

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela



Vol.39

Nº 70

2021

The Comparison of Examples of Deviation from Jurisdiction in the Criminal Procedures of Iran and France

DOI: <https://doi.org/10.46398/cuestpol.3970.58>

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Abstract

In criminal proceedings, in special circumstances, exceptions have been provided for to deviate from the competences of the judicial authorities, and the present study aims to compare these cases in Iranian and French criminal procedure. As for intrinsic jurisdiction, the findings indicate that in Iranian criminal procedure deviation from intrinsic jurisdiction is permitted in cases such as issuing a collective verdict and observing the rules of multiple crimes. In French criminal procedure, deviation from the inherent jurisdiction is possible in limited cases and only within the framework of a referral. Moreover, as regards the rule of diversion from local jurisdiction, the fact that, without exception, that rule cannot lead to favourable judicial review of criminal cases is common to both criminal proceedings. Indeed, the need to establish exceptions and violations of this rule in order to increase the efficiency of the judiciary is inevitable. Moreover, in both Iranian and French criminal proceedings, the basis for determining personal jurisdiction is the perpetrator, so that the criminal procedure has placed the investigation of certain persons under the jurisdiction of a specific authority.

Keywords: criminal proceedings; intrinsic jurisdiction; local jurisdiction; personal jurisdiction; comparative law.

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Comparación de ejemplos de desviación de la jurisdicción en los procedimientos penales de Irán y Francia

Resumen

En el procedimiento penal, en circunstancias especiales, se han previsto excepciones para desviarse de las competencias de las autoridades judiciales, y el presente estudio tiene por objetivo comparar estos casos en el procedimiento penal iraní y francés. En cuanto a la jurisdicción intrínseca, los hallazgos indican que en el procedimiento penal iraní se permite la desviación de la jurisdicción intrínseca en casos como emitir un veredicto colectivo y observar las reglas de múltiples delitos. En el procedimiento penal francés, la desviación de la jurisdicción inherente es posible en casos limitados y solo en el marco de una remisión. Además, en cuanto a la regla de desvío de la jurisdicción local, el hecho de que, sin excepción alguna, dicha regla no puede conducir a una revisión judicial favorable de los casos penales, es común a ambos procesos penales. De hecho, la necesidad de establecer excepciones y violaciones de esta regla para aumentar la eficiencia del poder judicial es inevitable. Además, tanto en el procedimiento penal iraní como en el francés, la base para determinar la jurisdicción personal es el autor, de modo que el procedimiento penal ha colocado la investigación de determinadas personas bajo la jurisdicción de una autoridad específica.

Palabras clave: procedimiento penal; jurisdicción intrínseca; jurisdicción local; jurisdicción personal; derecho comparado.

Introduction

The Code of Criminal Procedure is an element of the ideal of justice, legalism and order in societies, guarantees individual rights and freedoms and provides social security in various fields. The Judicial Development Plan proposed by the Judiciary paved the way for fundamental changes in the country's judicial system, which in the light of the revival of the judiciary, the development of a comprehensive law in accordance with the needs of society Criminal matters approved in 1999 became necessary. The Code of Criminal Procedure, approved on 2013-7-3, has been integrated as an appropriate response to this important need based on criminal policies, and an attempt has been made to lay the foundation of criminal justice in the foundation of the country's legal framework.

In the new law of criminal procedure, the jurisdiction of criminal courts has witnessed changes and amendments in an appropriate and effective manner, the most important of which in the trial phase of the most

important amendments to the jurisdiction of criminal courts one and two, which operated in the Judicial Organization of Iran from 1982 to 1993. They were re-established and replaced the provincial, general and criminal courts with a slight change. (Mir Mohammad, 2002).

On the other hand, the Revolutionary Courts, which had previously followed the dangerous method of unifying judges in dealing with important crimes, some of which resulted in the death of the perpetrator, were required to have a system of multiple judges within their jurisdiction to deal with some crimes.. The juvenile court, the existence of which is an undeniable necessity for the prosecution of this group of persons, was not only preserved, but also changed its position from a specialized court, which was a sub-branch of the general court, to a special court.

One of the important issues in the Code of Criminal Procedure is the jurisdiction of the judicial authorities. When a crime is committed, it must be determined from all the criminal courts which one has the special jurisdiction to judge the perpetrator's behavior. Jurisdiction in legal terms is the ability and obligation that judicial authorities have in dealing with lawsuits under the law, and in another definition, criminal jurisdiction is the authority assigned to the criminal authority by law.

In fact, due to the specialization of the court, the study of the rules of jurisdiction, which is in fact dedicated to the division of labor between the courts, and as cases of deviation from it is of great importance. In fact, by examining the structure and jurisdiction of criminal courts, both public and private, we will see the appropriate changes that have been achieved inspired by the criminal structure and procedure in the past and have led to a fundamental change in it (Guinchard and Buisson, 2008).

French law belongs to the Roman-German family of written law and has become the source of legislative changes in the Middle East. and in France, under the influence of a collection of ideas and thoughts of scientists and philosophers of law and social sciences, the reform movement in criminal law began in the eighteenth century and after the French Revolution in 1789, reforms of criminal law and criminal law began, and the first French General Penal Code was passed by the Constituent Assembly in 1791, based on the idea of individual originality and the preservation of collective values and the protection of individuals and property. His goal was to defend the human person and the desire for the full development of talents and to defend him against any aggression (Ahmadi Golian, 2017).

During the one hundred and eighty years of the rule, the above-mentioned law had its strengths and weaknesses, and finally in 1810, based on the new amendments, the general punishment known as the code (Napoleon) was passed. In general, the criminal procedure of the Napoleonic Empire was a combination of the mixed penal system between the old French penal

system and the penal system after the French Revolution. Finally, after two centuries of rule, the new French Penal Code was passed in 1992, which is currently in force (Ahmadi Golian, 2017).

