

A Glance at Political Crime

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A b s t r a c t

Political crimes have been regarded throughout the history as any offences against the structure of power, whether political or ideological, in a given society. Despite the significance effects of these criminal acts on the order system, they are rarely examined by law scholars; though some recognize the fact that understanding these types of crime is fundamental to comprehending one of the main features of a criminal justice system that attempts to define what is criminal act, what are elements of criminal act and who are criminals. In earlier times, under the early penal laws, political crimes (as the oldest of all crime-types) were treated more severely than the ordinary crimes as the crimes targeting the basis of the government; nevertheless, gradually the approach toward political crimes changed.

Within the present paper, the author will examine the ambiguity surrounding the definition of political crime in the introductory section, also the criteria to define a comprehensive definition. Then, it provides an all-inclusive but brief analysis of the background of political crime in Iran legal system, with an emphasis on the most striking features of Iran's Penal Code as adopted in 2016.

Keywords: Political Crime, Iran Legal System, Criminal Justice System, Elements of Crime

Introduction

In earlier times, under the early penal laws, political crimes (as the oldest of all crime-types) were treated more severely than the ordinary crimes as the crimes targeting the basis of the government; nevertheless, gradually the idea became prevalence that these types of criminals deserve special and leniency treatment due to having noble incentives, i.e. the aspiration of accomplishing the purpose of improvement of society and establishment of an ideal community that a prospect of which is presented in almost every religions and cultures;¹ additionally, perhaps they are selfless thinkers that even in the process of coming developments, they can find their way to top positions of a government.² Therefore, remissions and favors are provided under the statutory laws for this category of the offenders including being under no compulsion to work in prison or to wear prison uniform,³ non-extradition of political offenders to the requesting states,⁴ the necessity of the trial in the presence of the jury,⁵ absence of any restriction on the possibility of amnesty,⁶ non- application of the laws on

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¹ Schafer in his article titled "Political Criminal" names this type of criminals (offenders) as Conventional Criminals; since they are "convinced" about the truth and justification of his own altruistic beliefs; they resemble themselves with the prophets with the task of rectifying the society. Stephen Schafer, The Concept of the Political Criminal, 62 *J. Crim. L. Criminology & Police Sci.* 380 (1971).

² The prime example of this type is the late Nelson Mandela. He was arrested and imprisoned for his campaign against apartheid and racism. He won the peace Noble prize in 1993 in company with the incumbent president of the South Africa. He was elected as the president in 1994.

³ See Art. 1 of Law relating to Forcing Criminals to Engage in Labour (1935).

⁴ See Art. 8(2) of Law Relating to Extradition of Criminals (1960).

⁵ Article 168 of The Constitution of Islamic Republic of Iran.

recidivism,⁷ a more swift process of rehabilitation comparing to ordinary offenders⁸ and so on. The leniency toward the political offenders reminds us of the Ferry's idea that "the true political criminal is a pseudo-criminal and ought not to be considered in the same breath as the ordinary criminal. The latter is atavistic, harks back to a primitive and savage time; he is anti-social, anti-human, and is not to be confused with the political criminal since the latter is not anti-human, does not attack the bases of our human life, our life as social beings, but attacks only the bases of our political or governmental order which is transitory."⁹

A. Definition of Political Crime

Comparing to the other crimes, there are no wide criminal and criminological studies on political crime so that its definition is not even clear. *Sagarin* states: "unlike historian and politics theorists, the criminologists have neglected this issue".¹⁰

In addition, the political crime is not defined under the international conventions related to the issue of non-extradition of political criminals.¹¹ Perhaps for the first time, it was the European treaty that dealt with the definition of political crime; the treaty entered in 1174 between Henry II of England and William, the Lion, King of Scotland¹² which defined it as, any criminal attempts against the head of states, treason, conspiracy and rebellion. In 1854, a person attempted to kill the Napoleon III by blowing up the train carrying him, and then he escaped to Belgium. The Belgian government was hesitant to extradite him to France, so for the prevention of similar problems, Belgium added a clause to its Extradition Law, under which an attempt to kill the head of a state, when there are all the criminal elements of the regular crime of murder, shall not be considered a political offense; therefore, without defining the political crime, the acts that shall not be one of the instances of political crime, was explicitly excluded from its scope. In 1880 Oxford Congress of the Institute on International Law,¹³ in dealing with the issue of Political Crime, and without providing a general definition, recommended that this crime is confined to acts committed in the course of civil unrest or wars and those acts that are permitted during the regular wars.¹⁴ The Sixth Conference of Criminal Law in

