



A Comparative Study on the Legal Challenges of Application of Jurisdiction Due to Nationality of the Victim

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Abstract

Criminal jurisdiction is one of the most important issues of international criminal law whereby a government can apply its criminal laws through its national courts. The authority of the government in the trials of criminals is not limited to the crime in its sovereignty, but may be the citizenship of criminal actors (offender or victim) in prosecution of offenses outside of the sovereignty. In the event of a Jurisdiction of the victim, which is called "passive or negative personal Jurisdiction, his country of jurisdiction in defense of the abroad's victimization abroad. Among the principles of extraterritorial jurisdiction, this principle has been exposed to conflict and opposition more than any other principle. This principle, in addition to not yet identified national law in some countries, has been late and limited to national laws in other countries and international documents. Historically, this principle, as an independent criterion in superconducting jurisdiction, has little background and has been divided by the principle of protective principle. However, this kind of jurisdiction, which is generally the legal /judicial authority of the government in dealing with the crimes of the event against its nationals outside the territory of sovereignty, has been accepted in the laws of some countries. The laws of countries with a strong legal system have postponed its actions to considerations such as the severity of the crime and the permission of the judicial authorities. Islamic Penal Code 2013 Although the aforementioned principle has been restricted to the presence of the trial, the rule of dual criminality and the rule of prohibition of the trial, the Islamic Penal Code, but with limited acceptance of the rules of dual criminality and the prohibition of trial again, only the irresponsible way of ordering them in other crimes. He has committed a commitment against Iranians or Iran abroad. This law dedicated the principle that was previously dedicated to crimes such as hostage -taking, terrorist acts or crimes in the ship and aircraft using absolutely the word crime. It expanded all crimes, and on the other hand, it was conditioned by the Iranian courts. In specific laws, this jurisdiction is involved in a particular crime. In fact, the characteristic of the aforementioned principle in the aforementioned laws is that it is first limited in terms of the type of crime or where its occurrence (hostage, crimes inside aircraft or ship); Secondly, the exercise of this principle has a mutual or mutual aspect. But in QM 2013, this principle is generalized to all crimes. This is the case in the practice of action. Because, some crimes, such as mild crimes and forgiveness, are not

as important that they can be considered the trials of the crimes in addition to the territorial government. Therefore, it can be said that the approach of specific laws is more applicable to the crime of committing a crime or the spatial territory of crimes.

In general, it can be said that the acceptance of the aforementioned principle, regardless of the criteria such as the relative severity of the crime and the imposition of the rule of prohibition of trial again, can exacerbate the conflict of Iranian and foreign courts. Therefore, given some logical opposition to the principle, it is necessary to limit its implementation by modifying the existing conditions and adding other conditions. It seems that that material, in accordance with the laws of other countries, needs to be amended in the following directions:

1- Including the "crime against Iran", along with crimes against Iranians, has subject to the limitations of the principle of personal jurisdiction, which must be within the realm of real jurisdiction. In addition, the concept and instances of crimes against Iran do not have the transparency necessary for the principle of legality of criminal rights. Therefore, it is better to transfer crimes against Iran (and the restrictive conditions of Iranian courts to them) to prevent the sputum of the discussion. Also, to avoid widespread interpretability, a legal definition for the concept of crime against Iran.

2- In paragraph (a) Article 8 of the Relative Acceptance of the Prohibition of the Courts of Refrigeration Repeat only for non-existential crimes in other offenses, or is incompatible with the lawsuits of the country's courts and fair trials. With the unity of the criterion of Article 5, the implementation of the implemented part of the external punishment shall be stated in paragraph (a) of Article 8 of Article 8.

3- Paragraph (a) Article 8 is silent on cases where the crime committed in the external righteous firm is investigated. Given the precedence of the authority of the territorial government and the jurisdiction of the court that has begun to proceed earlier, it is better for the Iranian courts to be investigated by the ongoing cases. The subject of this article is to examine the challenges facing personal jurisdiction arising from the citizenship of the crime with a comparative approach. To this end, it is first examined to the historical background and the theoretical foundations of this principle. (1); Then, the legislative challenges of this type of jurisdiction are in three areas related to crime, crime and the terms of Article 8 BC, with the emphasis on the CMA 2013, so that the terms of its implementation in the legal system shall be examined. Explain Iran and its deficiencies and failures.

Keywords: Cross-border jurisdiction, victim, Article 8, double criminality, prohibition of retrial.



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