

Responsibility Based on Joint Criminal Enterprise in International Criminal Law

Aref Rashnoudi (PhD student of Criminal Law & Criminology)

Muhammad Ali Ardebili (Professor at Shahid Beheshti University)

Joint criminal enterprise is now one of the most important forms of criminal responsibility in international criminal law. One of the most important reasons for this is the suitability of this form of responsibility, with the method of committing international crimes. Because of the crimes with the presence of superiors (including political, military and administrative officials) as the leader and often committed, they should be grouped and based on a common plan and in a broad area. Considering the widespread use of this form of criminal responsibility by prosecuting authorities for accountability to defendants of group crimes and on the other hand, there are many challenges in the legal foundations of this form of responsibility and its comprehensive interpretation by the prosecution authorities in the exclusive courts (Yugoslavia and Rwanda) and, consequently, the hybrid courts (the Special Court for Sierra Leone, the Extraordinary Chambers of Cambodia and the Courts of Cambodia...) caused. In the wider context of this form of responsibility, by scholars of law, lawyers and academia, scientific and judicial criticism. Much of the criticism about the fact that, When the Yugoslav court accepted this form of responsibility for the case Tadic, at the time, this form of liability was not accepted in customary international law, and many critics do not regard this form of responsibility as the result of

موسسه حقوقی شهید بهشتی



customary international law, but also consider it a form of judicial innovation beyond the scope of the Statute of the court Yugoslavia and customary international law. Therefore, the cause of research in this field is the identification of challenges and legal and scientific ambiguities Which the International Criminal Tribunals are responsible for dealing with this way. The achievements of this study are mainly to identify the concept of criminal responsibility based on joint criminal enterprise and determine the elements of this form of responsibility in international criminal law.

Keywords: *Forms of criminal responsibility, Joint criminal enterprise, International crimes, Constituent elements, Scientific and judicial criticism, International criminal law.*

Comparative Study of Criminal Policy in Drugs with a Look at Criminal Policy of Iran

HasanAli Moazzenzadegan (Associate prof. at Allameh Tabataba'i University)

Muhammad Faraji (PhD student of Criminal Law & Criminology)

After the announcement of war on drug in the 1970s in the United States of America and its undesirable results, the necessity of alteration of confronting ways has been taken into account and a different policy, different from that tough one, has been exercised. This article seeks to examine and explain United States of America's "national drug control strategy", as a country of those dealing with drug problem. Regarding that in terms of that problem, Iran has some similarities in some aspect with United States of America, so the similar action namely "general policies of fighting against drug" is





also mentioned. Actually, examining these strategies and policies, it finds out that those like a balanced criminal policy is to use all capacity and attempt to provide society with security, as much as better. These strategies and policies, in a broad spectrum include prevention, early intervention, treatment, rehabilitation, international cooperation and criminal justice reform. Consequently, these strategies and policies are to be efficient control of drug in both national and international level, which in resolving drug problem not focus merely on posterior penal response but take into account the anterior non penal response.

Keywords: *Drugs, National strategies, Criminal policy, United States of America, Iran.*

Cultural, Social and Economic Challenges for the Correction and Treatment of Delinquents

Asghar Balarak (PhD student at Islamic Azad University, UAE Branch)

Hussein Gholami (Associate professor at Allameh Tabataba'i University)

M. Ali Babaei (Associate prof. at Imam Khomeini International University)

Criminals' reform and treatment is a set of medical-clinical and preventive measures (curative, educational, and educational) that criminals are taught as a norm by these programs and are led to follow social rules. These concepts have many approaches and effects that are now being codified and organized in different ways at different stations throughout the cycle of proceedings. Now, after formulating and revising the remedial approaches to the Law Book, studying the actions in this regard and identifying the structural challenges facing

these processes is necessary. It is clear that in a simple division, existing structures can be separated into three cultural, social and economic domains. The analytical study of these structures shows that educational structures, social laws, poverty status and unemployment in Iran's current society are in conflict with the remedial programs, and the problems in these areas present a serious challenge to the return of the offender to the normal life-style.

Keywords: *Correction, Treatment, Social Structure, Cultural Status, Economic Situation.*

The “Cloudy Years” Novel in the Light of the Teachings of Criminology of Children and Adolescents

Hadi Rostami (Assistant professor at Bu Ali Sina University of Hamadan)

Ali Molabeigi (MA in Children's Penal Rights)

Since the law includes the discriminative children, It is possible for them to enter in penal code, because of criminality. On the other hand, these kinds of children are exposed to the sorts of abuse and crime victimization, due to their special physical and emotional conditions. But with disregard of these conditions, some of them are exposed to crime victimization and criminality more than the others. We can name them “injured Children”. The examples of the above mentioned children can be found in a novel which is called “the cloudy years” by Ali Ashraf Darvishan; Which can be viewed from the perspective of some criminological theories through the method of content analysis. The result of this can, on the one hand, be the close link between





literature and criminology, and on the other hand, literature as a preventive tool for building an ideal society and exposing the bad economic, cultural and other social impacts that affect children.