⁶ Under the pre-revolutionary law, granting amnesty to political offenders was feasible without any limitations, although there were restrictions with regard to ordinary criminals. See. Arts. 54 and 55 of former General Penal Code repealed by Discretionary Punishments Act (1996) (as amended in May 17, 1998).

⁷ See Art. 26 of former General Penal Code.

⁸ See Art. 56 of former General Penal Code. In this respect, see also Single Article of the Bill on Elimination of the Effects of Political Convictions (May 8, 1979) Adopted by the Revolution Council.

⁹ Quoting from Ferri, in Robert Ferrari, *Political Crime*, *Columbia Law Review*, Vol. 20, No. 3 (Mar., 1920), pp. 308-316.

¹⁰ Frank E. Hagan, *Political Crime: Ideology and Criminality*, Allyn and Bacon, 1997, p. 12.

¹¹ The lack of clear definition of political offenses is not unprecedented in the laws of different countries. As an example, the Eighth Amendment to the United States Constitution (the first ten amendments to the United States Constitution or the Bill of Rights proposed by the Congress in 1789) that prohibits the infliction of any cruel and unusual punishments, provides no definition of political crime. The U.S. Supreme Court has ruled that the death penalty (capital punishment) is not by itself a violation of the Eighth Amendment's prohibition of cruel and unusual punishment, but the Eighth Amendment shape certain procedural aspects regarding when a jury may use the death penalty and how it must be carried out to guarantee the fair and just implementation of the death penalty. Also, the Supreme Court has disapproved a lengthy imprisonment that is unconstitutionally disproportionate to the crime (see: *Ewing v. California*, 538 U.S. 11 (2003)), the Court stand against any efforts to carry out the death penalty in reaction to a crime other than first-degree murder, no need to say that the death penalty is a possible punishment for murder under certain conditions. See: B. Neuborne, (1996), "An Overview of the Bill of Rights", in A. B. Morrison (ed.), *Fundamentals of American Law*, Oxford University Press, pp. 84-127; 111-112.

¹² See generally Ann Powers, Justice Denied? The Adjudication of Extradition Applications, 37 *Tex. INT'L. L. J.* 277 (Spring 2002).

¹³ United States Congressional serial set, Issue 3279, p. 26.

¹⁴ Schafer, *ibid*, p. 10.

Copenhagen in 1935 considered the political crime a crime committed against the government structure and the manner of governing a state.

Anyway, providing a general and comprehensive definition of political crime, due to its ideological feature and the efforts of the states to deprive the violent offenders from the advantages granted to political criminal, was always faced with problems and no definition is provided under the laws of many countries. On one hand, it is argued that that all crimes are political crimes inasmuch as all prohibitions with penal sanctions represent the defense of a given value system or morality, in which the prevailing social power believes.¹⁵ Perhaps, King of England, Edward III can be regarded as the innovator of the idea that ordinary criminals, like bandits, were to be punished as the traitor and political criminal, since their acts undermined the sovereignty of the monarch. On the other hand, some scholars such as *Louis Proal*, the author of the book titled “Political Crime”¹⁶, along with *Bonger*, *Garofalo* and *Ferri* have considered such crimes as the ones against the government or the crimes of “the oppressed against the oppressors”.¹⁷ Others have regarded the political crime as a crime committed by a government or against it with ideological goals.¹⁸

