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Investigating the exception Rei Judicata in Criminal Proceedings in Iran and France Penal Codes

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Abstract: *In any criminal justice system, when criminal proceedings are brought to a final verdict, they say: the verdict, the validity of the case or the defendant's case has been acquired, and as a result, a public prosecution has collapsed. The laws that are intended to resolve mistakes in the judiciary, mitigation claims can be dealt with at various stages of primary and research, and prosecution, the criminal offense is considered after the hearing and the issuance of the sentence and during the stages or expiration of the deadlines set forth in the law is definite. Reproduction has been prohibited for many reasons, according to the jurisprudence of criminal law scientists.*

Keywords: *Rei Judicata, investigating prosecutors*, *French judiciary*, *Criminal Procedure*

INTRODUCTION

They have justified the importance of the validity of the matter on the basis of dual thought and thought, in their individual interests as well as social necessities. The basis for the individual's importance is respect for human dignity and the assurance of individual freedoms not only during the course of the proceedings, but also when the criminal proceedings are brought to a final and definitive stage, as well as the effect on the term and training of the offender. The confidence of individuals that the criminal lawsuits will be resolved decisively and resolutely and will not be shaken by life during the life of the same charge as his future and destiny will be in a way in favor of a favorable criminal policy and consolidating the power of the judiciary to be effective and effective. will be. On the other hand, the community's tendencies and the related system require that the accused's final assignment be made in terms of conviction or photograph. A definitive trial, whether condemned, convicted or persecuted, does not begin again. The public order and the peace of the society require that each lawsuit filed in the judicial authorities be closed one day.

Decisions of investigation authorities and issuing verdict

1. Procedures for investigating prosecutors

The final decisions of the investigative authorities may, as the case may be, be a ruling or subject matter. The prohibition of prosecution is due to the lack of time offense and the general amnesty of the verdict, and there is no prosecution even if new causes are discovered. It should be noted that investigating judges should investigate the crime in all respects, and then issue an appropriate judgment. The prohibition of a definitive prosecution prevents further prosecution, even under other definitions, of the act of committing. Only in

terms of timelines and timing, given that the system of dividing offenses differs from the timeframe for the review and the time of the two, if the issuance of a prosecution for punishment due to review and time, if there are new reasons for defining the crime Changing it and making it a criminal offense is time-wasting and longer, hence, by changing the type of crime, the subject is redefined in terms of a new description. For example, in the simple crime of piracy, which according to the former public prosecutor's law was considered as an offense, if prosecution was prosecuted because of the timing of the prosecution, he was prevented from prosecuting him, despite the new reasons for the crime of robbery (Article 222) Which was criminal and still not subject to time lapse. On the face of it, when decisions by prosecutors justify the prosecution of the accused due to inadequacy of the reason, the decision is a matter of fact and has a temporary validity, and it is required that no new reasons be obtained. Otherwise, with the prescription of the court, the prosecutor will have a resettlement position. Because the investigations and decisions of the investigative bodies are primarily concerned with the preparation and completion of the reasons for the trial and do not restrict the courts to comply with it, and the courts have complete freedom to re-examine the case in all respects, to evaluate the grounds and jurisprudence, and finally to issue Voting is for confirmation or violation of the decision of judges of the investigation.The reason for new reasons is the reasons that have already been considered by the prosecutor and are effective in discovering the truth.Some of the decisions of the prosecutors, such as the prosecution imposed by the provisions of the prosecution provided for in the laws of some countries (Article 40 of the AFC), as well as the suspension of the issuance Under the conditions stipulated in the Law on Amendments to some of the laws of the court, passed in 1977, the prosecutor's duties were not valid, since in these cases there is the possibility of re-pursuit without even obtaining new grounds. Attending courts (convicted offenses) issued by prosecutors does not have the same validity. Because the courts can deny the offender a criminal offense or, in the event of non-compliance with the jurisdiction rules of the prosecutor, whether to consider the issue in the jurisdiction of the higher court or the specialized courts, to issue ineligibility. In Iran, the Prosecutor's Office (prosecutors) and prosecutors are prohibited from pursuing investigations) due to lack of sufficient reason for the validity of the offense because, in accordance with Article 180 of Law A. D K If new reasons are discovered, then the prosecution is again possible. However, the Prosecutor's Office prohibits prosecuting a defendant due to a lack of action or a time lapse after appealing to the Provincial Court, and then the Supreme Court of the country obtains certainty and credibility. In this regard, the Legal Department of the Ministry of Justice has stated in the Advisory Opinion that:The prosecution should be considered. In this way, if the prosecution is prohibited, including legal and regulatory issues such as non-offending or time-bound issues, then re-pursuit will not have legal status in the face of new grounds (Imani, 2003).

