

## The Requiring Principle of Prosecution Regarding Iran's Law

Zahra Ahangari Nane Keran<sup>1</sup>, Farzaneh Moradi<sup>2</sup>

<sup>1</sup>Young Researchers and Elite Club, Ardabil Branch, Islamic Azad University, Ardabil, Iran

<sup>2</sup>Young Researchers and Elite Club, Arak Branch, Islamic Azad University, Arak, Iran

*Received: November 21, 2014*

*Accepted: January 5, 2015*

---

### ABSTRACT

Today, it is clear that the prolongation of judgment is a problem in which the system of punitive justice in 50 many countries have faced with this problem, and sometimes, it causes judicial system to face with such a suspension that perhaps there is not any reference for investigating the crimes and contests. Up to now the reason for prolongation and plans for solving them, frequently have been considered by jurists and technicians, and with regard to the dangerous prolongation of judgment, these studies are very useful and significant. The plans in which has been regarded decreasing the prolongation of judgment by the writers of this written, is the amenability of legal system of prosecution in the custom of punitive judgment instead of being legal. Since in the legal system of our country, the origin is amenability of legal system for prosecution, surveying the possibility of amenability of our legal system with regard to the origin of expedience of punitive prosecution and it challenges in the matter present writing, is giving originality to the amenability of expedience origin. In this regard, after surveying the advantages of amenability from the origin of expedience, challenges of legal system of Iran for adherence of it; such as monopoly of power of decision making in authority of trial judges in Iran, the necessity of origin for separating powers and so on is considered.

**KEYWORDS:** Judgment prolongation, the origin of expedience for punitive prosecution, the origin of legality for punitive prosecution

---

### INTRODUCTION

In Iranian law, with regard to this point that doctrine, from the side of lawgiver a lot of times ago, enforced the necessity of accepting the system "being appropriate" of prosecution, practically, the attorney generals, due to lack of legal text and with recourse to the law of formation principles of equanimity that has been approved in 1306/04/07 stressed on the system of "being obliging", and except in exceptional cases such as forgivable crimes, their imposition was, legally, prosecuting all of crimes (Ashori, 1997, p 52). Among the series of temporary law of punitive trial principles that has been approved in 1330 AH, it can inducted well that "the being legislation of punitive prosecution" in Iran, is a principle (Khazani, 1998. p 25). Meanwhile, the origin of being legislation of prosecution clearly had been reflected in the article 79 in the law of principles for formation of justice that was approved in 1307. According to this article, "attorney generals have to prosecute and investigate the actions that presuppose misdeed or crime. Also, first case in the article 3 "the law of forming common court and amendment revolution 2002/07/28 with stating this point that the attorney general is responsible for detecting crime, prosecuting the accused person for crime, action from the aspect of jurisprudence and maintaining the common law and limited actions of God, has been originated in the being legislation of prosecution in the bill of judgment punitive custom in the article 11, this declaration has been predicted: "prosecuting the accused person and action with regard to the common prestige is related to the responsibility of prosecuting attorney, and the action and demanding the prosecution of the accused person from the aspect of particular prestige with complaint or particular accuser".

Based on the origin of being legislation of prosecution, the right of punitive prosecution and common action against perpetrate that may result in issue of his penal or secure or educative measures, is belonged to the community that its system has been destroyed due to the commitment of crime, and the community has abdicated the actions of this law to the government. Governments, in the course of running justice against community, are responsible for punishing and penalizing those persons in which commit crimes. Here on, attorney general that is representative of the community, in the case of occurrence of crime and exist the reasons against the accused persons, is convinced to the punitive prosecution.

In this principle, the legal assumption is this that the prosecuting any kind of crime is useful for all, and there are not necessity or need for the policy of coordinator of running law. Law arrangement and rule arrangement, in

---

\* **Corresponding Author:** Zahra Ahangari Nane Keran, Young Researchers and Elite Club, Ardabil Branch, Islamic Azad University, Ardabil, Iran, Email: [zan1365@yahoo.com](mailto:zan1365@yahoo.com)

this principle, correspond. The aim of prosecution is law administration, and the duty of prosecutor is advocating the law arrangement. With regard to this principle, the law has been subjectivism and its literal interpretation is emphasized.