Even in case the recent definition of political crimes is not fully accepted due to the ambiguity in the phrase “ideological goals”, the point that can be inferred from it clearly would be as follows; Giddings, the translator of Proal’s book under the title of “political crime”, defines the political crime as “offenses committed by the governments under the pretext of protecting the system and by the politicians by virtue of the interest or for political interests”. He considers the politics without morality would lead to the destruction of society and compares it with the science without conscience that would lead to the destruction of soul.¹⁹ Therefore, it can be concluded that political crimes are of two categories which are committed against or by a government. The first category is those acts in violation of human rights that are committed by the state agents (such as illegal search of homes, deprivation of personal liberty, illegal detention of a person, punishment more severe than the legal punishment, physical abuse and the same)²⁰; the second category includes the acts such as illegal protests,

espionage for foreigners and alike; also it should be mentioned that every state can in fact exclude some of these offences from the scope of the political crime by defining the features of political crime in their domestic laws or international conventions and regard them as the regular crimes. As was mentioned previously the case of Belgium. The other case, European Convention on the Suppression of Terrorism (1976),²¹ under Art. 1, excludes the following acts from the scope of the political crime or as an offence connected with a political offence or as an offence inspired by political motives:

“a) An offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft,²² signed at The Hague on 16 December 1970;

b) An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,²³ signed at Montreal on 23 September 1971;

c) A serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents;

d) An offence involving kidnapping, the taking of a hostage or serious unlawful detention;

e) An offence involving the use of a bomb, grenade, rocket, automatic firearm or letter or parcel bomb if this use endangers persons;

f) Any attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence”.

¹⁵ See: Schafer, *op. cit.*, p.19 & Hagan, *Political Crime*, p. 3.

¹⁶ See: Louis Proal, *Political Crime*, D. Appleton, 1898.

¹⁷ Hagan, *op. cit.*, p. 122.

¹⁸ *Ibid.*

¹⁹ F. H. Giddings, (1898), *Introduction to Proal’s Political Crime*, New York, pp. V-VII.

²⁰ See the articles of Chapter Ten of Discretionary Punishments Act (1996).

²¹ For the full text visit: <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/090>

²² For the full text see: www.un.org/en/sc/ctc/docs/conventions/Conv2.pdf

²³ For the full text see: www.un.org/en/sc/ctc/docs/conventions/Conv3.pdf

In the same manner, U.S.-U.K. Supplementary Extradition Treaty,²⁴ under Art. 1 defines the offences that shall not be regarded as an offence with a political character. Under this Art., in addition to pointing to the crimes mentioned in some other international treaties, there is a reference to these crimes: murder, manslaughter, intentionally caused injury or severe physical injury, kidnapping, illegal detention (including hostage taking), an offense involving the use of an explosive devices which its use endangers any person or property; and conspiracy to cause an explosion, possession of such devices with the intention to cause such and explosion by himself or another, possession of arms or firearms with intention to endanger life of the other individuals, the use of arms to prevent the arrest of himself or someone else, causing damage to property with the intention to endanger the life of others or negligence in this case or an attempt to commit any of the foregoing offenses.²⁵ Article 4 of the Resolution No. 7/1984 of International Law Association prohibits the states from allowing perpetrators of terrorism acts to escape punishment or to be extradited by the reasons of political incentives.²⁶ From what was discussed before dealing with the European Convention, U.S. – U.K. Extradition Treaty and the Resolution of ILA, it can be inferred that in the second category of criminal offences (i.e. the crimes committed against a government), as the most significant focus point of this article, the feature of “being against a government” turns a committed act into a political crime.

B. Criteria to distinguish political crime

Commonly it is said that one of the subjective or objective criterion can be applied to distinguish that an act is committed to oppose the state in some manner. According to the first criterion, it is the intention of the perpetrator that must be considered; and that whether his intention to commit the crime is opposing or challenging the state or not. In conformity with the second criterion, it is the reasonable consequences of the crime that must be taken into account. Whenever the consequence arising out of a crime or its reasonable consequences which are expected to arise; could challenge the structures of the state, in some manner, potentially or actually; shall the committed crime be considered the political one or a regular one. Sometimes, both criteria are applied to distinguish the political nature of the crime; in other words, by realizing each of these criteria, it may be said that the committed crime can be regarded as a political one.