2. Decisions of the issuing authorities (courts)

General rules - Court decisions will find a credible statement that the decision, whether a verdict or an order, is uncontested. In other words, as long as the ways of complaints are open to sentences such as waking and renewing or researching. The condemned sentence can not be raised fundamentally. If the verdict is finalized, any criminal prosecution of the defendant in the same case is prohibited in accordance with the rule non bis idem.(Jafari Langroudi, Ganj Danesh)

In cases where the court order is void or revised by the judicial authority and the ruling is finally finalized after a fresh hearing, even if the sentence imposed in the sentence is not definite, it will be deemed to be closed and there is no possibility of a fresh hearing. Regarding the verdict, even if there is a new reason, it will not be possible to reopen the decision on the decisions of the investigative bodies (prosecutors and prosecutors), even if there is a new one, except that the case law of the courts Adoption of Law Enforcement Agents. D The establishment of restoration of criminal proceedings is related to the convictions or appeals of the Attorney General for the maintenance of the law. The reason for the exception is rule of law in cases of use of restraining regulations, the elimination of judicial mistakes and the preservation of the rights of convicted persons in the case of innocence. In this regard, the provisions of the law of innocence are fully

admitted to the principle of innocence, and the exception is therefore based on the rule of law and the avoidance of a violation of the law, which is very limited and specific to certain cases by the legislator.
The decision of the court shall be deemed to be closed when the judgment issued by the competent court is definitive and in criminal matters. The definitive ruling of the non-competent authority is ruled out, and the rule of law will not be closed to it. The orders of the courts do not have the validity of the law. In addition, the final decision of the court is the condition of the application of this rule. Therefore, referring the case to the expert and other investigatory and follow-up measures of the court during the proceedings, even if it has stated the opinion in the nature of the case, is not considered to be an end in itself, and the objection of the convicted offender The reason for considering your comment is not acceptable (Hosseini, Seyyed Mohammad Rezaein Darseini Madani, Volume 2, Publishing, Tehran, Year 84).
The issuance of the verdict and the suspension of the execution of the prescribed penalty if the verdict is finalized does not have the validity of the offense, since according to the rules on suspended sentences, it is probable to extend the period of suspension or cancellation and order to enforce it by the court.
Second topic:

The conditions for the validity of the order are reserved

In order for a criminal offense to be able to censure and invoke a conviction, there is a need for conditions between the two first and second lawsuits. These conditions include the unity of the subject, the unity of the parties, the unity that causes each one to be individually examined (Assyria, 1997).
A: Unity of the subject: The subject of a criminal complaint is basically to punish the accused. So, in two or more cases, the subject matter is definitely the same. It is not different that a lawsuit is filed by a prosecutor or private plaintiff because the purpose in both cases is to punish the accused. When one of them made a criminal case and a definitive ruling from the judicial authorities was issued, the general lawsuit would be void. However, there is no unanimity between the orders of the law enforcement agencies and state organs in investigating employee offenses and the competent criminal courts in investigating the general crimes of the same people. Only law enforcement agencies can not make decisions that are contrary to the criminal court's rulings. French law of law in the past used to link the terms of validity of the closed criminal case with civilians and used the provisions of Article 1351 of the civil law of that country on the unity of the matter in the criminal proceedings, and They believed that the unity of the criterion of this document was the condition of the unity of the matter in criminal matters. However, this theory is not confirmed by current lawyers. In my opinion, the unity of the matter in the criminal case is always on the face of civil disputes between two lawsuits (Assur, 2009).
B: unity of the parties: the French doctrine and judicial procedure is a common denominator and, finally, a form of judgments and rulings, when it has the ability to cite claims that the parties in both cases are the same as the one that issued the verdict and the second one that is being raised. The condition for the relative validity of the permanent duty in all criminal cases in systems that are at the preliminary stage of investigation by the prosecutor is researcher and implicit, because in this type of procedure, even if the proclaimer of the offender is a private claimant, it is principally a prosecutor's job The order has been issued to prosecute a criminal case, and has put forward and pursued a lawsuit by Amur. The French court has stated in this regard: when the prosecutor has started a lawsuit against the accused and has resulted in the issuance of a warrant, the court order is void and the private plaintiff can not reinstate the criminal case. Also, in cases where the criminal case has been imposed and closed by a private claimant, the prosecutors themselves can not be prosecuted for the same operation. In other words, when the subject of a criminal offense is certain, it does not matter whether the prosecutor's office or The private claimant has been prosecuted. While there is no such thing as a defendant about this unity in two lawsuits, and if the unity of the parties to the lawsuit can be invoked for the affair, a certain person has been prosecuted in both cases

under the name of the unit. However, if, in the first prosecution, the accused is prosecuted as a persecutor and, as a result, acquitted, he is not prevented from being prosecuted again as a deputy in prosecution of the same crime. Given that the decisions of the judicial authority do not contradict. Thus, from the principle of relativeity, the conclusion is that those who did not participate fully in a lawsuit that did not participate in a definitive ruling can not, in the new lawsuit against the same act, discontinue the citation, since, in accordance with the rule, the definitive ruling is in favor of or The loss of anyone will not be a new criminal penalty. However, lawyers do not consider unity in the application of this rule. Some believe that in the pursuit of success when one is a single offender, but different defendants, if both prosecution of the charges of individuals as a company or deputy in action, the decision in the first judicial decision Whether favorable or unfavorable, include the accused or the defendants in the secondary lawsuit. Some other defendants believe that the effect of the offending should only be taken into account in the interests of those who will be prosecuted in the secondary proceedings. In other words, if the final decision of the judicial authority is in the first suit against the accused or accused, such a judgment as the sentencing victim, the defendant or subsequent defendants, such as the steward or the assistant to the crime, benefited from such a sentence, provided that the decision of the primary judicial authority The basis for objective reasons, such as the prosecution of the offense or the imposition of a punishment, is due to the fact that there is no crime or time lapse or a minor age. However, if the final decision was favorable to the judicial authority, but for personal and sensory reasons such as insanity, the defendant was not entitled to prosecution of this cause, this could not be in the interests of those who were involved in criminal acts and had criminal liability conditions and then prosecuted. have taken. This scientific theory was formerly approved by the French Court of Justice, and the relative validity of the matter was fixed, which is the principle and in accordance with this view, has become an absolute property (Hossein Sharifi Taraz Koohi, 2007).

The new French judiciary and some of the criminal law writers such as Dundee du Weber and Garson have expressed another view and consider the solution as more logical. According to this theory, follow-up actions are fundamentally independent of each other, and what the first lawsuit provides for a definitive ruling on it can not be an effective criterion for other people, whether as a partner or a crime victim of secondary prosecution, and since defendants are not in the same pursuit of the unit, Does not exist. The new judicial procedure accepts the assumption of the relative validity of the rule completely and unconditionally, and relied on this justification that in the evolution of the goals of the criminal law, the impact of the rules of criminology in the criminal proceedings, the criminal is more concerned. To commit an offense, therefore, the principle of the validity of the law is mutually exclusive. The French court even believes that there will be no conflict between this principle and the prosecution of another person in pursuit of the offense of committing a crime by changing the description of the offense. There is also no prohibition on exacerbating the punishment of a crime victim who has been prosecuted after the case has been closed (Ansari, 2001).

