



Impossibility of Realization of Immaterial Plurality of Crime in Iranian Criminal Law

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ARTICLE INFO

Article history:

Received 30 Sep 2014

Received in revised form 10 Oct 2014

Accepted 28 Nov 2014

Keywords:

Single Behavior,

Criminal Titles,

Plurality of Result,

Plurality of Crime,

Immaterial Plurality

ABSTRACT

Objective: Immaterial plurality is a case in which the perpetrator commits one action but encounters several criminal titles. This rule has been predicted in the criminal laws of many countries. **Methodology:** In criminal laws of Iran this rule is just anticipated for Ta'ziri crimes and some conditions are necessary for its realization such as its Ta'zir nature, unity of behaviour, realization of numerous titles, and the possibility punishing the criminal in relation to each one of the titles. **Results:** Since the subject is vague, the domestic foreign lawyers have different ideas in this regard. In this article it has been tried to investigate this principle in common classification of crimes with each other and to prove that this principle is not realized in each classification of simple and compound, instantaneous and continuous, absolute and bound crimes and also in offences of omission. **Conclusion:** Moreover, it rejects the possibility of realization of immaterial plurality of crimes through careful and detailed review of Iran Penal Statutes.

1. Introduction

The general rules and principles of criminal law are very important in determining the fate of the offender. Sometimes a wrong interpretation of these principles might cause irreparable damage or might release an offender from punishment. Plurality of crime is one of the rules of criminal law which is divided into material plurality and immaterial plurality. This rule that aggravates penalty is considered as the common cause of crimes because it can be applied to all kinds of offences. Immaterial plurality which is one type of crime plurality refers to the condition when a single act by the perpetrator receives several criminal titles. These criminal titles should have identical physical and non-physical components. In crime aggregation, some offences might be violated simultaneously but they cannot be immaterial plurality. Generally, in classification of crimes one or several elements are considered as the main criteria that distinguish or classify the crimes. For example in simple and compound crimes the distinctive factor is physical behavior which is mono-component in simple offences and multi-component in compound offences. This distinction is very important in immaterial plurality because the two offences that are realized with one behavior should be basically identical in physical and non-physical elements. In classification of crimes as instantaneous and continuous, absolute and bound, due to the distinctive features of each one of the crimes it is not possible anymore to face a condition when one single act receives two or several criminal titles which is actually considered as immaterial plurality.

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DOI: <https://doi.org/10.24200/jmas.vol2iss04pp53-56>

2. Materials and methods

2.1 Definition of Immaterial Plurality

Lawyers have referred to "single act and numerous titles", which are the foundation of immaterial plurality principle, as mental, credit, descriptive, superficial, virtual, subjective, formal, and title plurality (Baheri, 1961, & Taheri Nasab, 2002). Lawyers have offered many definitions for immaterial plurality some of which are referred to here. Some lawyers have considered the text of law in definition of immaterial plurality and have defined it as: "When an individual commits a single criminal act, and the act has two criminal titles in law, it is immaterial plurality" (Khakpoor, 1968). One of the lawyers has defined credit plurality as the following: "Sometimes an offence is the result of committing one single physical act but it contains several criminal titles and descriptions and it seems as if several crimes have been committed (Peimani, 1995); or the general definition has been cited: "sometimes a criminal act has different criminal attributes." This definition is similar to the one offered by the Lebanese lawyers (Elham, 1993, & Ardebili, 2008). Generally, in Arabic countries credit plurality is known as the violation of several criminal attributes with a single act which is contrary to the violation of several criminal attributes independently and by a single person and before issuing the final verdict.

The author believes that the appellation of immaterial plurality which has been raised by some lawyers is more apparent in Iran and Afghanistan's Law, because only in the ¹. Article 155 of Afghanistan Penal Code: "Whenever a single act commitment results in numerous crimes the perpetrator is sentenced to the punishment that is more context of criminal law of these two countries, particularly Iran, the single act and several criminal titles are explicitly mentioned while in some countries particularly Arabic countries instead of "title plurality" the term "attribute plurality". However, these terms all express one sentence. For instance, according to the Article 57 of Jordanian Penal Code, "whenever an act has several criminal attributes all of them must be mentioned in the sentence and the court will sentence the more severe punishment".

