

A comparative study of the law's jurisdiction based on the nationality of the victim in Iran and GermanySajjad Jalilian¹, Dr. Hasan Heidari²¹ Department of Law, Persian Gulf International Branch, Islamic Azad university, Khorramshahr, Iran² Department of Law, Ahvaz Branch, Islamic Azad University, Ahvaz, Iran

Abstract: The aim of this study examines the different approaches of comparative criminal law systems to support a national approach to victim. In the search for appropriate political and legal strategies stated amounts in proportion with the national legal system to support cross-border challenges affecting the exercise of jurisdiction. Using research tools including books, theses, dissertations, articles and websites in gaining information is required. In this article, we pass on the evolution of the rights of citizens beyond its borders will be the victim, as well as the perspective of the victim support. Damage and risks faced by citizens in a foreign land to identify and seek ways foreseen in national legislation and international legal protection. Relying on political or diplomatic tool called political support internationalization process steps and in line with the rights of individuals. The concept of sovereignty and its features in light of the internationalization of the rights of citizens as well as the scope and scale of international obligations in the international community paid. In the following challenges and barriers to cross-border actions in support of national jurisdiction referred to in trying to study, analyze and investigate different perspectives and sometimes join the legal system, the analysis was a comparison. Appropriate mechanisms at the national level and international law by the national executive, based on the principles of legal certainty and away from political tensions is found.

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Keywords: law's, comparative, national approach, criminal law

Introduction

The aim of this study is a comparative study from different approach of the legal system toward criminal support approach from the victim citizens that are seeking appropriate legal and political strategies and in accordance with national legal system against challenges facing the Support cross-border exercise of jurisdiction by using. From investigative tools, including books, theses, dissertations, articles and websites and the information.

In search, initially we will have a review on the evolution of the rights of the victim citizens beyond its borders, And also with the prospect of supportive sacrifice, we identified injuries and risks faced by citizens in a foreign land, And we are seeking legal protection through anticipated national and international laws on the basis of political or diplomatic tool called political support, And in line with process of internationalization of individual rights, we paid attention the concept of sovereignty and its features in light of the internationalization of the rights of citizens and the international obligations of the global community, and In the following challenges and obstacles facing citizens in support of cross-border jurisdiction are mentioned, and in is trying to give method of studying, analysis of different perspectives and sometimes parallel to legal system so we can conduct a comparative analysis, Legal

appropriate mechanisms at national and international level with the ability national executive, based on the principles of legal certainty and away from the political tensions is found.

Keywords: Criminal support, nationality, jurisdiction based on the nationality of the victim, personal jurisdiction, territorial jurisdiction.

Background:

The growing importance of maintaining the security of persons and protection of their rights anywhere in the world is considered part of the foundation rethink concept of sovereignty as responsibility of governments, Concept from the evolution toward responsibility for the protection from the citizens of outside the sovereign territory is idea about defending this article, Although can't imagine the extent of the sovereign territory beyond its borders but relying on the concept of responsibility from the governance for supporting citizens of the state we can know the scope of the responsibilities and powers which is based on this responsibility, more broader the borders of the their respective state, A wide range of threats and the extent of the territory location from the crime has caused that are considered more new institutions and collective responsibilities, Relying on the rule of government intervention, as responsible for support of its citizens, Insistence on this point is that, besides maintaining security and protection of state against internal and external threats, supporting

citizens against external threats is from the responsibility of governments.

Superstate being of the jurisdiction to cross-border crime has evolved from the results of international relations that is related to legal correlation between in the field of foreign and local, national and international, in ruling political systems and strengthen of international relations in the light of security of the foreign nationals protection of their rights of defense.

In line with the process of globalization and to parallel process of internationalization of the elements of the offense, to legal mechanisms as well as to dimensions of international obligations in the international community will be discussed. Accordingly on international solidarity in support of the rights of individuals and the provision of international cooperation is emphasized.

The historical background of the topic:

About development and expansion of government authority in the application of criminal law in relation to crimes committed against their nationals outside the sovereign territory known as the principle of jurisdiction based on the nationality of the victim in the works of some of the jurist wrote, that all are in the importance of survey and the reasons of denial and acceptance of principle but is not about the process of its implementation and study problems facing the implementation of this principle as well as legal entities in it are not mentioned, works like:

Poorbafrani (1381) studied an article the "nature and types of qualification in international criminal law." a part of his article is on the definition of jurisdiction based on the nationality of the victim but conditions of applying it in terms of international criminal law and the rights of criminal from Iran isn't considered. Khaleghi (1383) in a book entitled "Studies in International Criminal Law" examines the nature and how the implementation of the principle of international criminal law and penal law but violation of this, is about aspect of its comparative.

