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The Principle of Legality of Crimes of International Criminal law Perspective

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Abstract: ***In this article, a short explanation from principle legality of crime and international document inthis field has been processed and also the process of the principle in the international court. But this principle as the other criminal principle is not without any problems, which cause that: now a days in the process the bureau European of human rights the speech of quality of criminal has been proposed. So in this article we will explain about this nearly new principle and the power and weak points of it and also a solution for solving it`s problems.***

Keywords: Principle Legality, Criminal Law, Personal Information, Victems

1. Introduction

Nowadays criminal law has root in philosophical and intellectual evolution in the 18 century which climaxed by punishment and penalty thesis by Cesar Beccaria (1) in 1764. Cesar Beccaria's book was the beginning of principle legality of penalties and punishment and in depth of his idea, he codified criminal procedure code. Beccaria believed that "only law can determine punishment for crimes, in similar way, Montesquieu (2) who believed in abstract Power segregation Think that "if judgment power and legislation power (legislature and judicature) do not separate from each other, there will be no sign for freedom".

Finally by creating principle legality of penalties and punishment, basis was created for producing peace and restricting parliament in desired decision in recognition penalties but as we can see by passing year, this principle was not far from faults and this matter today caused that in procedure of human rights European bureau, there is dialogue about qualification principle which in this thesis we explain this new principle and weak and strong points of that issue. Principle legality of penalties and punishments is described in Section II. In Section III, International documents are discussed. Section IV contains Quality principle. Finally, the conclusions are summarized in Section V.

2. Principle Legality of Penalties and Punishments

Principle legality of penalties and punishments (3) is one of the main principles of penalty law. Aforementioned principle means that people have penalty responsibility against some action which aforementioned action with no ambiguity in law will be crime and there is punishment for them. (4)

Another word, the meaning of above principle is that, no action is crime unless before that in law, it will be clearly and explicitly crime and whenever the crime is proved, the judge is not allowed to determine punishment against criminal action for condemn which is not in law but merely can sentence the condemn to punishment which in predicted in law for that action. The most important goal of government in principle legality of penalties and punishments consist: legitimating lawful system governed in country via restricting interference of government in penal justice according to right and freedom of people, merely according to cases that forbidden actions is applied and explained from law to people. In each system that law will be backed to past, definition of crimes is ambiguous, this matter cause increasing the qualification and selection if judge and police; lack of observing this principle causes omitting law governance and separating power. Aforementioned principle in support of constitution and separating power from each other, play an important role. (5)

Another word, the goal for governance of legality of penalties and punishments is to restrict the governor in interpretation of penal law against parliament. The reason for restriction is parliament selection and not selection of judicature, means that parliament have power for setting up law and in opposite judicature has the obligation for enforcement of law setup by parliament.(6) Without considering that this organization by criminology and unlimited interpreting of law, indirectly enforce law.

As Phonest, German lawmaker says that: principle legality of penalties and is a shield foe citizen against unlimited power of government. This principle protects people from cruelty pressure of majority and another word power monster.(7)

3. International Documents

Contemporary international documents in aspirate from identification of discussed principle of human rights act and France citizen and they clarified this principle. Clause 1 of article 15 regulate international covenant on civil and political right (that from this moment we call it by summary covenant)" no one because of action or not doing the action during commitment which is not crime according to national and international law, will not be condemned and also there will be determined no severe punishment than the action during crime commitment. (8)

Article 2 clause 11 universal declaration of human right is formalized by principle legality of penalties and punishment. (9) Also aforementioned principle in other international and regional documents is also clarified.(10)

- Convention for civilian support 12 gune, 1949, art 64, 67.
- extra protocol No 1 to Convention 1949 Geneva for supporting victims in international armed war, enforced 7 June 1977, part A, clause 7, art 75.
- extra protocol No 2 to Convention 1949 Geneva for supporting victims in non-international armed war, enforced 8 june 1977, part C, clause 2, art 6.
- European convention for supporting human right and fundamental freedom. Nov 1950 art 7.
- African convention of nations and human right, 27 June 1981, clause 2, art 7.

