Interference rule of retaliation in criminal law of Iran

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Abstract

In Islamic penal code of 1992, sentences for crimes interference had not predicted and legislated in an independent difference, but the general provisions of intentional, quasi-intentional crimes and intentional error had been predicted on the case of the material from retaliation or blood money but in the penal code which in fact it can be one of the subsequent developments in the law to take into account, expected orders refer to the interference of the crimes that the legislator described it in the second chapter of the first part of the third book in articles 296 to 301, and also the third part of the first chapter (member retaliation) in articles 389 and 390.

Key words: interference of causes, interference caused, contagion, retaliation

Introduction

The first clause: interference rule of retaliation in Islamic penal code

Islamic penal code of 1370 in article 218 provides:

Whenever the assault and battery results in both birth defects and killing, if there is a blow, retaliation of killing is enough and there is not any retaliation or blood money to birth defects.

The logic of the aforementioned article is based on the first case of interference of the member retaliation in blood vengeance that we stated the legal order. Contraposition of this article is the case which assault and battery are not with a blow that this sense includes the third and fourth case but the order of the second case, that is, the occurrence of death is from a blow to the ruling religious conflicts do not match with the concept of this matter requiring multiple punishments, so in such cases we cannot restore to the meaning of article 218.

Under article 36 of the constitution:

Sentence and its implementation should be made only by a competent court of law. But since the former penal code about the interference of member retaliation in had no particular order,

so the silence of the law referred to article 167 of the constitution and to find a sentence it should have referred to Islamic sources or valid juristic opinions. However, the penal code act of 2014 has eliminated the shortcomings of the act 1992.

According to the article 296:

"If someone deliberately imposes a crime on individual members and he dies due to the spread of crime and if the crime is located under the definition of the crime, it is called intentional killing, otherwise it is quasi-intention murder and the perpetrator convicted to pay blood money of the soul in addition to the member of retaliation".

The crime of the murder is the crime of the result that the style of the commitment does not result in the attainment of the result achieved, but what is important is to leave the spirit that leads to the realization of the result. This article describes two scenarios which in one case just take place blood vengeance and in another case, the death penalty and member retaliation are ordered. It is assumed that the term "if someone deliberately imposes crime on individual members and he dies due to the spread of crime" it is common to both cases; that is, in both cases, the crime spreads to the soul but the difference between these two cases is that in the first case the crime includes the definition of intentional homicide and only occurs the interaction between the crime because the crime on member is an introduction of the soul but the latter the crime is not an intention homicide and due to the difference in the nature of the crime, the interference of the crime does not occur.

It is noteworthy that in the first case, however, the reason for homicide is from the spread of the crime, but the spread of the crime and murder does not mean that there are not any causality between the crime and murder but on the basis of this assumption, in addition to the material principle, the relationship of the causality must be provided. On the other side, articles 297 and 299 of the penal law, according to the jurists between the crime with a penalty kick and the crime with several penalty kicks with respect to multiple outlines each of the forms described above:

Crime with a blow: the state is divided into two cases. In one case, the blow of the victim has been imposed and the same blow will lead to death. The sentence of this article is stated in 297.

"If a committed with an intentional hit, causing crime that resulted in the death of the victim, if the crime is located under the definition of the crime, it is a deliberate killing and to cause birth defects or injury which is caused by murder, is not sentenced to death or money".

This article was not in the previous law and since the crime took place with a blow, it is like the previous article; however, due to the same physical behavior of both materials, the punishments are the same, but the difference of this article with the first part of the previous article is that here a bodily injury resulted in killing directly but in the previous article at first impose an injury to the victim and then the wound gradually hits to the soul of the victim and results in the death and that is why in the previous article the quasi-intentional has been predicted but here there is only one case.

The main difference for this article with the previous article is in transmission or non-transmission and the main message of this article is that if at first a member hurts due to the bodily injury and then occurs, crime and punishment interference takes place and two separate punishments do not apply.