Ghiasi et al (1383) in a book entitled "A comparative study of general criminal law" only have a brief discussion of the nature of this principle in the realm of the application of criminal law, and about its conditions imposed and aspects of its comparative have not mention.

Mir Mohammad Sadeghi and Ezedyar (1392) in an article entitled "Jurisdiction based on the nationality of the victim" with emphasis on the law of Islamic punishment discussed the introduction of this principle and how its conditions imposed, but its failure towards to the present study is comparative aspect that this article to the rights of the other countries have not addressed this issue.

Faraj Al Sadeh (1413) a book entitled "Principles of law" has raised definition regarding this principle, but is not talked on the conditions applied of it and the comparative aspects of it.

Barbara van and Tigre Shatakam in a book entitled "Human security and international law" only Discussed the principles of the implementation of the principle of local laws and have not been mentioned comparative aspects and conditions of its imposing.

Internal and external criminal support:

With regard to the territory where the crimes, we can divide into two parts the criminal protection of victim citizens, internal and external. In other words, if the offense occurred within the territory of a state, can be acted by internal criminal protection, but if location of crime against internal nationals is outside the sovereign territory of the state, The government can intervene as the external criminal protection, when the spatial domain of crime is the range of domestic government and the absence of any foreign element in terms of the foreign committed offense or the victim or subject and result of it, is obvious that the government is competent to handle. But what is challenging and makes limitation of competence of local government is the time that place of the crime and the offender is foreigner. But since the victim is a inner citizen and his government is in the wake of protection of he/she, is requires the development of the legal framework and the internal and external policy making (criminal).

Hypotheses (if necessary) or research questions:

1-The principle of support for the victim in out of the sovereign state, has what dimensions and legal work?

2-The principle of support for the victim in the criminal law of Iran what is the position? In other words, the position of Iran's rights toward to the rights of other countries particularly the target countries (Germany, Saudi Arabia and Afghanistan) in the application of the principle, how is?

3-what is position The principle of support for the victim in the countries compared (target countries: Germany, Saudi Arabia and Afghanistan) ?

The concept of jurisdiction based on the nationality of the victim of Iran rights

Jurisdiction based on the nationality of the victim that would be a crime on a national of a country outside territory of that State, the country of origin, finds jurisdiction over the crime. Although this the principle in the regress of rules and until 1370 Penal Code was not adopted, but in particular, that applies in some other criminal laws, These include: (1) paragraph 2 of Article 31 of the Civil Aviation Act 1328 (1); 2. Paragraph B of Article 14 of the Iranian government's accession to the Convention Tokyo,

about crime and applied, ultimately Article 8 of the 1392 Islamic Penal Code seal of approval.

Jurisdiction based on the nationality of the victim can be studied in three dimensions:

Basis of this competence of support: the basis of this principle is based on the nationality of the victim.

1. subject of this qualification: person who we are seeks to support for his rights, is a natural or legal person, so the development of competence is the person-centered approach.

2. tools and references competent to handle in this type of qualification: civil law is the main tool for this aspect of indicators of jurisdiction and making legislation. In Iranian law, this principle can be used when the external threats facing the nationals with all aspects of its, all the elements of the crime even its implications, in outside the territory of the State was actualized by a foreign person and the judicial process for crime was acted until giving of judgment, but his sentence has not been implemented or has been faced with incomplete implementation. Although apparently these aspects separately and are presented separately but using conventional or accepted definitions of a word or phrase and definitions related on each It can also involve their interaction. For example, the nationality of the victim is equal basis of this principle and also is making - determination the principal tools, and reference address.