According to the principle of being legislation, the policy is not posed in the prosecution. Recognizing the wrongdoer's character, recognizing his or her moral, spiritual, social and educative conditions, and awareness of origins and social factors of commitment is not necessity. In fact, the origin of being legislation has been a clear representation of liberal's approach in the recent century, that in the form of lack of confidence to administrative officials and confidence to this that the judicial decision for all social matters, and previously is issue-able by lawmakers, has revealed itself.

Based on the origin of being legislation of prosecution, in one hand, the authorities of officials for prosecution in recognizing the need or lack of need of prosecution has been limited, and in the other hand, every kind of trials that is out of ceremonies and has been arranged for a legal court, is forbidden; because the origin of being legislation in the common meaning, addition to the crimes, also the policy of court and ceremony is considered (Milani, 2008, p 158). But in appropriateness system, the punitive prosecution of attorney general has very extensive authorities in making decision for punitive prosecution or lack of prosecution.

In the other hand, attorney general, by surveying the case and recognizing the general matters, can prevent the punitive prosecution. So, with regard to the special aspects, apart from defined reasons in punitive laws, he can order for achieving the case. The condition for enforcing this system is that the punitive prosecution, only and basically belongs to the courtroom and there are not any problems for prosecuting the crime (Khazani, Ibid, p 18). Every of these two approaches for punitive prosecution has their own special advantages and disadvantages; but these two approaches, in addition for helping the appropriateness of system in punitive prosecution and for solving the prolongation of judgment, it causes the mentioned system to be significant, and it also creates this question that, with regard to facing legal system of our country with crisis of judgment prolongation, why system of being legislation of prosecution is origin not the system of having situation or being appropriateness of punitive prosecution? For finding the answer of this question after surveying the advantages of amenability from the origin of being appropriateness of prosecution, this article, for amenability of the mentioned origin, surveys some of the problems of Iranian legal system. In advantages of amenability according to punitive prosecution; In the first stage, the acceptance of this system in the custom of punitive judgment is agreeable with public thoughts; because the community in compared with small punishment, significantly considers the prosecution and punishment of criminals in the important crimes such as murders, induction of public battery, and this approach is useful for the society; because the courtroom with surveying the subject, prevents the punitive prosecution, if the punitive prosecution to be useful for the community. Also, with regard to this point that the enforcement of this system, is conditioned to the surveying of all conditions and the factors that is related to the crime and characters of criminals, so practically, the punitive affair is an individual act that in the present punitive law, it is very significant. In addition to this, also the insane person will use the advantages of this system; because in the case of culprit's freedom, the private accuser has more chance in atonement and secure of damage that is originated from crime, so by punitive prosecution and issue of the order for sentence, the accused person to be prison, and by losing his occupational condition, he cannot atone the damage of private accuser. The most important matter is about existing condition for punitive prosecution in the direction of judgment benefits and judicial references; because, significantly, the affair of reference persons causes easy the issue of order; as a result, it gives more opportunity for them, so they can investigate the significant cases with more accuracy and guaranty. Moreover, with suspension of punitive cases, the different costs of government specially employing judicial personnel and administrative personnel and other related costs will be decreased (Khazani, Ibid, pp 20-19). In fact, helping the mentioned system to solving the judgment of prolongation, it has made useful its amenability for many legal systems; but based on some consideration, the legal system of our country has considered the system of being legislation as an origin in which some of them is considered in this paper.