Given the importance of French law and their impact on Middle East law, a comparison of the terms and conditions of deviation from jurisdiction in the Iranian and French criminal procedure can explain the areas of identification of weaknesses and challenges in the Iranian criminal procedure. However, in our country, so far, no article or dissertation has been registered that comprehensively examines the issue of deviation from the jurisdiction in the criminal procedure of these two countries. The researches done are mainly in two special categories.

The first category is research that has examined the issue of jurisdiction over specific crimes, such as cybercrime or international litigation. The second category includes studies that have exclusively examined one of the competencies, including intrinsic, local, personal, and relative competencies, and have avoided a comprehensive study of the types of competencies. In the field of comparison with other countries, in a few cases, comparisons of personal and local jurisdiction have been made between the penal systems of Iran and Turkey, Iran and France, which have been briefly compared in a limited framework of differences and similarities.

In addition, the disadvantage that is observed in most of the researches is that the researches have studied the criminal jurisdictions according to the laws approved before 2013, which due to the significant changes in the criminal procedure approved in 2013, the need New research is needed to update studies based on new rules.

In view of the above, it has been necessary to conduct a comprehensive and complete study of the weaknesses, strengths and methods of exercising jurisdiction in the Iranian criminal procedure and compare the identified cases with an advanced criminal procedure such as France. The results of the forthcoming research can be considered by the judiciary of our country as well as research and study institutions as a source for the issue of jurisdiction of criminal courts in the judicial system of Iran and France.

1. Research Literature

1.1. Jurisdiction

Jurisprudence in the word means competence, desirability, deservingness (Dehkhoda, 1962) and in reform, refers to the ability and jurisdiction of judicial authorities in handling lawsuits (Goldoost Joybari, 2014). In procedural terms, it is the authority given by law to a court to hear

a case. In other words, the legal jurisdiction of the court to hear a specific lawsuit is called jurisdiction in legal terms. In fact, in criminal matters, the prosecuting authority must have the competence and authority to intervene and deal with the matter, and this jurisdiction of the prosecuting authority is usually predicted in four ways: inherent jurisdiction, local jurisdiction, personal jurisdiction and relative jurisdiction.

1.2 Intrinsic Jurisdiction

Among the types of jurisdiction, first is the inherent jurisdiction, the determining criterion of which is the subject of the accusation, and in this respect, the inherent jurisdiction of the criminal authorities may be different. In our legal system, the jurisdiction of judicial and administrative authorities in general in relation to each other in terms of class, and the jurisdiction of public and private courts such as the General Legal and Criminal Court the Revolutionary Court in terms of type, and the jurisdiction of first and highest courts are inherently different (Karimi, 2018).

1.3 Local Jurisdiction

According to Article 310 of the Code of Criminal Procedure, local jurisdiction is the jurisdiction of the reference of the crime scene. In other words, the accused is tried in a court in which the crime takes place. If a person commits several crimes in different jurisdictions, the trial will take place in the court in which the most important crime took place. If the offenses are equal in punishment, the court in which the perpetrator is arrested will try them all. If the accused has not been arrested, the court in which the prosecution first began has jurisdiction over all crimes (Karimi, 2018).

1.4 Relative Jurisdiction

Claims that are determined in terms of the subject matter of the claim or the quorum of the claim or the amount of the claim are called relative jurisdiction. Such as eviction disputes, expropriation, etc., and the purpose of the price demanded or the quorum of the demand, the amount and value of the demand is what has been the subject of the claim. The subjects can deviate from relative jurisdiction by compromising each other (Sadrzadeh Afshar, 2006).

Also, in criminal cases, for some crimes, depending on the extent and severity of the crime, the criminal jurisdiction also changes. For example, according to Article 303 of the Code of Criminal Procedure adopted in 2013, all crimes related to drugs, psychotropic substances and their precursors, and smuggling of weapons, ammunition, items and controlled substances are under the jurisdiction of the Revolutionary Court. In fact,

the Revolutionary Court is a special court because, according to the law, it has only the jurisdiction to deal with limited and specific crimes, and outside that framework, it does not have jurisdiction over it (Sadrzadeh Afshar, 2006).

In fact, the principle is that the criminal court has two jurisdictions to deal with all drug offenses, except as provided in Article 303. As another example, according to Article 302 of the Code of Criminal Procedure, intentional crimes against physical integrity with a fine of half full or more or more are within the criminal jurisdiction of one. If the diyat is less than the mentioned amount, the criminal court will have two jurisdictions.

1.5 Personal Jurisdiction

Personal jurisdiction is the jurisdiction that the legislature determines according to the position, personality, occupation, and age of the perpetrator, so that a court that does not have the local jurisdiction to hear a case may be assigned to the crimes of certain individuals. In fact, the legislator, regardless of the place of the crime and only with regard to the perpetrator, considers another competent court competent to hear (CÉRÉ, 2011).

2. Examples of deviation from jurisdiction in the criminal procedure of Iran and France

According to Article 11 of the Code of Criminal Procedure, whenever a person commits a crime, he will be tried in the court where the crime took place, and if a person commits several crimes in different places, those crimes will be tried in the court where the most important crime took place and whenever the offenses are of a degree, the court in which the accused was arrested shall be tried. In this case, the court of each place carries out the necessary investigations in accordance with its duties and sends the results of the investigations to the prosecutor of the court that must hear them.

