatever real or legal (firm & institution) that commit a crime in the territory of Iran's land sea, aerial sovereignty.

Advantage that are not retroactive criminal laws.

1. Protection of individual freedom namely all people before one act or leave of act is considered s crime by legislator they were free to act or leave an act and according to the religious view, an act or omission of an act has previously been allowed.
2. The most important advantage of reference to un precedent penal code according to people rights is to interpreted in the interest of the accused and its religious basis is that according to verse 28 of surah Nesa, God punishes Muslims for their sins and crimes that commit before Islam appearance.

From legal view: principle 169 constitution: no act or omission of an act is considered as a crime according to the law that has been imposed after it.

CONCLUSION

According to the mentioned discussion, Islamic penal code 2013 has more advanced and better rules about the real of legal jurisdiction and Iran courts than Islamic penal code approved 1991. This law could make the new law more compatible with the accepted principles in international criminal law and regarded as the positive evolution about the legislation after revolution. Therefore, we must not suffice of this evolution; we must mention the difficulty of this innovation.

The reason of this claim is that some evolutions resulting from the new law, previously existed in the reformed law of public penal that has been approved in 1973 in forty years ago in fact, legislator again confirmed the law by return to the past. One of these cases is to accept against the rule of avoidance of again court proceeding, we are criticized to enter more limitation to the new law. In this condition we mention them as the most important new rules about implementing Iran criminal law about the committed crimes in the foreign country against Iranian nationals with Iran country (principle of personal, negative or passive jurisdiction).

About the main hypothesis, the results showed that the determination of limitation of implementing the criminal law depends on one or few principles including, territorial principle of criminal law, personal principle of criminal law, principle of real jurisdiction of criminal law.

About the first sub- hypothesis, the results showed that the most important return of the new code to code 1973 is to recognize the credit of foreign penal orders in Iran that despite its limitation, we must consider it as optimal point of developing juridical cooperation's will all countries.

About the second sub – hypothesis, it can be said that there are different answer depending on public and private kind or whether it related to which principle of legal sub – principles.

Suggestions

1. According to the territorial principle of the criminal law given that the limitation of implementing the penal codes.
2. About the location of implementing the limit punishments, the lack of possibility of implementing these punishments is in the land of Islam enemies. This criterion is predicted to prevent incorporating sentenced to limit to enemy.

When the new law is approved after abundant studies, its insufficiency should be minimized.

REFERENCES

- Akehurst M. 1972. Jurisdiction in International Law, The British Year Book of International Law.
- Akehurst M. 1988. A Modern Introduction to International Law, 6th ed, Unwin Hyman.
- BOUZAT P. 1963. "Les effets internationaux de la sentence penale." *Revue internationale de droit penal* 34.
- Bowett DW. 1982. Jurisdiction: Changing Patterns of Authority over Activities and Resources, the British Year Book of International Law, Oxford.
- Brownlie I. 1990. Principles of Public International Law, 4th ed, Oxford.
- Cameron I. 1994. the Protective Principle of International Criminal Jurisdiction, Dartmouth Publishing Company.
- HUET A.2005. et Renee KOERING-JOULIN. Droit penal international. Paris, PUF.
- Khaleghi A. 2013. Studies the new evolutions of local realm of criminal law in the bill of Islamic penal code, legal research magazine.
- KOERING-JOULIN, Renee. Et Andre HUET. "Effets en france des decisions repressives etrangeres." *J.CI. (procedure penal)*: 404-10.
- LEVASSEUR, Georges et Andre DECOCQ. "Jugement etranger, (matiere penal)." *Rep int. Dalloz*
- LOMBOIS C. 1979. Droit penal international. 2e ed. Paris: Dalloz.
- Mc Clean D. 2002. International co-operation in civil and criminal matters. Oxford University Press.
- Mir Mohammad Sadeqhi H. 2009. international penal law of articles collections, first printing, Mizan publication.

Resolution du 3e Congres international de droit penal, parleme, 1935, cite par: Renee KOERING-JOULIN et Andre HUET, "Competence des tribunaux repressifs et de la loi penale francaise (infractions commises a l etranger). "J.-Cl.,(procedure penale).