Devoting the power of decision making, about defining the punishment, to the forum judge in the law of Iran:

Policy for punitive prosecution is the need of entering defendant in the nature of case and its surveying, while the origin of necessity of legal judgment in which has been known from main factors of "being legislation of criminal law" (Nobahar, 2010, p 20), trial and decision making needs qualified judge in the court, and decision making by the prosecutor is against of this origin. In fact, the devoting the power of decision making, about defining the punishment, to the forum judge in the law of Iran, under the title "principle of being judicial of the punishment" is an accepted principle. With regard to this mentioned principle, only the judge of statement issuant has the right for defining the punishment or compurgation of accused person, and although, the attorney general, the attorney general's assistant, interrogator and avenger are called the judicial officials of the courtrooms (Iran newspaper, 21Jun 2012, p6), but they do not have any right for defining the punishment, and this right is exclusively in hand of

the judge of courtroom and the prosecutor cannot decide about the punishment of accused person. In the answer, it can be said: firstly, it seems that the origin of being legislation of the punishments is mainly the supervisor on the decision making about the punishment and it's Rubicon, and compurgation is not considered; secondly, some of jurists, for the amenability of the principle being legal of the criminal law has considered the interference of the judicial power, not only the judge, as significant factor (Nobahar, 2000, p 65; Ardabili, 1999, Vol 2, pp 143-144) that also includes the prosecutor. In addition, although the principle of being legislation of the punishments needs the interference of qualified judicial official, but the qualified judicial official, as an obligatory manner, the judge of punitive courtroom is not in the term meaning and sometimes based on the law, solving the administrative contraventions and judgment for enforcing the punishment to be delivered to a person or to particular persons, they also will be considered as qualified official (Nobahar, Ibid). Then, the prosecutor due to this law also can be considered as a qualified official. Also, with regard to this point that, in our country, the judgment is an ordering affair, the authority of juries-consult, with regard to the condition, can give order or judgment to the persons (Ettelaat Newspaper, 2012). So, it seems that if the policy of destroying and the necessity for solving the problem of punitive inflation and also dominated in Islamic Republic of Iran include: lawmaker power, administrative power and judicial power in which is under supervisory of complete affair and leadership of the people according to the future principles of this law are enforced. These powers are independent from each other. Also, in the start of principle 156 institution, this point has been declared: "judicial power is a power that is independent and it advocates the personal and social rights, and it is responsible the following duties". The meaning of independence of accepted power in these two principles cannot be different from the meaning of power separation in political science and law; this conception has been mentioned in the first Iranian constitution that is conditional constitution. In the principle 27 and 28 that is the complimentary of conditional constitution, in addition to counting the duties, each of the three powers has been considered in the principle 28:

The mentioned three powers always will be different from each other. It is clear that to be separated from each other, will have meaning in the limitation of theory of separating powers (HosseiniMonfared, 2001, p52). So, there is not any doubt in accepting the origin of separating powers in constitution of Islamic Republic of Iran; and this affair can be one of the amenability of appropriate principle in the punitive prosecution of Iranian law; because, the duty of lawmaking is the responsibility of lawmaker power, and it defines the related crimes of prosecution in the punitive laws. Also, the principle of being legislation that has been declared in the article 36 in constitution, has not more than one meaning, and in this, the only reference for identifying the crime is law, and also accept the law, any other reference can create punishment (Bashir, 1999, p 153). In the answer, we should consider some points; the first point includes the amenability of appropriate principle for punitive prosecution that before any thing, it needs its acceptance in the law and confirming the conditions and its rules by lawmaker power. With regard to this point that all the conditions and the methods of survey to the different struggles have been identified officially in the laws of punitive judgment custom and other rules and regulation; and whatever is done as a method of prosecution and judgment in the courts, is accomplished by legal certificate of lawmaker power, and undoubtedly, the amenability of organized prosecution from the origin of appropriateness, it also, as a method of prosecution, will be with legal certificate of mentioned power. Secondly, the basic challenges of the theory for separating powers is this that for enforcing the governing the unity, it needs to concentrate and cooperate in this side, and in the other hand, the concentration of the powers cause some problems that is against the separating the power. Due to this reason, about the theory of separating the power, there are different conceptions in this regard in which one of them is complete separation and the other is the relative separation. At first, the theory of complete, separation of the powers has been followed, and for example, American lawmakers, by making the government of federal of USA, the best approach is complete separating of powers.