In addition, Article 12 of the Code of Criminal Procedure stipulates that if a person is accused of committing several crimes of various types, he or she will be tried in a court that has jurisdiction over the most important crime, with inherent jurisdiction. Also, according to Article 14 of the Code of Criminal Procedure, the accomplices and accomplices of the crime are tried in a court that has jurisdiction to try the main perpetrator. On the other hand, according to Article 20 of the Rules of Procedure of the Revolutionary Courts and Courts, the accused will be prosecuted in a court that has committed a crime in the same area, and if he has committed a crime in several areas, he will be prosecuted in the court where the most important crime took place. Will take. Recognition of the most important

crime is with the court in which the accused has been detained. And if the crimes are of the same degree, the accused will be tried in the area where he was detained.

Article 197 the Code of Criminal Procedure also stipulates that whenever a person is accused of committing several crimes of different degrees, he will be tried in a court that has jurisdiction over the most important crime. In addition, under Article 198 of the Code of Criminal Procedure, the accomplices and accomplices of the offender go to court, which has jurisdiction over the principal offender.

2.1. Deviation from the inherent jurisdiction to cancel the suspension of punishment

According to Article 33 of the Penal Code of 1991, the court that issued the suspension order or the successor court was competent to revoke it. In the Islamic Penal Code adopted in 2013, part of Article 54 states: "After the final verdict is final, the court cancels the suspension order and issues an order to execute the suspended sentence and announces the matter to the court issuing the suspension order."

According to this part of the article, two cases occur:

According to Article 55 of the new law, the court that issued the suspension order, after issuing the order, finds that the convict has a history of effective conviction or other final convictions, among which was a suspended sentence. In this case, the suspension will be canceled.

The other court, after examining the other charge of the accused, finds out with certainty that the convict has already committed one of the crimes subject to hadd, qisas, ta'zir up to the seventh degree.

Here, the legislator, contrary to the previous law, has considered a new situation. Thus, this court, which was not the issuer of the suspension order in principle, revoked the suspension order and issued an order to execute the suspended sentence and announced the matter to the court issuing the suspension order. In fact, the court that did not issue the suspension revokes it and even orders the execution of the previous sentence. The creation of additional jurisdiction for a court that was not originally in the process of suspension can be criticized, because in principle it would have been better for the court issuing the suspension to lift the sentence in all circumstances, rather than the court that ruled in another case.

Therefore, when a suspension decision is issued in one branch and then the case is heard in another court, in this case, too, the court, regardless of its inherent jurisdiction, is allowed to cancel the suspension and execute the sentence issued by the said branch and comment. It is about that that one of the exceptions is deviation from inherent jurisdiction.

2.2. Examples of deviation from intrinsic jurisdiction in French criminal procedure

In French criminal procedure, in criminal, misdemeanor or misdemeanor cases, the criminal branch of the Supreme Court can disqualify any investigative or judicial authority and send the case to another authority due to a legitimate suspicion. The request for referral can be submitted by the Attorney General of the Supreme Court or the court located in the requested authority or by the litigants. This request must be communicated to all litigants who have a ten-day deadline to submit the bill to the Office of the Supreme Court. The submission of a request has no suspensive effect unless the Supreme Court issues another order in this regard (Article 662 of the French Code of Criminal Procedure, paragraphs 2-3).

Similar cases are not mentioned in the Iranian Code of Criminal Procedure, and they can hardly be classified under such headings as maintaining public order. There seems to be a gap in accepting the referral of a case from one judicial authority to another. In general, it can be said that in the French Code of Criminal Procedure, the legislator has provided for the issue of violation of the rule of inherent jurisdiction in both the prosecutor's office and the court.

3. Examples of deviation from local jurisdiction in the criminal procedure of Iran and France

3.1. Examples of deviation from local jurisdiction to maintain public order and security

Violation of the rule of local jurisdiction on the basis of public order and security is one of the common cases in the two legal systems of Iran and France. According to Article 420 of criminal law:

In addition to the cases mentioned in the previous article, in order to maintain public order and security, on the proposal of the head of the judiciary with the Attorney General and the Supreme Court, the case will be transferred to another jurisdiction.

This legal article can be considered as one of the cases in which the security consequences with the effects of criminal proceedings on public interests are a criterion and justification for violating the rule of local jurisdiction. The text of the article does not explicitly mention a specific crime and the possibility of the mentioned expediency of maintaining public order and security in different situations is conceivable. Some have cited the maintenance of order in the city and the general public as examples of this title, such as that a criminal trial disrupts urban security (Goldoost Joybari, 2014).

Despite the benefits that can be imagined in this regard, and some of which will be mentioned later in French law, however, the existence of the phrase is general and vague, and in fact gives the relevant authority broad authority to violate the local jurisdiction rule. Seems. Perhaps this is why some have considered it outside the existing global framework and principles of human rights and in clear contradiction with Article 34 of the Constitution on the right of individuals to access a competent legal court (Akhoondi, 2009). Article 665 of the French Code of Criminal Procedure also provides:

The transfer of a case from one authority to another can be ordered by the criminal branch due to public security and only at the request of the Attorney General of the Supreme Court ...

It can be seen that the French legislature has a similar procedure in the discussion of public security and the only difference is in the jurisdiction of the applicant, who in Iran, along with the Attorney General, the head of the judiciary has the same authority, but in the French legal system This authority is limited to the Attorney General of the Supreme Court.

3.2. Deviation from local jurisdiction due to difficulty with the complexity of the case

The severity or complexity of the crime, especially in cases where there are a large number of plaintiffs or defendants and the crime rate is high in terms of geographical or social consequences, requires that, like simple cases with fewer problems, a single investigating judge Not addressed and more appropriate and factual mechanisms should be put in place for them. In fact, traditional methods of investigation today are not the answer to new crimes, which are sometimes committed in a gang and organized way or with modern and advanced tools.

