



Home Office

Country Policy and Information Note

Iran: Fear of punishment for crimes committed in other countries ('Double Jeopardy' or re-prosecution)

Version 1.0

January 2018

Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country information

COI in this note has been researched in accordance with principles set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#) and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,

5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: chiefinspector@icinspector.gsi.gov.uk

Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <https://www.gov.uk/government/organisations/independent-chief-inspector-of-borders-and-immigration/about/research#the-independent-advisory-group-on-country-information>

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Policy guidance

Updated: 31 January 2018

1. Introduction

1.1 Basis of claim

- 1.1.1 Fear of punishment on return to Iran for crimes the person has committed and been punished for in another country ('double jeopardy' or re-prosecution).

1.2 Points to note

- 1.2.1 The term double jeopardy is used to refer to a circumstance where a person is charged in Iran for an offence which was committed and punished in another country. The UK no longer uses the term 'double jeopardy' but it is commonly referred to in articles regarding Iran. Where the term is used in this CPIN it refers to cases of this sort.

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2. Consideration of issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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2.2 Exclusion

- 2.2.1 Where there are serious reasons for considering that a person has committed a criminal offence, decision makers must consider whether any of the exclusion clauses – in particular Article 1F(b) – apply.
- 2.2.2 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection.
- 2.2.3 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

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2.3 Particular social group

- 2.3.1 Persons facing (or potentially facing) 'double jeopardy' are not considered to form a particular social group (PSG) within the meaning of the 1951 UN Refugee Convention. This is because they do not possess an immutable (or innate) characteristic that cannot be changed.

2.3.2 In the absence of a link to one of the five Convention reasons necessary for the grant of asylum, the question to be addressed in each case will be whether the particular person will face a real risk of serious harm sufficient to qualify for Humanitarian Protection (HP).

2.3.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.4 Assessment of risk

2.4.1 Double jeopardy (or re-prosecution) is covered by Article 7 of the Iranian penal code. It states that any Iranian national who commits a crime outside Iran and is found in, or extradited to, Iran shall be prosecuted and punished in accordance with the laws of the Islamic Republic of Iran. Article 7(b) states that crimes punishable by ta'zir (crimes for which punishments are not fixed and instead are left to the discretion of the Shari'a judge) are specifically excluded from re-prosecution provided the accused person is not tried and acquitted in the place of the commission of the crime, or in the case of conviction the punishment is not, wholly or partly, carried out against him (see [Article 7 of the Penal Code \('double jeopardy'\)](#)).

2.4.2 Almost all ta'zir crimes are dealt with in the Penal Code and the judge may apply the punishments prescribed in the Code. Crimes punishable by ta'zir include bribery, money laundering and those covered by Iran's Anti-Narcotics Law (see [Punishments prescribed under Sharia Law](#)).

2.4.3 Crimes involving drug trafficking will generally fall under the anti-narcotics law and will not be subject to re-prosecution unless they involve attacks on Iranian national interests (i.e. breaking into diplomatic and consular premises, physical aggression and/or assault on Iranian diplomatic and consular officers) or involve activity which is deemed to be openly hostile to the Iranian regime, i.e. through public speeches, demonstrations, rallies etc. (see [Application of Article 7 in practice](#)).

2.4.4 Hudad (or Hadd/ Hodoud) crimes are those with fixed and severe punishments for which the grounds for, type, amount and conditions of execution are specified in holy Shari'a. Qisas (or Qesas) is the main punishment for intentional bodily crimes against life, limbs, and abilities. Crimes punishable by Hudad, which include illicit sex and sodomy, or punishable by Qisas, for example murder, may be liable to re-prosecution in Iran when a private party who sustained damages resulting from a crime committed by an Iranian abroad, or a victim of the crime, makes a complaint to the Public Prosecutor Office and the Penal Court (see [Punishments prescribed under Sharia Law](#) and [Application of Article 7 in practice](#)).

2.4.5 The evidence does not suggest that even when a crime falls within the scope of Article 7 that a prosecution on the same charge has ever been successful (see examples on pages 3 and 4 of [Annex A](#)).

2.4.6 Given the limited scope of offences to which double jeopardy may apply, the specific exclusion of those punishable by ta'zir, that it is unclear whether a prosecution on the same charge of crimes punishable by Hudad or Qisas can be initiated by the authorities; and the lack of evidence of prosecutions

taking place in practice, the evidence does not suggest there is, in general, a real risk of double jeopardy in Iran.