For detailed study of European, African convention of human right:

Amir Arjmand, Ardeshir, collections of human right international documents, regional documents, Jangal Editions, Tehran, first edition 2006.

Author of these lines used comprehensive lists which are represented in following reference about international documents related to principle legality of penalties and punishments.

Kay Ambos, General Principles of Criminal Law in the Rome statutes, Criminal Law forum , volume 10 no.1 , kluwer, 1999, p.4

4. Quality Principle

Nowadays, instead of principle legality of penalties and punishments in procedure of human rights European bureau, there is speech about the quality principle. Here we talk about this issue that if law quality is the way that will be intelligible for people or not. By this explanation quality principle is beyond law principle. For this there will be some need:

1) Law adhere from predictable principle (Predictability), this is convict can understand legal and criminal consequence of his action from punishment and predictable crime in law.
2) Law does not be equivocal, and ambiguous.
3) Law has accessibility. Law will be simply available for everyone, because in each country criminal law has original body which is original law.

The most important value in private penal laws and principle govern them comes in public penal law. But in this bough, there will be different links, such as labor act and personal registration law whish all have some criminal law. These varied links by public principle are adjacent to totality of penal law; but they are scattered in tens documents and texts. Criminal links are always available such as main body and be clearly proved and obsolete. So nowadays instead of legality we have quality.

5. Conclusion

In long run, principle legality of penalties and punishments, that we can see beginning of that in reflection of Cesar Beccaria, governed in penal lawmaking, in the way that one of the fundamental Principle and goal of this principle is restricting the compass of parliament's option and lack of unlimited dominance and prevention of desired decision making toward different kind of crimes. Specific clarifying of crimes in law id the main and fundamental characteristic for principle legality of penalties and punishment, but as we can see from principle legality of penalties and punishment, somewhat we can see wastage of people's right. It means that if our law is available and clear that community is that is consist of different culture and levels will be informed? And with precise look which show increasing crime in medium and low class of people in that society, can we get right of people by reliance to legality principle? As we can see, predicted crimes in law are not codified and lump that availability to them will be possible in a specific book and text of law have ambiguity and is so changeable that community cannot have complete and accurate understanding from it. In conclusion we should predict proper solution in this case how we can punish people which are not informed accurately from this law? And if we consider the goal of legislator from predicting crime in law and punishment appropriate to that, if we can reach this goal by lack of knowledge of people from crime and punishment of them? It seems a theory which is far from mind, but today we can see new discussion in human rights procedure of European bureau which make us far from weak points of legality principle of crime and that principle is quality principle of crime. As we said, quality principle has three elements.

1) Non ambiguity
2) Predictability, at last availability of law.

This new principle to a much extent make us far from proposed problem in legality principle, but by thinking about that we faced problem in this principle and it is lack of mentioning scope of parliament option, which don not mentioning that means omitting of that.

While in all this year, the most important element of legality principle and from strong point of that, limiting the scope of parliament option and prohibition of decisions is stylistic and eliminating this element by itself encounter us with a big problem. So in conclusion, The mentioned suggestion in this thesis is using quality principle by adding fourth element which is restriction of parliament that we can get the right better and more and issue verdicts according to justice, because by considering the content of quality principle we can conclude that the goal of this principle is prevention of punishing the people for crimes that are not accurately aware of them and even providing the availability to that laws, because of its ambiguity they do not have appropriate understanding of that crime.

References

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[2] Andrew Ashworth, Principles of Criminal Law,Oxford, First Published, 1991, pp: 69-70. Antonio Cassese, International Criminal law, Oxford, 2003, pp: 141.

[3] Amir Arjmand, Ardeshir, collections of human right international documents, ShahidBeheshti University, 2rd edition, 2007, pp: 101.
[4] Convention Geneva about treatment with war prisoner, 12 gune, 1949, art 99.