Also, French people after their own revolution resulted that the government organizations should be separated by walls and damsthat they cannot any possibility for interfering in each other's affairs. Therefore, the practical experiment of governments indicated that complete separation of the powers is not possible. The basic reason of relative separation is that, the three powers are the indicator of different political power with unit government, and basically their separation is done only for dividing. So, the separation should be done slowly, until, at the first stage, the power should not be contract in one place, and in the second stage, it does not prevent the enforcement of the government. In fact, the nature of governance is not matched with separating the complete powers, and attempting for independence of the powers rather than each other. Also, the law of Islamic Republic of Iran, according to the opinion of many experts, according to the relative separation of powers has been designed (pp 51, 59 & 62). As, Ayatollah HashemzadehHarisi, the member in leadership Majlis has declared in the Shargh Newspaper in 2012/02/09; the independence in the powers that has been accepted in the constitution of Islamic Republic of Iran, it is not complete independence and it is relative and limited. And it is in this limit that the powers do not have right to have illegal interference in each others' duties (Shargh Newspaper, 2012, p3). So, it seems that, with regard to the

relative separation system of powers in the law of Iran, amenability of principle in the punitive prosecution, it will not have disadvantages with the mentioned principle; because the judicial power will not have illegal interference in the duties of decision maker's duties, but his enforcement in the amenability of prosecution organization from the principle of appropriateness is for its duty in enforcement of the law and issue of order not other thing.

### **Illegality among the people of community**

From the sociologists' point of view, the community of Iran has people with the habit of illegality (Naraghi, 2004, p 23). Often the researches and surveys that have assessed the degree of illegality among Iranian people have resulted to this point that there is not much interest for observing the law in community. According to a definition, illegality is a kind of direction to the norms that is preferred (Rezaee, 2005, p 47 & 58). The currency of illegality in the community of Iran is one of the problems of accepting the amenability for appropriate principle of punitive prosecution in the punitive system of country and enforcing it in the community. Because it seems that the two factors for its punishment and limit has much effect in internalizing the legal affairs. Only, the recognizing illegal affairs are not enough. Ability of judicial organizations causes the decreasing the power of illegality. In this approach, there is not more necessity for the legal affair (Rezaee, Ibid, p 54). Due to this reason, Iran Newspaper in 2012/03/20 has been considered the confirmation of forgiveness of all or part of defined fires of employees against non-paying the right of workers' insurance under the encouragement of employees by the Majlis for illegality (Iran Newspaper, 2012, p1). While the amenability of prosecution organization from appropriateness principle has destroyed the certainty and also the limit of punishments, and it also causes the weakness of legal enforcements in the community that its people observe the law only due to the mentioned enforcement certainty. It can be said that although uncertainty and being easy of the punishment can cause the increase of illegality and also it can be effective in the interest for offense (Danayifard&etal, 2009, pp 18-19). In fact, the power and accuracy of judicial power in a community is an important factor that can confirm its health and vital. The matters such as lack of judge, due to the decrease of the judges' works, delay in prosecution and punishing the crimes, complication of judgment stages, unsuitable environmental characters in prisons and lockups, due to disability in their control can be solved, and this affair helps a lot for solving the problem of illegality in community. Meanwhile, only the related matters of judicial power are not effective in illegality, but there are so many matters in this regard; such as social, cultural and economical matters, and in fact, punitive answers although to be acute, in the heart of community, they will destroyed by material and cultural poorness, clear class difference, and generally social injustice will have limited effect (Najafi Abrand Abadi, 2010, p 584). So, solving the matter of illegality is not so simple that the acuteness and certainty of punishment can only overcome it; it needs survey all of aspects and a lot attempts in the different social and cultural fields.