International criminal responsibility in protecting the rights of the victim nationals:

Today the rights of the citizens is as a important factor in international relations. Accordingly, governments in regulating their relations in this field are facing with the international constraints and in time unwanted. In the contemporary world, the issue of the rights of individuals the one of the sustained and serious discussions between the countries has become. In most international meetings, bilateral and multilateral meetings, the views of the countries towards the issue of human rights will be exchanged. Especially the developed Western countries that have had more progress on human rights, the promotion of individual rights and government support, it is described as one of the conditions of economic and political relations and insist on its. Today countries and different organizations to put pressure on countries violating human rights and published a report in this regard to a "making-shame policy" against violators of human rights have taken. While a number of countries are in the list of human rights violations (looking west) and even international settle accounts also with violator showing UN and certain governments is done, is result of ashamed-making policy.

Problems facing embracing the principle of qualification based on the nationality of the victim in some countries:

While accepting the importance of the principle of the US to the extent its is not in Europe but also in this country in some cases this the principle is used. Sample of File: In February 1985, one of America's anti-narcotics officers Camarena was kidnapped in Mexico City Gvard Lajra and a month later his mutilated body was found ten kilometers from the city. The indictment issued against guilty of murder is attributed to him but America government's efforts to extradite him on an extradition treaty between the two countries was not helpful, Finally, in April 1990 from 5 to 6 armed gunmen kidnapped him from his office in Mexico and America brought, the court ruled that This kidnapping is violation of the extradition treaty signed between the two countries has been.

In one case, a premeditated murder committed by a citizen of America on an island inhabited is known as violations of America's rules and traceable in the country and America's war crimes law enacted in August 1996 for all those who commit serious violations of the Geneva Conventions are anywhere of the world on the condition that the offender or the victim or a member of the army or a citizen of this country America and are known traceable and punishment, the punishment could even be death. In some international conventions, jurisdiction based on the nationality of the victim is approved and accepted, Convention about the hostage to allow undersigned states so in cases where the person taken hostage is from their nationals for extraterritorial jurisdiction are allowed.

America's government, however, have doubts about the accepting the principle so that foreign countries put this principle as a base of making - rulings against Americans, America's government, however, have doubts about the accepting the principle so that foreign countries put this principle as a base of making - rulings against Americans, But at the same time in cases where nationals outside its borders taken hostage or have been victims of terrorist acts, this government on the basis of this the principle demands the extradition of the accused and, if possible, he is brought to trial in the courts of America. Including can be noted to America claims against Lebanese citizen called Younis accused of hijacking a plane belonging Airlines Jordan Beirut and blow it up after release of all passengers, America's government according to the two US citizenship hostages, kidnapped Younis of international waters and for trial in 1988, brought to America, Another extradition request is Mohammed Abbas Zidane, a member of the PLO that by the America because hijacking of the Italian cruise ship Achille lauro in the

waters of Egypt and the killing of one of America's nationals Leon in 1985 in this regard and America government demand for the extradition of nationals of Libya to bring down a America plane over Scotland surface which is noteworthy.

Jurisdiction based on the nationality of the victim in German law:

German law such as the rights Switzerland, France, America and Britain has emphasis on the theory being inland of criminal law, German lawyers as Kostlin and Martin believe that the offender does not break more than a law and that law is a law of country that has committed a crime in this country and does not obey of the rule its law, and if the government pays crimes that taken in outside towards to its nationals or against security of them, have natural right their self-defense, but This is no about response to criminal justice. It did not last long until the reaction movement against cross-border being legislation in Germany in the second half of the 19th century began that Bauer (Baur) in German law the personal jurisdiction of the judge knows but this aspect is optional. Feuerbach (Feuerbach German lawyer), personal jurisdiction limited to specific cases and that is when a crime committed outside Germany endanger national security or crime towards be done one of the German nationals abroad but does not prevent for develop the legislature the verdict on other things. (Hosseingholi Hosseini Nejad, 1383, International Criminal Law, p. 42).

German law scholars such as Lest, Binding and Wuchter sometimes also consider state as the interests of the rights and benefits that the state support them, the opinion of these scholars are divided into three categories: 1. The defense of the organizations. 2. The defense of property. 3. Defense of the People.

This principle in paragraphs 6, 7, 8 (a) and 14 (a) Article 5, paragraph 1 of Article 7 of the Penal Code of the Federal Republic of Germany; Article 8 of the Penal Code of the People's Republic of China and in Article 8 of the IPC, adopted in 1392, is accepted. The answer to this question in Iran and China legislation is positive, but negative in German law. Therefore, in accordance with Article 5 of Germany, In case a person is subject to the principle that he/she be residence in Germany or German nationals or his main livelihoods are on German soil. Penal Code Federal of personal jurisdiction based on nationality active in paragraphs 8 and 9 and paragraphs 11 (a) to 15 (Article 5) and the principle of personal jurisdiction based on nationality passive in paragraphs 6 and 7 of Part A, Section 8 and Section 14 a) This rule is reflected, German criminal law, the situation in the country where the crime committed is punished (in order to avoid double punishment) is not clearly defined.