Establishment of judicial cooperation commissions at the level of the prosecutor's office, which based on the severity and complexity of the crime committed and at the discretion of the president of the city court, can investigate the case of these investigative commissions, is one of the mechanisms envisaged by the French It is considered better and faster. In addition, in French law, contrary to the practice of the Iranian legislature, there is another type of violation of the rule of local jurisdiction, which is based solely on the type of crime committed and will be discussed later.

Regarding the complexity and complexity of the case, Article 1-52 of the French Code of Criminal Procedure provides:

In some city courts, investigating judges meet in an investigative panel. These judges in this investigative panel are only competent to conduct criminal investigations. These judges are also competent to deal with matters under Articles 1-13. And 2-83 of the French Code of Criminal Procedure require the need for judicial cooperation, have the authority...

This article of the law, which is included in the chapter on the investigating judge and its local jurisdiction, refers to the existence of an investigative body that, in the case of crimes and cases of complexity and complexity, has a different local jurisdiction than that provided for an individual investigating judge. Has been determined. The local jurisdiction of these research bodies and the geographical areas in the territory of each of them are determined according to a separate regulation.

Apart from the discussion of crimes mentioned in the article, which is within the jurisdiction of the panel, the complexity of the case is another criterion for disqualifying a competent local investigating judge by expanding his or her jurisdiction and referring the case to the investigating panel. According to Article 1-83 of the French Code of Criminal Procedure:

When the severity of the case justifies the matter, the investigation may be subject to judicial co-operation in accordance with the procedures provided for in this article ... Or, if there is an obstacle for his successor, as soon as the investigation begins directly or at the request of the city prosecutor in the initial application, he selects one or more press officers to join the investigator in charge of the investigation ... In cases where the investigation is ongoing in a reference where there is no investigative board, the president of the city court where the investigative board is located, after declaring the incompetence of the interrogator in favor of the board, the interrogator in charge of the investigation and one or more interrogators in Selects criminal matters. This declaration of incompetence will take effect from the date of appointment of the investigative board (Tadayon, 2015: 155).

The Iranian legislature in the Code of Criminal Procedure (similar to the Code of Criminal Procedure of 1378) does not provide a similar mechanism to facilitate and expedite the processing of cases that are particularly difficult and complex, and in all cases speak of an investigating judge or interrogator. It is responsible for conducting preliminary investigations into all crimes, regardless of their severity and complexity.

3.3. Deviation from local jurisdiction for the proper judicial review

In addition to the reasons for public safety in the French Code of Criminal Procedure, the proper handling of the case is one of the justifications that can be used to refer the case from a competent local judicial authority to another authority. This factor is stated in Article 665 of the French Code of Criminal Procedure.

The same factor in law Iran does not exist, and instead the Iranian legislature focuses on referrals to similar cases, such as the residence of the accused or more defendants in another court, or the proximity of another court to the crime scene so that another (incompetent local) court is easier. Has been able to address the issue (paragraphs a and b of Article 419 of the

Code of Criminal Procedure). However, the proper administration of the proceedings can be considered close in some respects to the two paragraphs mentioned above in Iranian law.

However, the French legislature has set more formalities and rules than in Iranian law for referrals in this case. Requesting the referral of a case on this basis, contrary to the case of maintaining public security (paragraph 1 of Article 665 of the French Code of Criminal Procedure), which is exclusive to the Attorney General of the Supreme Court, can also be referred by the parties and the Attorney General. The crime is within its local jurisdiction, too. Of course, in any case, the referral is with the criminal branch of the Supreme Court. In addition, the request based on this direction must be notified to the parties to the case and they have eight days to submit their defense bill to the office of the criminal branch. It would have been better for the Iranian legislator to refer the case based on paragraphs A and B of Article 419; It provided for such a right for the litigants to express their views in rejecting or approving the decision to remit the case. In any case, the criminal branch of the French Supreme Court must decide within eight days.

3.4. Deviation from local jurisdiction due to legitimate suspicion

Another case that according to law France can authorize the referral of a case from a local jurisdiction to another jurisdiction, provided there is a legitimate suspicion. The French legislature has not provided a definition of legitimate suspicion, but according to some judgments, a request for referral due to legitimate suspicion should target a judicial process, not a judge with a specific name and identity. In another case, legitimate claims against the gendarmerie and the judiciary were not admissible.

A request to transfer a case from a competent local branch to another branch can be made at the request of the Attorney General of the Supreme Court or the relevant geographical tribunal or the litigants.

The request has been notified to the parties and each party can submit its bill to the Office of the Criminal Branch of the Court within ten days (Article 662 of the French Criminal Procedure, paragraphs 2-3).

Asimilar case is not mentioned in the Iranian Code of Criminal Procedure, and it is difficult to place them under such headings as maintaining public order. There seems to be a gap in accepting the referral of a case from one judicial authority to another.

In general, as has been seen, in the Code of Criminal Procedure of France, Muqtada has provided for the issue of violation of the rule of local jurisdiction in both the prosecutor's office and the court together and in several cases.

3.5. Deviation from local jurisdiction according to the type of crime committed

As mentioned in the previous discussion, in addition to establishing investigative committees based on the severity and complexity of the crime committed, the French legislature has established, on a number of specific occasions, peer-reviewed competent courts under the general rule. The establishment of specialized tribunals for specific crimes began in 1975 and was intensified and regulated by Law 204-2004 of March 9, 2004.

Following the enactment of the Law of March 9, 2004 on the adaptation of the judiciary to criminal developments, violations of the rule of local jurisdiction have increased according to the type of crime and the number of these specialized authorities has increased. To better combat high-risk, organized and complex crimes, “committees” have been set up consisting of police investigation, prosecution, investigation and prosecution departments. In this case, the jurisdiction of a city court can be extended to the jurisdiction of one or more courts of appeal (Tadayon, 2015).