### **Illegality and official's abuse in prosecution**

One of the problems that have a lot of effects in the illegality of Iranian citizens is the lack of accepting law of responsibilities and governmental organizations. In an organized and ruled community, the addressees of law are not only people; the relationship between the person and law is as one dimension of the ruled community and in a one dimension of the ruled community and in a better interpretation, is its insignificant dimension. An important dimension of such community is the legality of government, governmental organizations, powerful groups and, in general, government (Danayifard&etal, Ibid, p24). But unfortunately, law breaking of some of powerful persons has caused that the Muslims to have habit to illegality. In fact, illegality of powerful officials is a greatest injustice that threatens human communities (Rahimi, 2010, p2). For solving this problem, standing against of any contravention and aggression should be based on criterion (PoorahmadiLale, 2004, p 40). Personal interpretation of legal meanings imposes the risk of illegality to the community. It considers invaluable matters as a valuable matter, and does not pay attention to the high spiritual values and gradually forgets them (Asgarizadeh, 2012, p 3). The amenability of prosecute organization from the appropriateness principle in the law of Iran, delivers the performance of law to personal tact and style and demand of the prosecute officials. This affair, in one hand next to the habit of majority of Iranian people to illegality, and in the other hand, lack of accepting law of the governmental officials considers the risk for interesting the officials of prosecution to illegality and administrative corruption: because the corruption contains the advantageous measures of politicians, businessmen and governmental employees that is done unsuitably and illegally and by abuse of station and job (Rahnavard&etal, 2010, p 39). Whatever, in the result of amenability of prosecution organization from the appropriateness principle in the law of Iran, it maybe occur for the official of prosecution, his interest for bribery and considering the difference between the common people and popular people through himself, ignoring the responsibility and abuse of power. Based on this school, all people that are included in this regard should be behaved in a similar manner (Miri, Ibid, pp 167, 57, 56, 54). Accepting the system of prosecution appropriateness disorders all of these relations and opens all of the station of prosecution and

its unsuitable enforcements. This affair, in the society of Iran that is in the stage for interest in illegality of Iran will have more value. In the answer, it can be mentioned that firstly, if attorney general wants to abuse his authorities, by using the present authorities, he also can abuse the mentioned matter. Secondly, preventing the amenability of prosecution organization of principle appropriateness in the law of Iran, due to the fear of independence of attorney general and creating administrative corruption, in fact, is the clearing the list of matter, and basically we should think about the solving the matter of illegality of responsible authorities and preventing the creation of administrative corruption. Although, the presentation of more authorities to the responsibilities, in abuse of the authorities is not without effect; but, canceling the authorities, is not a way for preventing their abuse. It should be thought in a way that even more authorities does not cause an abuse; because, meanwhile, also less authorities, in its own line, will have abuses with itself.

The researchers divide in three parts the effective factors an administrative corruption: the first group is organizational and administrative factors that include: the unrealistic and unnecessary regulations, definitions and ambiguous operational standards in the rules and regulations, complicated and administrative trends and the law salary of the governmental personnel; the second group is the cultural and social factors in which include: struggles among politicians, governmental officials and businessmen, social structure that supports the governmental and administrative officials, and it presents a particular valid for them, cultural environment that encourages abnormal and extremist behaviors in presenting for congratulation and condolence. The third group is psychological and tending those conditions: low level of moralities and accuracy in the governmental offices and propagation of self-centered, interrelationship, interesting in special region in the community (Rahnavard&etal, Ibid, p 39).

With regarding this point, the mentioned factors should be solved in the prosecuting attorney, and with regard to the matching of characteristics of this institution and its personnel, special tact's should be thought for preventing the creation of this factors, and with decreasing the authorities and or preventing the increasing the authorities of the attorney general's officials, philosophy of their existence should not be questioned.

## CONCLUSION

It is clear that the principle appropriateness of the punitive prosecution, in addition to the advantages that it has, it is not without mistake, and sometimes it maybe affects the aims of punitive laws. But as the prolongation of judgment has caused that our legal system to face with serious crisis, and amenability of principle appropriateness of punitive prosecution is one of solutions of solving this prolongation, the advantages of this principle will be more than its advantages. In fact, in the critical conditions, we should think to solve the crisis, and severity is not essential. Meanwhile, it was observed that some of problems in which seems to create the principle appropriateness punitive prosecution for our legal system are unreal and are hidden by the advantages of the mentioned principle, maybe due to these reasons in which the new bill of punitive judgment states some signs of interest of lawmaker for the appropriate principle of punitive prosecution; with this form that although in the legal system of Iran, the system of being legislation of the prosecution is principle; but predicting the institutions such as achieving the files and suspension of prosecution in new bill of the law of punitive judgment is the indicator of interest in legal system towards the economic system of punitive legal prosecution.