In Iran laws, these two criteria are applied to distinguish the belligerency crime (*muḥāribeh*) that can be similar to political crimes (since the belligerency is regarded as a crime by virtue of its features like anti-security and acting in opposing Islamic government; not by virtue of its violent quality). On one hand, occasionally, the intention of the perpetrator or the detrimental impacts of his acts, on the other hand, turns the committed crime into the crime of belligerency. The instances for the first type are those that “intention to overthrow the regime”²⁷ or “the intention to collaborate with the enemy or to defeat the own forces”²⁸ etc. is the reason to consider the perpetrator as a belligerent (*muḥārib*); the instances for the second type are those that are dependent upon the realization of the events such as “disrupting the domestic or external security or any disrupting in the governmental system”,²⁹ “defeating the Islam front”,³⁰ “strengthening the enemy”,³¹ “loss of lives”³² and “effective impact on the mission of the armed forces”,³³ these events turn the committed regular crime (e.g. forgery, false report, robbery, desertion from the armed forces or absence from service, etc.) into the crime of belligerency. The combination of these two criteria can be seen in subsection (1) of Art. 72 of the former Penal Code relating to the Offences of the Armed Forces (adopted in 1992) that states:

²⁴ For the full text see: <http://treaties.fco.gov.uk>

²⁵ This treaty has gained mutual support in both countries, although there is criticism against the United States by the supporters of the Northern Ireland.

²⁶ *ILA Report of the 61st Conference*, Paris, 1984, p. 315.

²⁷ See Arts. 21 and 23 of the Penal Code relating to the Offences of the Armed Forces (2005).

²⁸ *Ibid.*

²⁹ See Arts. 34, 35, 37 and 42 of the Penal Code relating to the Offences of the Armed Forces (2005).

³⁰ See Arts. 32 and 35 of the Penal Code relating to the Offences of the Armed Forces (2005).

³¹ See Art. 73 of the Penal Code relating to the Offences of the Armed Forces (2005).

³² See Art. 65 of the Penal Code relating to the Offences of the Armed Forces (2005).

³³ See Art. 72 of the Penal Code relating to the Offences of the Armed Forces (2005).

“whenever the destruction of facilities, buildings, fortresses, ships, airplanes, warehouses, roads and other aforementioned equipment and sites is done with the intention to overthrow the government and spreading corruption (Subjective Criterion); or resultant from these acts, the military mission is irreparably damaged (Objective Criterion), the perpetrator shall be sentenced to the punishment of a belligerent; instead of the 5 to 15 years imprisonment”.

C. Background of Political Crime in Iran Legal System

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Within the recent discussion, we will deal with the status of the political crime in Iran criminal system. Art. 168 of Iran Constitution which provides that “political and press offences shall be tried in the presence of a jury”, however, sets out that the term of political crime shall be define in accordance with Islamic criterion by regular law. The Amendment to Constitution of the Constitutional Period (*Mashrooteh*, i.e. Persian Constitutional Revolution) in Art. 79 refers to the political offences; with no attempt to present a definition. In Islamic jurisprudence, perhaps the closest notion to the political crime is the concept of “Revolt”; the lexical definition of Revolt is as follows: oppression, assault and disobedience, also, the term can be defined as uprising against Imam and the Islamic government; the concept is provided under Art. 287 of Islamic Penal Code (adopted in 2013). Previously, two drafts were prepared on this matter, one drafted by a non-governmental entity,³⁴ the other by the ministry of justice. In addition to their different text, in terms of the manner of dealing with these crimes and the treatment towards these types of convicted individuals; there was dissimilarity with regard to the definition and instances of the political crime. Under Art. 1 of the draft prepared by the non-governmental entity, political crime was defines as follows: “whenever, any act or omission, punishable under the statutory laws, is committed with the political motive against the established political system and the sovereignty of the government and political administration of the state and the interest of the Islamic Republic of Iran and/or cultural, social and political rights of the citizens and their legal freedoms, shall be considered political crime, provided that the intention of the perpetrator is not the personal interest.”