In fact, in specific offenses defined by law, the local jurisdiction of a county court and a criminal court extends to the jurisdiction of one or more appellate courts. In the geographical complex of France, eight major city courts have been established in the form of special interregional courts. These jurisdictions are in alphabetical order: Bordeaux, Fort de France, Lille, Lyon, Marseille, Nancy, Paris Verne. These courts have a similar and non-exclusive jurisdiction over the jurisdiction that prevails under the general rules of local jurisdiction. In addition, these courts have changed in some way through the specialization of appointed judges. These changes include a special section of the judiciary and designated structures of specialized investigation and prosecution to detect crimes (Dinarvand *et al.*, 2021).

In each city court, which is formed in the form of an inter-regional court, the provincial prosecutor and the head of the appellate court, after obtaining the opinion of the city prosecutor and the head of the city court, one or more judges, prosecutors and judges of the special investigation meeting, Determine prosecution. There is no longer any interference from the Supreme Council of Judicial Officers. These authorities have the following specialties:

Economic and financial crimes, crimes related to health, terrorism, drug trafficking, organized crime, water pollution by ship effluents.

With the exception of two special tribunals for terrorist offenses and drug trafficking, which were adopted on December 16, 1992, most of the tribunals were established by the March 9, 2004 law and followed the model of the tribunals for terrorism and narcotics.

In one belief, the Special Criminal Courts in the field of terrorism are in fact extraordinary courts created in the wake of the exceptional terrorist incidents of 1986 in France and then transformed into permanent special courts and special courts in the field of economic crimes and Finance, drug trafficking, etc. have been created by following the example of special criminal courts in the field of terrorism (Gozzi, 2003).

4. Examples of deviation from personal jurisdiction in the criminal procedure of Iran and France

4.1. Examples of deviation from personal jurisdiction in Iranian criminal procedure

Violation of the rule of local jurisdiction by the perpetrator is one of the cases that have been considered in the Iranian criminal justice system. In criminal procedure code Adopted in 2013, except for the repetition of the cases of the previous law, with some amendments, the cases of violation of the local jurisdiction rule have been added to the credibility of the perpetrator. In this regard, Article 307 of the Criminal Procedure Code, in determining the jurisdiction of the capital's criminal courts, provides:

Investigating the allegations of the heads of the three forces and their deputies and advisers, the chairman and members of the Expediency Council, members of the Guardian Council, members of the Islamic Consultative Assembly and leadership experts, ministers and deputy ministers, judicial holders, chairman and prosecutor of the Court of Audit, ambassadors , Governors, governors of provincial centers and general crimes of military and law enforcement officers of the rank of brigadier general or higher or with the rank of second brigadier general working in the ranks of the general brigade or the command of the independent brigade and general managers of provincial intelligence, as the case may be in Tehran criminal courts. "Unless other authorities have jurisdiction over these crimes under special laws."

In the case of crimes committed by military personnel with the rank of brigadier general or higher, all their crimes, whether military or general, are tried in the military or civilian courts of the capital, as the case may be. In this regard, Article 3 of the Law on Determining the Jurisdiction of Military Courts and Courts of the Country, approved by the Expediency Council in 1994, stipulates: "All military crimes with the rank of brigadier general and higher are prosecuted in the relevant judicial authorities in Tehran" (Khanali Pourvajargah, 2017: 14).

In addition, Article 308 of the Code of Criminal Procedure stipulates:

Investigating the allegations of advisers to ministers, the highest officials of governmental organizations, companies and institutions, and public non-governmental organizations and institutions, general managers, governors, managers of institutions, organizations, government departments, and public non-governmental organizations and provinces.” “Cities, heads of universities and higher education institutions, mayors of city centers and district governors, as the case may be, have jurisdiction over the criminal courts of the provincial capital, unless these charges are dealt with by other authorities under special laws.

In this regard, as is clear from the text of the article, the scope and scope of the persons whose jurisdiction to investigate the charges is contrary to the jurisdiction of the crime scene is within the jurisdiction of the provincial criminal court. For example, from all judicial base holders to all governors and governors and even advisers to the three branches. An overview of the list of persons mentioned confirms that there is no clear and acceptable justification for justifying the jurisdiction of many persons on this list to the Tehran Criminal Court, contrary to the usual rule; In particular, this article covers all charges without distinction. In addition, there has been a deviation from jurisdiction in this case, regardless of whether the crime was committed due to a government job or not, and in this case it has deviated from the principles related to jurisdiction to a large extent (Rahmadl, 2018).

The development of violations of local jurisdiction and the abundant allocation of this rule makes the main rule, including the jurisdiction of the crime scene and strong justifications beyond it, ease of gathering evidence and preserving the effects of the crime, ease of prosecuting the accused and partners and deputies, ease of witnesses and Informed, etc.) to be set aside.

4.2. Examples of deviation from personal jurisdiction in the French criminal procedure

Violations of local jurisdiction by the perpetrator’s validity are not as widely used in the Iranian Code of Criminal Procedure as in the French Code of Criminal Procedure. Conversely, the French legislature focuses on the type and severity of the local jurisdiction rule rather than the type, severity and emphasizes the complexity of the crime committed. However, there are exceptions and limitations; For example, in the Code of Judicial Procedure of the French Armed Forces, there are cases of deviation from local jurisdiction as a perpetrator. In this regard, Article 3-112 of this law provides:

”To deal with the crimes of cavalry (marshal) and admiral officers, generals or their ranks and members of the Army Command and Control Center, a High Court of the Armed Forces shall be established in time of war, the seat of which shall be determined by regulations. “This court can be formed in all parts of the territory of the French Republic. In exceptional circumstances, the seat of this court can be determined in another place according to the regulations of the Council of Ministers” (Tadayon, 2015: 155).