The author has used the term "immaterial plurality" because he believes that according to some lawyers in the interpretation of laws the reasonable and explanatory interpretation must be emphasized because in such interpretations in order to achieve the legislator goal, the judge detect the real purpose of legislator by referring to feasibility reports and preliminary affairs and regulatory proceedings at the time of drafting bills by the government and also parliamentary debates and related committees (Shambiati, 2003). Legislator has not cited any name for this kind of plurality in Article 131 of the Islamic Penal Code, but in Article 134-2 of the Islamic Penal Code it is defined as "immaterial plurality"².

By the definition of "Immaterial Plurality" the author believes that the offender has committed a criminal act, but the act is subject to multiple counts of legal texts and due to the validity of any of the texts that behavior is considered a separate crime, so that the offender can be punished by any of the legal texts. In other words, the criminal has committed two offences so that if the immaterial plurality principle is not considered according to the principle of legality of crime and punishment the perpetrator should be punished for committing two crimes, but as the two offences are committed with one behavior the legislator imposes only one punishment on the perpetrator. According to this definition, there is a point that is understood from the term "criminal titles and unit behavior" in the text of law. Given that two crimes are committed with one behavior, it should be possible to prosecute and punish the perpetrator by each one of the legal texts or articles. If it is not possible to do so, then the matter is not subject to immaterial plurality anymore and is either subject to material plurality or the conflict of the laws will arise which is addressed in the following sections of the paper.

2.2 Different types of Immaterial Plurality

From the point of view of the former lawyers of Iranian Criminal Law, there are numerous types of immaterial plurality and the classification is different among them. In 1925, in General Penal Code when the immaterial plurality was just added to the Iranian Penal Code, two articles were in general dedicated to the plurality of crime and four types of immaterial plurality resulted from the lawyer's inference of these two articles (Baheri, 1961). Some lawyers' opinions and classifications are addressed in the following. If the predicted punishments are similar to each other one of them is sentenced. Article 134-2 of the Islamic Penal Code: In Ta'ziri crime and preventive punishment when the single act has different titles of crime it is considered as immaterial plurality".

Article 31 of the Penal Code: when a unit act has multiple crime titles, the crime is subject to maximum punishment.

Article 32 of the Penal Code: If several crimes are committed for one purpose or some of them are the introduction or the component of the others or are not separated from each other, all of them are considered as one crime that is subject to the maximum punishment. Some lawyers have made a classification as the following: what is mentioned in Article 31 of the Penal Code and has remained the same later is the case when several criminal descriptions are true for a single act like an immoral act of rape which is both public and rapine so that the criminal description of indecent act in public and also the descriptive description of immoral act is true for it, or fraudulent by using a forged document so that both the crimes of fraud and the use of forged documents, which is itself a crime apart from forgery, are true for it. Also, the crime of beating a state officer that is offensive too, or negligence and fraud that lead to bankruptcy or recklessness and not obeying the public rules and systems that result in driving damage all of them are examples of the first type of immaterial plurality. The second type which is mentioned in the next article is that several independent and separate offences are committed for one purpose and for one intention and will. This rule does not seem interpretable or acceptable at all and with no legal form unless we adjust the assumption of Article 32 of The Penal Code approved in 1925 with the second type, i.e. (Zeraat, 2006). the single act that has several outcomes which seems to be impossible. In this type of immaterial plurality, a person commits an act that brings in similar or dissimilar results such as a car accident due to recklessness that results in killing one person and wounding another one or avoiding to pay alimony by the husband that does not let the wife and every child to take advantage of alimony and daily necessities. This is in fact, a single crime of not paying alimony and even if there are several wives it is still one single crime. The third type which is also included in the Article 32, is that if a crime is an introduction to another crime, it is as an implication of the other crime and thus the plurality of credit arises like entering into a home without permission for robbery which is in fact immaterial plurality and two crimes are committed with one single criminal act or like carrying small amounts of drugs or alcoholic drinks for consumption and using them or assault leading to death or carrying guns in an armed robbery. Of course, Iranian Judicial system has accordingly included a number of frequent

robberies in immaterial plurality. For example, several robberies of the properties of several people in one single storage is one of these cases which seems to be very vague and suspicious.