Art. 2 of the mentioned draft provides that in cases in which the crimes referred to under other statutory laws conform with the above mentioned definition, they shall be regarded as the political crimes. These crimes include: “forming, administrating or being a member in groups or cliques with intention to disturb the security of the state (Arts. 498 and 499 of Islamic Penal Code- Discretionary Punishments (*Tazirat*) as is discussed previously), propaganda against the regime (Art. 500 of Islamic Penal Code- Discretionary Punishments (*Tazirat*)), insulting foreign Head of State, or its Diplomatic Representative (Art. 517 of Islamic Penal Code- Discretionary Punishments (*Tazirat*)), unlawfully depriving members of the public of their personal freedom or from their rights provided in the IRI Constitution (Art. 570 of Islamic Penal Code- Discretionary Punishments (*Tazirat*)); colluding and conspiring to commit crimes against the security of the country (Art. 610 of Islamic Penal Code- Discretionary Punishments (*Tazirat*)); insulting high ranking state officials (Art. 609 of Islamic Penal Code- Discretionary Punishments (*Tazirat*)); Libeling and falsifying with intention to cause damage or to disrupt the public opinion of the state authorities (Arts. 697 and 698 of Islamic Penal Code- Discretionary Punishments (*Tazirat*)), all the crimes related to elections, and the crimes referred to in the Laws on the activities of parties, societies and political associations, guilds etc.

The text drafted by the Ministry of Justice defines the political crime as follows: “any criminal acts that is committed without exercising violence by natural persons with political motive or by political groups against established political system and the sovereignty of the government and/or social and political rights of the citizens, provided that provided that the intention of the perpetrator is not the personal interest.” Without referring to special law provisions, Art. 2 of the above mentioned text has considered the following acts as the instances of the political crimes: committing acts in violation of state sovereignty, communicating, information exchange, colluding and even interview with the foreigners that caused damage to the national interests while not among the instances of espionage, receiving financial aids from foreigners for political activities, attempt to spread or to increase disagreement among the people, disclosing confidential documents while not among the instances of espionage, taking part in foreign political meeting without obtaining the required permissions,

falsifying and disseminating rumours, encouraging individuals and groups to commit acts against the interests of the regime and dishonoring foreign political officials in the territory of Iran with intention to causing damage to foreign relations.

Both of the mentioned texts (respectively in Art. 3 and 4) excluded instances such kidnapping and hostage taking, bombing or bomb threat, theft and destructing properties, instigating persons to fight with each other and killing, smuggling and espionage from the scope of political crime. Here it should be mentioned that in these two texts, there is one of the main differences with regard to the instances of the political crime; that is the second text drafted by the Ministry of Justice criminalizes the acts such as taking part in foreign political meeting without obtaining the required permissions; while the first text takes a more reasonable approach on this matter. In other words, within the adopted laws, there should be a comprehensive definition of political crime with its clear and unmistakable instances specified among those crimes referred to in other laws (especially in Discretionary Punishments part (*Tazirat*) of the Islamic Penal Code) to avoid any difference of opinion; there is no need to criminalize other action and to consider them as the instances of the political crime. In other words, it should be determined that which of the “existing” crimes can be characterized as the political crime. In this regard, it should be noticed that mere political ideas or thoughts should not be considered as political offense; since in such a case, inquisition would be prevalent and the resultant situation would be much more like the scene on Ministry of Truth illustrated by the famed English novelist, George Orwell in his celebrated book 1984. Also, it can be said that in addition to crimes committed against the basis of the regime and government, there are other crimes which are committed against the policies and the laws adopted by the parliament, government or governmental entities (e.g., illegal protest against a law adopted by the parliament on abortion or animal testing – that happening repeatedly in the western countries- or against the decision by public bodies or against a governmental authority due to his responsibility within the state system); provided the existence of other conditions, these category of crimes are regarded among the political crimes.

D. Political crime in the Penal Code adopted in 2016

After many years of waiting, the Political Crime Act was adopted by the Islamic Consultative Assembly (the Parliament) in February 3, 2016; it was approved by the Guardian Council in May 18, 2016. The aforesaid Act defines the political crime by application of a subjective criterion as: “a crime that is committed with the intention to reform the state affairs and against the administration and political institutions or foreign or domestic policy without the intention to prejudice to the basis of the regime”.