5. Examples of deviation from relative jurisdiction in the criminal procedure of Iran and France

5.1. Examples of deviation from relative jurisdiction in Iranian criminal procedure: Jurisdiction of the criminal court one

The criminal court has two general powers to deal with all crimes, unless the law on the investigation of a crime places the jurisdiction of another authority (Article 301 of the Code of Criminal Procedure). The court is composed of one judge in the jurisdiction of the city. (Article 290 of the Code of Criminal Procedure) In places that have not yet become a city due to small population and are considered “districts” in terms of national divisions, if necessary at the discretion of the head of the judiciary, the district general court is formed and handles domestic crimes within the jurisdiction of the Second Criminal Court. (Article 299 of the Code of Criminal Procedure)

Article 302 of the Code of Criminal Procedure adopted in 2013, while the jurisdiction of the first criminal court has declared the investigation of 4th degree and higher criminal offenses, the main third degree crimes include offenses that in many cases for a single criminal act in addition to imprisonment, other punishments such as Fines and other penalties are also provided.

Regarding the jurisdiction of the first criminal court, it is necessary to pay attention to two other points. First, if a crime under Article 302 of the Code of Criminal Procedure is brought before the first criminal court and the court, after sufficient investigation and conclusion of the trial, determines that the act has another criminal title that is within the jurisdiction of the court. There are two criminal cases, the first criminal court will investigate this crime and issue an appropriate sentence (Note 2 of Article 316 of the Code of Criminal Procedure). In this case, the reason for the permission of the first criminal court to try a crime under the jurisdiction of the second criminal court is the existence of a single inherent jurisdiction between them, but the opposite is not true. That is, if the case was initially sent to this court on the basis of the general jurisdiction of the criminal court, but the court finds out after the trial that the crime falls within the jurisdiction of the first criminal court, because the crimes within the first jurisdiction of the criminal court must Judges will be tried, the criminal court will not be allowed to continue the trial and issue a verdict.

Second, if a person accused of committing two crimes, one under the jurisdiction of one criminal court and the other under the jurisdiction of the second criminal court or juveniles, all his charges will be tried in the first criminal court (Note 1 of Article 316 of the Code of Criminal Procedure). Criminal proceedings.

5.1.2. Exclusive jurisdiction of the courts of the center of the province or the capital

In some cases, either because of the importance of the crime and the need for more careful trial in the central courts, or because of the official position of the perpetrator, who usually serves in the provincial or capital center, the legislature deviates from the general principle of jurisdiction. And has dealt with it exclusively within the jurisdiction of the provincial capital courts or the courts of Tehran. In these cases, the competent court to conduct investigations, as the case may be, is the city court of the capital of the province or the capital court, because according to Article 29 of the Code of Criminal Procedure: "It is the place where the crime took place, it is the responsibility of the prosecutor's office, which acts in the presence of a competent court, unless otherwise provided by law."

Another case of jurisdiction of the provincial central courts, which of course this time is accompanied by the determination of the inherent jurisdiction of this court, is political and press crimes, which are tried not in the court where the crime was committed, but in the criminal court of a provincial center. Regarding press crimes, the note of Article 36 of the Amended Press Law of 1998 states: "Press crimes will be tried in the competent courts of the provincial capitals." But criminal procedure code, After the above article, it has been approved and in addition to determining the local jurisdiction (center of the province), it has also determined the inherent jurisdiction of the court dealing with these crimes and political crimes (criminal one). Article 305 Code of Criminal Procedure "Political and press crimes are prosecuted publicly in the criminal court of a provincial center where the crime took place in the presence of a jury, in accordance with Article 352 of this law,"

It is necessary to pay attention to this point that the above article refers to "criminal courts" and to see the types of criminal courts, one should pay attention to Article 206 of the Code of Criminal Procedure. Therefore, the crimes of the mentioned persons, as the case may be, are tried in one or two criminal courts, one or two military courts, or the Tehran Revolution, and not necessarily in one criminal court. Also, the exception to the last part of the article is provided by the legislator for special cases, such as the jurisdiction of special clerical courts, which are in principle outside the criminal courts enumerated in Article 296 and are subject to special regulations.

Regarding the time of holding the above positions, Article 309 adds: Have been criminalized. Therefore, for the exceptional jurisdiction provided in Articles 307 and 308, the perpetrator must hold either of the above positions at the time of the commission of the crime or at the time of the investigation of the crime. Sufficiency of committing a crime before holding

these positions to qualify for a court in Tehran or the provincial capital, clearly shows that the crime does not have to be related to the performance of duties.

Finally, according to Article 59 of the Law on Patents, Industrial Designs and with the approval of the Judicial and Legal Commission of the Trademark Parliament, which was reached on 2010-10-29 and must be implemented on a trial basis for a period of five years: This law and its executive regulations are under the jurisdiction of a special branch or branches of Tehran's public courts ...) However, according to the word "disputes", which in our legal language appears in legal issues and lawsuits, it is difficult to The citation of this article considered the investigation of the crimes contained in this law in the exclusive jurisdiction of the judicial authorities of Tehran, but Article 179 of the executive regulations of this law, approved on 2008-3-30, explicitly provides that:

According to Article 59 of the law, legal and criminal lawsuits related to the law and this regulation are within the jurisdiction of a special branch or branches of the Tehran General Court, which is appointed by the head of the judiciary and, if possible, is located in the General Directorate of Industrial Property. To be. In the case of criminal cases, if the crime took place outside of Tehran or was discovered or the accused was arrested outside of Tehran, then a preliminary investigation was carried out at the scene of the crime or the discovery or arrest of the accused and the case was referred to the above courts?