The fourth type is the plurality of credit in Iranian criminal law which is mentioned at the end of Article 32 of the Penal Code with the phrase of "or are not separated from each other" and occurs in the next laws of this kind it is explained with clearer terms and is monitoring one kind of compound crimes such as armed robbery which is combined with breaking into a guarded place, threat, destruction, and carrying weapons (Kurrani, 2000).

Another lawyer believes that we are facing immaterial plurality in two cases: "first, a single physical act can be adapted with the legal definition of several crimes, for example, the act of rape in public. Second, a compound physical act which consists of actions that form the physical element of several crimes and thus is punishable according to several articles of the law. There is a unity and close relationship between such acts because some of them intensify the others; for example, robbery with breaking into a guarded place, or all of them result from a negative intention for example issuing NSF (Not-sufficient funds) check in order to fraud (Afrasiabi, 1998).

According to the relatively similar articles of law on immaterial plurality, the author believes in one kind of immaterial plurality, i.e. "a single behavior and several crime titles" and thinks that the other kinds discussed by the lawyers are subject to material plurality of crime and their sentences in the relevant articles and provisions. It is very difficult to find an example of immaterial plurality in Iranian Penal Law. This rule must be found through sifting the criminal principles and the elements of crime and as mentioned in the definition, an example should be found in which the committed act could be investigated under two criminal titles in such a way that it would be possible to punish the perpetrator due to each one of the criminal titles. In different parts of this study, different types and instances that the lawyers have studied are examined separately.

3. Discussion and results

3.1 *Impossibility of Immaterial Plurality Realization in Classification of Crimes*

Lawyers agree on classification of crimes based on material or immaterial principles and divide the crimes based on their simplicity and complexity into simple and compound crimes and based on the physical element into instantaneous and continuous crimes and based on the achievement of the result into absolute and bound crimes. Given that each one of the mentioned categories can be one of the titles of immaterial plurality. In this case, with regard to the mentioned classification, it is impossible to collect them with each other because one feature in each of them distinguishes them from one another (Shahri, 1996). In other words, the instantaneous and continuous crimes never come together or simple or compound crimes are impossible to come together as well as the absolute and bound crimes. Each one of the categories is discussed in the following.

3.1.1 *Instantaneous and Continuous Crimes*

Instantaneous or temporary crime is an offence that has stated in a point of time and has come to a conclusion or has been stopped halfway but it doesn't mean that its constituent elements should come together at once (Nurbaha, 2001). According to another definition, instantaneous crime is the one that occurs in a moment and the crime is realized. Continuous crime is the one that is occurring at every moment but after stopping the criminal operation it is considered as one crime. Unlike instantaneous crime, continuous crime refers to the behavior that continues over time (Ali Abadi, 1989).

Now, given the definition of these two kinds of crime the difference between them is made clear; therefore, it is not possible to accept that a single act that has two criminal titles is done by a person, so that one of the titles is instantaneous crime and the other one is continuous crime because the two physical elements are different from each other.

3.1.2 *Simple and Compound Crimes*

Some crimes are committed by doing or leaving a simple action; in other words, they have a physical element. An action or omission is enough for these crimes to be realized. They are simple crimes. On the contrary, some offences require performing different physical and sometimes complicated actions to be realized and even sometimes the possibility of the occurrence of several crimes is considered for a criminal act to be realized. That is, its physical element is composed of several acts. They are called compound crimes (Saki, 2008). According to the above definition they have a distinctive feature. Considering a single behaviour and several criminal titles in immaterial plurality, it is not possible to imagine a state that a single behaviour includes both simple and compound crimes. The example which is raised in this regard is the use of false documents and fraud. In Fraud, the use of false document can be a component of its physical pillar and thus cannot complete the title by itself. As it was mentioned before, a criminal act that is committed by the perpetrator must be punishable under each of these titles. Therefore, it is not possible to accuse the perpetrator to the fraud just by using a false document because fraud is a compound crime and its physical acts are different.