B: Another case is that the intentional injury causes numerous crimes against members but the murder of the victim is in all their documents where the death penalty is applied only to the provisions of article 298. In this article a legislator says:

If someone hits a deliberate blow and results in numerous crimes against the victim, if all of them jointly kill him and also killing includes in the definition of crimes, he is only sentenced to blood vengeance.

This article was not in the present form in the previous penal code, the difference with the previous two is that the murder here documents in several crimes, while in the previous ones a crime results in killing.

The sentence of this article refers to the case where the victim dies as a result of blows, so the member retaliation includes blood vengeance but if the imposed crimes do not lead to the death of the victim, but according to the principle "retaliation and blood money non-interference" every crime includes a separate retaliation unless there is a specific reason for some cases interfering with the judgment of the sentence. In other words, the multiplicity of causes leading to the multiplicity of causative, but the multiplicity of the causative does not result in the multiplicity of causes.

C: crime with multiple blows: crime with multiple blows has different forms that the sentence has been stated in this form in 299 (if someone with multiple intentional injury causing numerous felony murder and the murder is the victim and it is also included in the definition of intentional crimes, and if some of the crimes lead to killing and some do not have any role in the murder, the committed in addition to blood vengeance, the death of the murder, or blood money are condemned. But if death caused by the total crimes if they are consecutive

blows imposed is ruled as a blow to death or otherwise attached to the blood money that crime was also sentenced to death.

Note: the provisions laid down in articles 296, 297, 298, and 299 in cases where the crime or crimes committed spread in the same area more than any other member or members of the victim is also available. The sentence for this article is based on famous jurists, but in the case of the stated order have been doubted in the following article: "if injury and killing have taken place with a felony murder, the member retaliation includes blood vengeance as if it cut another hand with a blow and then the injured party dies, but if injury and killing take place with two blows, then interference does not occur as if it cut the hand of the victim and then kill him, but if two blows take place in two consecutive times as if it cut his hand with one blow and kill him with one blow and kill him with another blow, then does the verdict belong to him? Here are ambiguities and difficulties and the closest form is that interference does not occur". The reason why the legislator has stated the penetration verdict of the member retaliation in blood vengeance in many cases is not clear. It was better that the legislator set out a general rule instead of mentioning examples and samples as some jurists have noted and said the principle of non-interference is the member retaliation and soul.

Based on the appearance of the article, multiple blows resulting in killing have two cases, in one case only some blows play a role in its realization and some other blows have not any effects in the occurrence of killing, so according to the first sentence of article, blood vengeance and member retaliation take place, that is, the principle of retaliation non-interference is run. The second case is that all blows have a role in the occurrence of killing that this case is divided into two cases according to the second part of the article, in one case that all blows are done consecutively but if the blows are separately, and then the member retaliation also occurs.

In the first case, the verdict is clear but in the second one only being mentioned succession of blows a differentiating factor for two cases, is not perfect because killing that is a first crime document to all blows, the aim of blow succession is that the consecutive blows are done to die the victim. The legislator in this article has considered the next blows the continuation of the previous blows and considered all blows in a verdict of a blow too.

Another change and innovation-related crimes in conflict with the provisions of the penal code act of 2014 envisaged in article 300 of this law.

If the victim in a criminal case arising from deliberate crime against the notion that he would not be killed, or if the murder is not the result of intentional murder, it is not considered an

intentional killing. During the preliminary investigation or trial in court, the victim remitted his complaint in the above-mentioned aspects and/or compromise with obtaining blood money but then the occurred crime spreads to the soul of the victim resulting in his death, in this phase the legislator assumed two cases as it was referred.

The first case: whenever the court established that the killing of the victim contains the killing definition or intentional crimes that in this case this issue is a subject to the provisions of article 298 of the act, that is, the committed has been attempted to do a crime with assault and battery, and in practice the purpose of the crime has been his aim, in this case the court is recognized the committed as an intentional killing if the causality relationship between the blow and the death of the victim and his punishment will be blood vengeance.