In this regard, other examples can be mentioned, including: Note 2 of Article 46 of the Law on Combating Commodity and Currency Smuggling, approved on 2013-12-24, regarding the investigation of all the accusations of the heads and members of the branches of the Government Punishment Organization They are involved in cases of smuggling of goods and currency, in the central courts and tribunals (Khaleqi, 2015).

5.1.3. Jurisdiction of the Revolutionary Court in dealing with drug crimes

Pursuant to paragraph c of Article 303 of the Code of Criminal Procedure adopted in 2013, the Revolutionary Court is a special court to deal with all crimes related to drugs, psychedelics and their precursors and the smuggling of weapons, ammunition and items and controlled substances. In fact, the principle is (under Article 301) that the criminal court has two powers to deal with all crimes, except in cases where the law has explicitly conferred jurisdiction on the court subject to Article 294 in a particular case.

After adding Articles 301 and 303 of the new Code of Criminal Procedure, we come to the conclusion that the jurisdiction of the Revolutionary Court is exceptional; That is, the principle is based on its incompetence in criminal matters; Unless permitted by the legislature. Also, Article 1 of the Law Amending the Anti-Narcotics Law adopted in 1997 in 9 paragraphs

refers to the actions that should be in principle under the jurisdiction of the Revolutionary Court;

Such as poppy cultivation (absolutely), cannabis cultivation (for drug production); Importing, sending, exporting, producing and manufacturing all kinds of drugs; Storage, transportation, purchase, distribution, concealment, transit, supply and sale of drugs; Establish or manage a place for drug use; Drug use in any form and by any means except legal cases; Production, manufacture, purchase, sale and maintenance of tools and equipment and tools related to the manufacture and use of drugs; Escaping or sheltering drug suspects or convicts arrested or arrested; Includes the elimination or concealment of evidence of drug offenders, and the placement of drugs or tools and equipment in a place intended to accuse another.

However, one of the issues raised here is the crime of practical and verbal defamation, which is mentioned in Articles 26 and 27 of the Anti-Narcotics Law, respectively. The question is whether the crime of verbal and practical defamation, due to their nature, should be under the jurisdiction of the Revolutionary Court or not?

Practical defamation refers to a case in which a person places drugs or psychotropic substances in order to accuse another. But verbal defamation is just an accusation that is made in order to prosecute a person in the competent authorities. With regard to jurisdiction over practical defamation, there seems to be no doubt that it falls within the jurisdiction of the Revolutionary Court; Because the perpetrator is to be sentenced to the maximum punishment for the same crime. But regarding Article 27, which deals only with defamation and slander, is the investigation of this crime also under the jurisdiction of the Revolutionary Court?

According to the various opinions issued by the Legal Department of the Judiciary in this regard, it seems that defamation has nothing to do with drugs, and in cases of doubt, we should refer to the principle; That is, Article 301 of the new Code of Criminal Procedure, which is based on the jurisdiction of the Second Criminal Court. In this regard, the argument is that the nature of the crime is merely defamation and slander, which has been criminalized by the legislator of the Islamic Penal Code, although the subject of slander or defamation is related to drugs.

On the other hand, another argument can be made that although it is a public offense, but since its proof requires proof of the “falsity of the claim”, although this proof is achieved simply by not providing evidence by the mufti, it is possible. Defendant to provide evidence to substantiate his claim. Accordingly, verbal defamation is under the jurisdiction of the Revolutionary Court.

5.2. Examples of deviation from relative jurisdiction in French criminal procedure

Pursuant to Article 76-706 of the Code of Criminal Procedure of France, the city prosecutor, the investigating judge and the criminal courts established in accordance with Articles 70-75 have the same jurisdiction as the courts and tribunals which, according to the general laws of local jurisdiction are recognized as competent. In addition, terrorist acts with criminal descriptions are tried by a special criminal court without a jury. The tribunal consists of a president and six advisers to professional judges. Under normal circumstances, however, the criminal court is composed of three specialized judges (one president and two advisers) and one member of the jury (Reza Vanaki *et al.*, 2021).

There has been criticism of them since the establishment of the Special Terrorist Courts. In fact, the formation of these courts is based on the fact that the nature of the terrorist crime and the pressures from which it can be directed at the jury, justifying the need for a special trial with professional judges (Rezvani and Daryanvard, 2012).

On the other hand, some people are against considering these courts as exceptional, and in fact, they have not considered the philosophy of their status as contrary to the general rules, and in this regard, Exceptions have given a negative answer (Gozzi, 2003). It has been argued that Muqtada did not intend to establish an exceptional judicial system in the law of September 9, 1986 (Sepehri, 2006). Accordingly, it is more appropriate to consider a criminal court without the presence of a jury as a special character by nature.

In this sense, the legislature did not intend to re-establish exceptional courts, such as the National Security Court, by creating these courts with the same jurisdiction as the general courts, and in fact these courts have a relative jurisdiction over criminal offenses of a criminal nature. That is what happens in peacetime. From this perspective, does the existence of these special courts contradict the principle of equality of persons before the law in Article 7 of the 1789 Declaration of Human Rights or not? The Constitutional Council has considered the existence of these courts to be compatible with criminal courts and to help ensure a fair trial.

Conclusion

The Code of Criminal Procedure, as an extract of the ideal of justice, legalism and order in societies, guarantees individual rights and freedoms and provides social security in various fields. One of the key issues in the Code of Criminal Procedure is determining the jurisdiction of judicial authorities

In fact, after committing a crime, it must be determined from all criminal courts which one has the jurisdiction to judge the behavior of the perpetrator. Depending on the type of crime, the importance of the crime committed, the place of the crime, the occupational and social status of the offender, and also taking into account the age and military rank (in the case of military personnel), the powers of judicial authorities are relatively divided.