## REFERENCES

1. Ashuri, Mohammad; (1997) "a statement around some of terms in the law of punitive judgment of Iran", contented in punitive justice (sets of articles), GhanjDanesh publication, Tehran, Vol. 1.
2. Ardabily, Mohammad Ali; (1999) "Law of common punishment, Mizan publication, Tehran, Vol. 2, second edition.
3. Bashiriyeh, Tahmoures; (2008) "Preservation of basic law in the interactions of principles 36 and 167 in constitution" legal seasonal letter and judicial judgment, seventy second year, new course, spring and summer, pp 145-156, No. 36 & 62.
4. Poorahmadilaleh, Mohammadreza; (2003) "a thought on the factors of lawbreaking and tact's for solving it", judgment monthly, 8th year, Mars & April, No. 43, p 39-43.
5. OreinOseing; (2003) "power or judicial authority?", translated by Asad-allahYavari, Basic law Quarterly, first year, autumn, No. 1, pp 285-325.

6. Khazani, Manouchehr; (1998) "system of being legislation and system of having condition or matching with punitive prosecution", contended in the punitive process (series of articles), GhanjDanesh publications, Tehran, first edition.
7. Danayifard, Hasan; Azar, Adel; Salehi, Ali; (2009) "illegality in Iran: stating the function of political, economical, legal, managerial and social factors", Quarterly letter of police knowledge, 11th year, autumn, No. 3 (serial), pp7-65.
8. Rahimi, Mohsen; (2010) "illegality and legality" Dadgostar monthly, 7th year, Jun and July, No. 38, p 2.
9. Rezaee, Mohammad; (2005) "survey, kind and effective factors on illegality", sociology of Iran Quarterly, 6th course, autumn, No. 3 (serial 23), pp 47-69.
10. Rahnavard, Faraj-allah; Zaher poor Kalantari, Habib-allah; Rashidi, Aazam; (2010) "identifying effective factors on financial corruption among the personnel of administrative systems", Bulletin of administrative management, 10th year, the first half of year, (serial 38), No. 1, pp 35-52.
11. Ettelaat Newspaper; (2012), 20 Jun, No. 5097, P. 1.
12. Iran Newspaper; (2012), 21 Jun, N. 5104, P. 16.
13. Shargh Newspaper; (2012), 9 May. No. 1514, P. 1.
14. Sanieemonfared, Mohammad Ali; (2001) "The independence of powers in the constitution of Islamic Republic of Iran", Quarterly of Islamic government, 6th year, winter, No. 4, (serial 22), PP 51-83.
15. Asgari rad, Hossein; (2012) "preserving the respect of law", Shargh Newspaper, 27 May, No. 1530, P. 3.
16. Mansoornajad, Mohammad; (2005) "separating the powers, Absolute supreme leadership and independence of the powers" weekly that is attached in Hamshahri Newspaper, 18 April, No. 45, PP. 3-5.
17. Miri, Seyed Reza; (2011) "The punitive attorney general (punitive prosecution): surveying in the system of punitive justice in Iran and England, Majd publications, Tehran, First edition.
18. Milani, Alireza; (2008) "the principle of being legislation of crimes and punishments in history", legal and judicial Quarterly of the justice, 72nd year, New course, spring and summer, No. 62 and 63, PP 157-180.
19. NajafiAbrandabadi, Ali Hossein; (2010) "fairly prevention of crime", contended in the criminal sciences (series of articles in admiring professor doctor Mohammad Ashuri), Samt publications, Tehran, Vol. 3.
20. Naraghi, Hasan; (2004) " Familiarly sociology, Why are we helpless?", Akhtaran publications, Tehran, 9th edition.
21. Nobahar, Rahim; (2010) "judicial principle of the punishment", Shahre Danesh publications, Tehran, Vol. 1.
22. Noorbaha, Reza; (2000) "The field of law of common punishment" Dadafarin publications, Tehran, 4th edition.