Compare the analysis of this principle in the law Iran and Germany "

The importance of crimes committed

As the active personal jurisdiction, this requirement must also be met jurisdiction based on the nationality of the victim. So for that principle is applied in different countries only in major crimes. United States of America as a country that it applies only in crimes such as terrorist crimes (Shaw, 1994, 409). This condition in Article 8 of the 1392 IPC is not accepted, so all crimes committed outside Iran against Iranian nationals are subject to the jurisdiction based on the nationality of the victim. China, unlike the Penal Code of Iran has given to this condition and it has predicted in Article 8. According to this regulation, "while for that crime, This law a minimum punishment of imprisonment not less than three years is set...". So, according to this regulation specifies that the first offense punishment shall be imprisonment, secondly, at least not less than three years. Penal Code of the Federal Republic of Germany as well as the principle of personal jurisdiction, crimes against citizens divided into two categories, important and unimportant. The only difference with Iranian law, it is that In other words, German law as Iranian law jurisdiction based on the nationality of the victim considered the include all crimes. German law by dividing the important and unimportant crimes to prosecute major crimes has imposed conditions more easily while there is not such the making - division in Iranian law.

The principle of mutual culpability

On this requirement should be stated that Iranian lawmaker among all the principles of extraterritorial jurisdiction, after the for the first time jurisdiction based on the victim's nationality was adopted, this requirement only on the same principle is accepted on a limited basis. Therefore it is clear that Iranian legislator accepted this conditions of sanctions, is also in accordance with Clause 2, Article 115 of the IPC in 1392 only for non-authorized law sanctions is applicable. China's Penal Code this condition about all the crimes against its nationals is accepted. Germany also the accepted same position in this principle of personal jurisdiction is accepted. Namely offenses covered by this principle is divided into two categories, important and unimportant. Major crimes include risk political persecution, abduction of minors, violation of professional or commercial secrets related to the professionals who are physically in the territory of the Federal Republic of Germany or related to the investment is that its location is in the country. Or related to investment where it is located in outside and is related to investment in the Federal Republic of Germany and with recent linked investment forms a group; Sexual abuse and bribery of delegates.

Jurisdiction based On the nationality of the victim against other conditions such as the prohibition of retrial, despite the law to prosecution under the laws of both countries and there are return of accused to the country that to the order to make the positions of all three of these conditions on jurisdiction based on the nationality of the victim is the same as the personal jurisdiction has been accepted in principle is not mention it again. But the question arises on this principle. The first question is that if a person after a crime victim, the their citizen have changed, Do new country can deal for him citing the principle of jurisdiction based on the nationality of the victim for the crime committed against him ? this question is controversial (Mir Mohammad Sadeghi and Ezadyar 1392: 11), but looking at the laws of Iran, China and Germany, should be believed the answer is negative, Because according to Article 8 of the IPC 1392 "If the foreign person outside Iran... committed a crime against the Iranian Person", it is clear that the legislator has been intended time of the offense. The second question that in the principle of personal jurisdiction was raised is whether a national of a country should certainly in the respective country must have normal life or not?

And their livelihoods are in that country, if a crime take place against him, so is subject to the jurisdiction based on the nationality of the victim or not? The answer in the next discussion we developed.

Conclusion

in the study presented, we conclude that, firstly, the development of criminal law jurisdiction outside the sovereign territory does not harm the sovereignty of other nations. Because the development of authority is not means have the authority to enter into the sovereign territory of other nations, It means that governments give themselves the right that if crime by their nationals or against their nationals or take parts and against the essential interests them and arresting criminals through legal means may be (Whether by entering to the sovereign territory, or through extradition) it be competent to investigate the crime committed by their nationals. On the other hand acceptance of this principle not only does not conflict with international criminal law, with Sharia is not in conflict, because according to Shari'ah standards, wherever occur crime against the citizens of Islamic countries, to deal with it is in the jurisdiction of the country Islamic. Iranian criminal law Previously, only the active personal jurisdiction in Articles 6 and 7 of the Penal Code (1370) is accepted, and for many reasons, including being subsidiary the principle of personal jurisdiction with respect to principle of territorial jurisdiction and equitable observance of justice with respect to accused, the principle of