Crimes such as insulting to state authorities or some the crimes referred to in the law regarding the activities of parties; and the offences provided in the laws on elections are considered to be political crimes by Article 2. On the other side, Article 3 excludes the following crimes from the scope of political crime: crimes punishable by Sharia-fixed punishment (Had), assassination attempt, kidnapping and hostage taking, bombing, theft, drug trafficking, bribery, embezzlement, unlawful appropriation, money laundering, espionage, instigating people to fight and killing, causing disruption in data, and all the crimes against public morals and ethics.

The privileges provided for the political offenders are clearly stated by the legislator in Article 4 (on the presence of the jury) and Article 6 (regarding the other advantages). What is striking on first sight of the Act is the amount of political crime exceptions compared to the ones included in! at the moment there is no clear explanation for the non-inclusion of the crime of propaganda against the regime, the crime referred to in Article 500 of the Discretionary Punishments Act of 1996, (which under any criteria, is regarded as one of the evident instances of political crime),- perhaps, it is excluded from the scope of political crime since it is committed against the totality of the regime. Anyhow, it is expected that the required grounds to implement this insufficient Act will be prepared in the near future; at the same time, it is hope that appropriate measure shall be taken to amend its deficiencies.

E. Political crime in the legal system of other countries

At the last part of discussions provided within this paper, it seems of use to briefly consider the approach taken by other countries toward the political crime. In the Penal Code of France (adopted 1992) categorizes there types of political crimes as following:

- a) Crimes against the nation, the state and the public peace (Article 410-1 of Penal Code of France);
- b) Complex crimes that are committed with political motives while violating the interests of others (e.g., killing the head of a state);
- c) Related political crimes i.e., those crimes that are committed during a political event (e.g., riot in the course of a political protest).

There are substantive and procedural differences between political crimes and regular crimes; including a case in which perpetrator of a political crime is not required to serve the former suspended sentence; also, their extradition is not permitted. There are dissimilarities in terms of sentencing among these two categories of crimes. As to investigating authority, by dissolution of the State Security Court, there is no difference among political crimes and the regular ones, although there can be trivial differences in terms of the criminal procedure.

Unlike what is discussed on the French legal system, some other countries, e.g., U.K. and U.S., have not essentially recognized a category of crimes including political crimes and criminals; therefore all of the crimes are dealt with in the same manner. Perhaps the reason is the necessity of the presence of the Jury in all proceedings in both countries, then, there is no need to provide special protection for political offenders. While, they believe that the incentive of all the political offenders is not a dignified one and the others lack such a noble inspiration. As an example, can it be said that the incentive of an ambitious political party who instigates people to protest illegally is nobler than a thief that robs a bank to help his indigent neighbor's sick child to be hospitalized for his incurable sickness with all the money gained through theft? Thus, in cases related to this kind of disagreement, noble incentive by any offenders (not only the political ones) can be a factor to be consider at the time of sentencing to alleviate the extent of the punishment; a factor which is consider under Article 38 (c) of Islamic Penal Code (adopted in 2013) with regard to the crimes punishable by Discretionary Punishments (*Tazirat*).

Conclusion

From what was said, it can be concluded that the acts excluded from the scope of the political crimes are specified despite its lack of a clear and comprehensive definition; including the cases in which any resort to violence makes the perpetrator excluded from the scope of criminal offender definition; also from the remission provided for the political offenders. However, a person who acts with intention to reform, even in cases in which his act is criminalized by the penal laws of the respective country, in comparison with other criminals, he should be treated in a lenient manner in terms of procedural and substantive aspects; although a political offender acts against the sovereignty of a state, instead of leaving their fate in hands of a judge and a public prosecutor who are in fact the representatives of the sovereign power, they deserve to benefit from the presence of the jury, the true representatives of society. This benefit has been provided for in the Amendment to Constitution of the Constitutional Period and in Article 168 of the IRI Constitution; despite the fact that the Legislative body had not taken its task to define political crime before and after the Revolution; thus in practice political offenders were deprived of their rights guaranteed by the constitution for years.

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