The second case: if the court is to prove that crime is not covered by the definition of intentional crimes, in this case, if the court is still committed to the issue of recklessness or ignorance, or the crime due to recklessness is committed, in such cases, the offender is sentenced to pay compensation for soul without including blood money for member retaliated and/or consideration in contract of compromise taken.

The second clause: terms of retaliation interference in judicial procedure

The provisions of the penal code, adopted in 1370 without interference death sentence in another member and also one of the four members of retaliation interference in death, the murder was the result of several blows and kicks all citations death. Accordingly, given that in order to implement the principle of "legality of crime and punishment", citing rulings by the court is required to rule, constitution of the Islamic republic of Iran, as well as some other laws, including regulations, duties and sanctions are specific to this case. For example, article 166 of the constitution adopted in 1358 provides:

The courts must be well reasoned and documented the laws and principles upon which the warrant was issued. According to article 167:

The judge is bound to endeavor to judge each case finds, and if not, citing authoritative Islamic sources or authentic judgment issue the sentence of the case, and he cannot excuse or remain silent or incomplete or inconsistent rules outlined refrain from admitting and investigating the case and sentencing.

Article 214 of the criminal code of the public and revolutionary tribunals adopted 2000 in this case provides:

The verdict must be reasonable and justified and documented the laws and principles on which it is issued.

The court is bound to find the order of each case in the codified laws and if the law is not the case, citing reliable sources of legal or valid warrant issue the sentence of the case, and the court cannot refuse to excuse silence or failure or conflict or ambiguity codified law, litigation and adjudication of complaints.

Article 9 of the law courts and the public (prosecutors revival law) adopted 1992 also involves a similar ordinance. According to this article:

Warrants and court decisions must be justified and documented in law or sharia principles upon which the order is issued. Abuse of this order and vote declaration without citation will lead to sentencing law.

In the case of basic and ordinary legislation from "reliable sources" which was mentioned in principle 167 and article 214, some experts have proposed two impressions: "first, the purpose of the deduction of provisions is the evidence of four (scripture, tradition, reason, and consensus), arguing that the final review of the constitution, the proposal was only referring to reliable sources, then one the representative proposed that since it is possible the judges have not been priest and be a follower, authoritative judgment is also added. So, judgment is for the judges of the follower and sources for the judges of priest and it is natural that dignity of the priest is order deduction for four reasons. The second possibility is that the meaning of sources is religious books such as ways, jewelry, and laws. According to this provision, principle 167 of this is as a brief and succinct, not proof".

On "October judgment", some suggested that the purpose, the notion of famous jurists, theologians consider the guardian council, in its opinion of jurists that is compatible with the interest or the leader, some other believe: "judgment is an obvious right for imitation so make sure it is valid judgment, although it is clear in this case too. Some authorities oppose systems or those who consider as authority on matters of religion in a specific geographic area, the judgment are valid or not. In case of judgment they have also said: "some consider caution in getting to the judgment of the supreme leader, but as we know, a condition for the supreme leader is Ijtihad, and perhaps a priest has not deducted in certain fields and not have a judgment, besides, such precautions have not any legal basis.

However, in the case of the principle 169 made a lot of controversy, but article 136 according to the simple task of judges in reference to the law continues, and article 597 of the penal code in 1992 considered the sanction of this issue, according to which:

As noted above, the legislator used the opinion of renowned jurists and especially religious ideas of imam Khomeini (however, his idea was not in accordance with popular belief) in the

formation of the penal code 1992 in the vast majority of cases, judges of the courts of the state of silence or ambiguity or defect or brevity code follow the same method to discover the warrant claims. The witness for this issue is frequent quotation of the various branches of general board of the Supreme Court judges to the book liberation means in publishing different opinions, which is visible in the proceedings of the court. For example, in an advisory dated 06/08/1992 no. 2239/7 of the legal department of the judiciary issued on the interference or non-interference of retaliation or compensation, If assaults and murders occur at a time by one person, only death will be punished and if it is indifferent time, each sentence will be determined independently.

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