The principle of jurisdiction of judicial authorities derives from the principle of legality of the court and is part of the jurisprudential rules in criminal proceedings, so that the litigants can not agree in any way contrary to what the law determines the jurisdiction of a court. However, in the criminal procedure and in special circumstances, exceptions have been provided for deviation from the mentioned jurisdictions, and the present study has compared these cases in the Iranian and French criminal procedure.

Regarding intrinsic jurisdiction, the research findings indicate that in both Iranian and French criminal proceedings, the most important basis in distinguishing and recognizing the inherent jurisdiction of the court is the type of crime committed and the amount of punishment. According to the commonalities of the Iranian and French criminal procedure, intrinsic jurisdiction is tied to public order and its rules are among the rules of jurisprudence and are unchangeable in implementation, and violation of its rules causes the absolute invalidity of any decision made from it. However, in the Iranian criminal procedure, deviation from inherent jurisdiction is permitted in cases such as issuing a collective verdict and observing the rules of multiple offenses.

The result is that because the degree of punishment determines the jurisdiction of the courts and the punishments are divided into eight degrees based on weakness and severity in Article 19 of the Islamic Penal Code, and in case of multiple punishments, imprisonment is considered the most severe punishment, so in case of multiple punishments, imprisonment should be punished. In addition, when a suspension judgment is issued in a branch and then the case is heard in another court, the court, regardless of its inherent jurisdiction, is allowed to overturn the suspension and enforce the sentence. From the mentioned branch and comment on it.

In fact, the court that did not issue the suspension revokes it and even orders the execution of the previous sentence. Deviation from inherent jurisdiction can be criticized for a court that was not originally suspended. Because, in principle, it would have been better for the issuing court to suspend the sentence in all circumstances, rather than for the court that issued the final verdict in another case. In French criminal procedure, deviation from inherent jurisdiction is possible in limited cases and only within the framework of a referral.

On the other hand, the findings indicate that in the Iranian criminal procedure, deviation from personal jurisdiction within the position and position of the perpetrator is provided. Also, contrary to the Iranian criminal procedure, in the French criminal procedure, deviation from personal jurisdiction in cases where the crime committed by French nationals outside the territory of France is not a crime or misdemeanor and also when the crime is a misdemeanor in the country of occurrence It is not considered a crime or punishable. In addition, French criminal procedure provides for the waiver of personal jurisdiction in cases such as the plaintiff not filing a complaint and the lack of discretion of the prosecutor to make the prosecution appropriate.

Also, based on the findings in both Iranian and French criminal proceedings, relative jurisdiction is determined based on the merits of each of the criminal authorities that have inherent and local jurisdiction, based on the importance of the crime and the extent of their punishment. However, deviation from the jurisdiction of the relative court in the Iranian criminal procedure is envisaged within the jurisdiction of the first criminal court, the provincial or capital courts and the revolution regarding crimes such as diyat, drug trafficking and the prosecution of official crimes. On the other hand, in the French criminal procedure, unlike in Iran, deviation from relative jurisdiction in cases such as position, general circumstances and type of crime is provided within the jurisdiction of the juvenile court, juvenile police and the local police court.

In addition, the results of the study show that in the case of the rule of deviation from local jurisdiction, the fact that, without any exception, the said rule can not lead to a favorable judicial review of criminal cases, is common to both criminal proceedings. In fact, the need to provide for exceptions and violations of this rule to increase the efficiency of the judiciary is inevitable. However, it should be noted that the determination and emphasis on the rules of jurisdiction as mandatory rules in the criminal proceedings, including the rule of local jurisdiction for the purpose of establishing judicial order and especially the protection of the rights of the accused, is a matter of course and accepted.

In addition, a look at the violations of the rule of local jurisdiction in the two legal systems of Iran and France confirms that despite the French legislature, which has undergone extensive changes in this regard in recent years, the Iranian legislature, especially in the Code of Criminal Procedure adopted in 2013. Its cases are also limited and it can be considered as the source of change. On the other hand, the findings of the study indicate that the Iranian Muqtana, as observed in the classification of cases of violation of local jurisdiction, except in cases of violation of the rule on the authority of the perpetrator, in other cases are satisfied with general conditions such as maintaining public order and security.

In contrast, there are several violations of the rule depending on the type of crime committed in the French system. In addition, the findings of the study show that in both Iranian and French criminal procedure, the basis for determining personal jurisdiction is the perpetrator, so that the criminal procedure has placed the investigation of the charges of certain individuals in the jurisdiction of a specific authority. This jurisdiction is only effective in changing the local jurisdiction.

Given these results, it is suggested that the Iranian legislature, like the French legislature, provide for the right to notify judicial decisions in order to refer the case to the litigants and to present a defense bill. Pay special attention to the developments of delinquency in recent years, especially the quantitative and qualitative development of gang and organized crimes and terrorist crimes, and adapt the traditional solutions for dealing with all types of crimes with today's delinquent developments.

On the other hand, what can substantiate the violation of the local jurisdiction rule is better handling of the case and increasing the efficiency of the judiciary, and what better guarantees this increase is the anticipation of specialized courts and tribunals. Are competent under the general rule of local jurisdiction.

In fact, what we have seen in the French legal system includes commissions of inquiry with specialized judicial institutions, provided that they do not become specialized courts contrary to the rule of inherent jurisdiction and less legal than what is provided in the general judicial system for litigants, especially defendants. Can not be determined, can increase the efficiency of the judiciary and fight more effectively and better, especially with new forms of crime.

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UNIVERSIDAD
DEL ZULIA

CUESTIONES POLÍTICAS

Vol.39 N° 70

*Esta revista fue editada en formato digital y publicada en octubre de 2021, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

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