3.1.3 *Absolute Crimes and Bound Crimes*

Absolute crime refers to the crime whose incidence does not require the realization of the result from the crime. On the contrary, some crimes are bound to the results and as long as the criminal result is not achieved the mere perpetration of physical element is not sufficient for their realization. The legislator in Article 144 of the Islamic Penal Code has explained absolute and bound crimes which provides that: "In realization of intentional crimes in addition to the knowledge of the perpetrator about the subject of crime, his intention in committing the criminal behaviour should be authenticated, too. The crimes whose occurrence according to the law is subject to the realization of results the intention of result or the knowledge to its occurrence should be authenticated, as well." In this state, as well, it is not possible to imagine a state when a single behaviour is done in one time and two crimes are perpetrated so that one of them leads to a result and the other one doesn't (Garv, 1965). Another argument about these types of crime is the element of ill will particularly special ill will in bound crimes. It is not possible that the legislator predict two crimes with one behaviour so that for the perpetration of one crime he considers special ill will necessary and for the other crime he doesn't consider the special ill will necessary which is subject to immaterial plurality and is the bound crime in the first condition and the absolute crime in the second condition. Therefore, the consensus of these two crimes is

impossible (The Judicial Branch, Department of Education, 1999). Absolute crimes are also divided into two categories. In some of them, the element of special ill will is assumed such as roorback and some of them do not require special ill will. The consensus between each one of them is also impossible in immaterial plurality; for instance, it is not possible to imagine that the legislator has criminalized two absolute crimes, one of which requires special ill will and the other one doesn't require ill will, with one behaviour. Also in the consensus of bound crimes it is impossible that the legislator criminalize two bound crimes that require general ill will, special ill will, and result with one single behaviour. In other words, he doesn't criminalize one behavior twice which are similar in two cases. Otherwise, the weakness of legislation is revealed. That's the same for criminalizing two absolute crimes with one behavior.

4. Conclusion

In this article, Iranian Penal Law has been investigated in terms of immaterial plurality of crime and some results have been achieved. Immaterial plurality of crime is one of the regulations predicted in Islamic Penal Code. This regulation is adapted from French Criminal Law. Iranian criminal legislation has accepted this system in 1925 and has entered this regulation into the criminal law and the penal code.

The hypothesis that is studied in this paper is that in which places the immaterial plurality is impossible to be realized. Its first instance is the classification of crimes which are divided into simple and compound crimes, instantaneous and continuous crimes, and absolute and bound crimes based on their behavior or kind. According to their definitions and distinction it is quite evident that an act cannot be committed that is both simple and compound crime; for instance, the crime of using false documents and fraud. The same is the consensus between instantaneous crimes and continuous crimes. In the consensus between absolute and bound crimes it is necessary to explain that the legislator is impossible to criminalize one behavior with two crimes so that in one of them the ill will and the result are not predicted and in the other one the ill will and the result are predicted and reflect immaterial plurality. The consensus between two absolute crimes with each other and between two bound crimes with each other is not possible either. That is, the legislator is impossible to criminalize one behavior twice so that the two crimes do not need special ill will and result and have two titles that represent the immaterial plurality. The legislator is also impossible to criminalize a behavior twice so that both of them have special ill will as well as separate result which represent the immaterial plurality, too. Otherwise, the legislator is criticized and this is a flaw in legislation.

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How to Cite this Article:

Sohrabi Zolmabadi H., *Impossibility of Realization of Immaterial Plurality of Crime in Iranian Criminal Law*, Uct Journal of Social Sciences and Humanities Research 04 (2014) 55–58.