personal jurisdiction in absolute terms do not apply, but its actions are subject to important conditions such as crimes committed, lack of previous and mutual culpability. Iran's rights since the adoption of the 1352 Penal Code to remove all these conditions after the revolution, even the most minor crimes, such as violations of Iranian nationals outside the country, verifiable in the Iran's court, whether that this practice taken part in the country where is the crime or not and whether Iranian nationals abroad the country prosecuted because of commit it or not. However, in Article 7 of the Penal Code, adopted in 1392 as an expression of personal jurisdiction that is active, the a judicial review only, be or not be guilty of sins in the place (if mutual culpability), it does not know conditional. However, somewhat between the Iran's Penal Code pertaining to the exercise of personal jurisdiction with internationally recognized standards such as the rule of the previous lack of investigation as well as the principle of mutual culpability apart from hudud and qisas offenses is accepted. Of course legislator should differentiate between the crimes committed in Islamic countries and non-Muslim and the applying principle of personal jurisdiction to consider such a issues makes possible. For example, execution of the judgment on an Iranian citizen who was sentenced in Lebanon is considered and the offender will not be prosecuted again.

From what was said, it can be concluded that Support of Victims of offense may have played a major role in reducing the criminal phenomenon, in the criminal justice, the reconstruction of the personality of the victim and the providing material and moral damage him is effective. Permissibility of retaliation in premeditated murder, payment of blood money, and the in some cases, amnesty for restorative justice, are the methods that Islamic criminal policy to protect the right to life and compensation for victims of offense and the victim's family has decided and for completion and the implementation of these policies, key institutions such as the "guarantee relative", "guarantee rational" and "treasury" is predicted, to be realized in any possible way support for the rights of victims and to preserve the sanctity of human blood and does not see this measures enclosed in place and thus Islam condemned a violation of the rights of Muslims anywhere in the world and supporting him on the Islamic State is obligatory.

Current trend is outside the traditional framework, and new global regulations intentionally or unintentionally imposed on countries and National governments of the drafters of to the law function change the nature and use. Under these conditions, domestic and international means intertwined and Mode of action deeply wrapped, so when a member of a treaty or agreement was optional, but now global

rights regime conditions intentionally or unintentionally imposed on players. Gradually with grip strength the process global governance, scope of authority and autonomy countries has been limited, and may be required to comply with rules that do not desire this. Such as that criminal is their national and victim respective Governments knows itself competent to investigate, this now reached to the point where it may not be member of an international organization but must respect the rules approved, and thus state sovereignty in contrast, global governance and international organizations and universal rights associated with it is more limited. The basic difficulty the international community today, especially in what is related to the rights of its citizens, Mainly to cross the boundaries ((rule)) of governments and infiltration ((territory)) of them are summarized. Naturally, for this operation ((interference)) don't consider in the internal affairs governments to the their cooperation is needed more than ever. (H.b.k, Muhammad Ali, Ardabil, 1388).

It seems that the best system responsiveness to transnational crime should be based on foreign criminal policy not based on internal criminal policy, because in criminal policy, actions only are reactive and criminal and attention to compensation for the harm of victim is further. It is necessary the exchange of information and coordination of the international community to support and follow-up measures as well as impose other appropriate measures in order to prevent the commission of such crimes to act with cross-border nature. " In fact, in this order, the prevention of domestic law-based state governments is into account the comments of the legislator. Also duty of governments to determine criminal punishment can not suggesting claims of penal that policy and not criminal. Because principle of individual from type of responsiveness also in the process is reference - able. Perhaps Because court or tribunal determines that the response is proportional to the crime including non-criminal measures such as the replacement of imprisonment.

Another factor that is causing psychological trauma problem is sexual violence or cruel and inhumane that enters more on vulnerable groups such as women and children. International documents in this case requires special attention paid to it and the member states observing and protection of the rights of the aforementioned groups are required. So first step towards protect the rights of the victim, trying to repair the damage and considering losses imposed on him by the perpetrator or his government and then with request of the victim, the offender will be punished.

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