C: Unity Causes: Alliance causes action in two claims of the third condition to accept the issue. In this explanation, in order to realize the validity of the law, the legal and material elements of the crime that the sentence is issued is based on it, they must be the same in the new criminal lawsuit. Obviously, if the Jericho was tried and sentenced, and the convicted person rescinded the same act, it would be subject to the principle of repetition of the offense and that the offender could not have any effect on the repeat offender's conduct. The existence of a condition of unity causes, sometimes to be considered and worthy of further analysis, and when it comes to the practice of the subject of punitive sentences in terms of criminal law, and the material acts in the crime of committing are sometimes distinct and different. Occasionally, apparently, unity causes the act of committing, but it is negligently observable that the material element does not have unity in two criminal prosecutions. Examples of this are the events that the Tribunal has decided on: An accused person of unintentional murder has been mistreated due to the carelessness of the light bulb, which has no torch, near the bed of his wife, causing fire and The woman's severe burns and her death. After prosecuting the accused, the prosecution finally sentenced the accused to death for the unintentional murder and sentenced to a final

sentence. Then, there are reasons why the convicted person will deliberately kill his wife by pouring oil on his wife. The convicted person is again prosecuted for more serious crime, and this time he is sentenced to legal punishment in a criminal court. According to the Tribunal's ruling, because it does not lead to a single lawsuit, the first definitive ruling does not restrict the validity of the new claim, and the objection is rejected, and the criminal court ruling is overruled (Jafari Langroudi, 2006)

Conclusion

The Criminal Procedure Code of Iran does not explicitly determine the credibility of the matter, but in other cases, the prosecution of a general lawsuit, such as the death of a lawyer, time lapse, general amnesty in political crimes and the passing of a private claimant, stipulate that the prosecution is to cease.

In Iran, there is no judicial procedure in this regard, it is used in these considerations to examine the issues related to the validity of the inevitable conclusion of the jurisprudence and jurisprudential jurisprudence and civil rights rules in the conviction and, finally, the general rules of criminal law.

Before the publication of the articles of the Law on the Principles of Criminal Proceedings in 1998, it was apparently judged by Article 406 of the law that prescribed:

Whenever someone has obtained his own iniquity from the fault of the court, no one has the right to contradict him in relation to this fault (Akhundi, 1990).

They believed that the conviction of an offender from the criminal court had the validity of the conviction. But if the title of the offense is not clear to the accused, such as an assassination which, in the opinion of the prosecutor, was a crime and, therefore, was sent to the criminal court if the criminal court considers the crime to be an unintentional offense, that is to say, The criminal court removes the accused from committing an intentional murder and does not impose a punishment on the assumption that the defendant's court did not punish the defendant in an unintentional murder. The article 406 of the above law, cited above, deduced from the following that the accused was deliberately motivated not to be prosecuted for murder but was prosecuted as an unintentional murder in a court of law. But according to some others, by accepting the jurisdiction of the criminal court in the criminal prosecution proceedings, it is compelled to convict the defendant as an unintentional murderer and to be sentenced to a penalty, so the criminal court's ruling should be valid.

This controversy was similar to the dissenting opinion of the French jurists that finally the legislator of that country, by adopting Article 368, in its previous pages, ended the discussion in this regard at least within the limits of the sentences issued from the criminal courts, but in Iran, despite the explicit edition of Article 406 The Law of the Principles of Trials in 1958 is no longer a legal document that can be used as a basis for discussing and expressing opinions in the context of the validity of the matter. Given the fact that until 1982, the criminal law in Iran, like France, according to the division of the trials of crimes in the offended criminal tribunals Criminal proceedings were conducted to resolve the issues related to criminal proceedings with due regard It was possible to have external judgments or opinions. Since the adoption of the regulations on penalties, retaliation, reburial and sanctions on the one hand, and the change of system to the criminal courts of the Islamic Republic of Iran, and the bureaucratic theory and practice of the affairs of the Islamic Republic of Iran, based on these developments and according to the Islamic penal code, should not be discounted. In the new criminal system, the verdicts of the courts are definitive and the validity of the case is closed and, as a result, prevents the re-examination of the same claim. It is possible that the sentences are repeatedly reviewed, but it is not in conflict with the validity of the judgment given.

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