Keywords: *The novel of cloudy years, Law opposed children, Victim crimes children, To be exposed to danger children, Crime sociology and psychology theories.*

The Justification for Suspending Imprisonment: A Comparative Study of Iranian-French Law

Shahram Ebrahimi (Assistant professor at University of Shiraz)

Reza Rahimian (PhD student of Criminal Law & Criminology)

Lawmakers today accepted the mechanism of justifying the sentence, which means requiring the judge to justify and explain his choice when issuing a prison sentence, in order to ensure that the criminal court judge does not issue the arbitrary prison sentence. According to this approach, the judge can only issue a suspended prison sentence as a last choice, in which case he must justify the necessity of the non-suspended sentence in the light of the severity of the offense and the characteristics of the offender, and also in the case that the other sentence implementation assurances appear to be clearly inappropriate. However, if a prison sentence is issued, it should be determined how to implement it as an open prison within the framework of one of the appropriate facilities, such as a semi-liberty system or the implementation of the sentence under the supervision of electronic systems. If such measures cannot be implemented, justification should be given to provide the possibility of exercising

control over the higher courts. Although the various provisions of the Code of Criminal Procedure have previously provided the justification of the sentence, the justification of a non-suspended prison sentence, which raises a degree of mistrust towards the judge who issued the sentence, is innovative and new and goes beyond the concept established by the Lawmakers in the Code of Criminal Procedure. The above-mentioned requirement to justify prison sentences on the one hand can prevent the issuing of a non-suspended prison sentence and, on the other hand, can lead to the changing of the execution place of an open prison sentence, using institutions such as the semi-liberty system.

Keywords: *Justification of vote, Imprisonment, Custodial inflation, Adjustment of punishment.*

Jurisprudential Challenges of Imposition of Ancillary and Supplementary Punishments on Perpetrators of Punitive Crimes and Retaliation in the Islamic Penal Code Approved in 2013

Mahdi Salehi Moghadam (PhD student of Criminal Law & Criminology)

Shahrbanoo Husseini (MA of Jurisprudence & Principles of Islamic Law)

Abd al-Reza Asghari (Associate professor at Razavi University)

The adaptation of laws, in particular penal laws with jurisprudential principles, is one of the important issues of legislation after the victory of the Islamic Revolution. One of the issues discussed in criminal law is the complementary and consequential punishment. The Iranian legislator, in Articles 23-25 of the 1979 Islamic Penal Code, allows





the judge, regarding to the crime and the characteristics of the person who committed the crime, to convict the criminal with one or more supplementary penalties and deprive him from social rights as ancillary punishments. Considering the general principles governing the Islamic punishment and retaliation (Qisas), in particular stability of its measurement depends on answering this question: is the spreading of the supplementary and ancillary penalties of discretionary punishment awarded by judge to Islamic punishment and retaliation consistent with religious principles? After referring to library resources, the opinions of jurists, and judicial procedure, and while expressing instances of supplementary and ancillary penalties in Islamic jurisprudence, this research has evaluated the reasons of the supporters and opponents and has showed that imposing other extrajudicial punishment other than Islamic punishment or retaliation is prohibited and spreading the limited number of extrajudicial punishments to Islamic punishments and retaliation in jurisprudence are some specific instances that stated by the holy lawgiver which is out of the general rule of the stability of the measure of the punitive and retaliatory punishment. Therefore, the absoluteness and generality of Articles 23 to 25 of the said law and the application of complementary and consequential punishment in all Islamic punishments and retaliation is not correct.

Keywords: *Complementary punishment, Ancillary penalty, Islamic punishment, Retaliation, Increasing the Islamic punishments, General rules of the Islamic punishments.*

Criminal Jurisdiction of the Coastal State, Based on Domestic Laws in Conflict with the Jurisdiction of the Flag State

Javad Salehi

Assistant professor at Payam-e-Noor University

The principle of jurisdiction based on the subject and object of nationality is one of the indicators of criminal jurisdiction. Accordingly, it is probable that criminal jurisdiction claims of two coastal state and flag state will be based on the nationality of each one in the single case. The case of the Enrica Lexie ship is also in the same position with claims of piracy countering. However, interpretation of each of the parties is different from the provisions of the Seas Convention on the Law of the Sea about Maritime Areas. The contiguous zone is the boundary between the territorial sea and the exclusive economic zone. However, the Convention's literature shows that the contiguous zone is part of the exclusive economic zone and follows the regulations governing this area. Therefore, the coastal state does not have the right to exercise criminal jurisdiction under domestic law. The coastal government should be limited to exercising specific affairs of administrative and supervisory sovereignty in contiguous zone. Prosecution of crimes, even the deliberate murder in a maritime incident, with the idea of fighting piracy in the contiguous zone within the jurisdiction of the flag state.

Keywords: *Criminal jurisdiction, Territorial jurisdiction, Convention on the law of the sea, Coastal state, Flag state.*



Drug Trafficking: The Illegitimacy of Narcotic Drugs or the Illegitimacy of Drug Trafficking

Hasan Toqranegar

Assistant professor at University of Zanjan

The criminal law of drugs are based on the list of prohibited “materials” and a set of criminalized “acts”. The almost neglected question is that the definition of illegitimacy goes back to the “object” or “action”. Consequently, they should talk about “illicit traffic in drugs” or “traffic in illicit drugs”. The next question is that, in both assumptions, “trade” and “consumption” of narcotics are described to illicit based on common ground, but why these two “practices” have different repressive paths? It is apparently the consequence of two pre-assumption: the demand creation by the supply and victimization of consumers. This debate, while criticizing the current criminal policy regarding drug trafficking, could lead to enlightenment in modifying that criminal policy.

Keywords: *Illegitimacy, Drugs, Drug trafficking, Drug use, Criminal policy.*