- 2.4.7 Where a person can demonstrate that their circumstances are such that the Iranian authorities are likely to be aware of their activity or a victim of the crime or others who have sustained damages are likely to make a complaint to the Public Prosecutor Office, then they may be at a greater risk of prosecution again for the same offence. However, decision makers must note that the Home Office does not disclose criminal convictions to the Iranian authorities and in the majority of cases there is no evidence to suggest that re-prosecution would occur.
- 2.4.8 Each case must however be considered on its facts with the onus on the person to demonstrate that they would be at real risk from the state authorities on return.
- 2.4.9 Where a person can demonstrate a real risk of re-prosecution they may qualify for a grant of Humanitarian Protection, or if excluded, Discretionary Leave or Restricted Leave. Decision makers should also refer to the country policy and information note on [Iran: prison conditions](#) where they believe someone is at risk of re-prosecution.
- 2.4.10 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.5 Protection

- 2.5.1 As the person's fear is of persecution and/or serious harm by the state, they will not be able to avail themselves of the protection of the authorities.
- 2.5.2 For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.6 Internal relocation

- 2.6.1 As the person's fear is of persecution and/or serious harm by the state, they will not be able to relocate to escape that risk.
- 2.6.2 For further guidance on internal relocation and the factors to be considered, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.7 Certification

- 2.7.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.7.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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Country information

Updated: 29 January 2018

3. Article 7 of the Penal Code ('double jeopardy')

3.1.1 The Iran Human Rights Documentation Centre (IHRDC) noted in an article titled 'English Translation of Books I & II of the New Islamic Penal Code' dated 8 April 2014;

'Article 7- In addition to the cases mentioned in the articles above, any Iranian national who commits a crime outside Iran and is found in, or extradited to, Iran shall be prosecuted and punished in accordance with the laws of the Islamic Republic of Iran, provided that:

- a. The committed conduct is deemed an offense under the law of the Islamic Republic of Iran.
- b. If the committed crime is punishable by ta'zir, the accused person is not tried and acquitted in the place of the commission of the crime, or in the case of conviction the punishment is not, wholly or partly, carried out against him.
- c. According to Iranian laws there is no basis for removal or discontinuation of prosecution or discontinuation or cancellation of execution of the punishment.'¹

3.1.2 The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), noted in a document titled 'Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation' dated July 2015 that:

'As regards the issue of "double jeopardy", Tellenbach [Silvia Tellenbach, a specialist on Iranian criminal law at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg (Germany), noted in a 2014 commentary on the new Islamic Penal Code (IPC) of 2013] states that in some cases, criminal judgments passed in other countries may become effective in Iran. This effect had been provided for in the 1926 Penal Code (amended as of 1973) but was abandoned during amendment processes after the Islamic Revolution. The IPC of 2013 has reinstated detailed provisions with regard to counting sentences served abroad and the prohibition of double jeopardy. These provisions, however, only apply to ta'zir crimes. With the exception of crimes committed abroad by Iranian or foreign civil servants in connection with their professional activity, ta'zir crimes will not be punished for a second time if the perpetrator has been

¹ Iran Human Rights Documentation Centre. 'English Translation of the Islamic Republic of Iran's Criminal Code of Procedure for Public and Revolutionary Courts, Approved on September 19, 1999 with amendments' <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000026-english-translation-of-the-islamic-republic-of-irans-criminal-code-of-procedure-for-public-and-revolutionary-courts.html>. Accessed: 18 September 2017.

acquitted or has entirely or partially served his/her sentence in the country where the crime had occurred (Article 7).²

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4. Punishments prescribed under Sharia Law

4.1 Overview

4.1.1 The IHRDC website's English Translation of Books I & II of the New Islamic Penal Code published on 8 April 2014 stated that:

'Article 14- Punishments provided in this law are divided into four categories:

- (a) Hadd
- (b) Qisas
- (c) Diya
- (d) Ta'zir

'Note- If causality between a legal person's conduct and a loss is established, diya and damages can be claimed. Imposing ta'zir punishments against legal persons shall be in accordance with article 20.'³

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4.2 Hadd/Hudud/ Hodoud

4.2.1 The IHRDC website's 2014 English Translation of Books I & II of the New Islamic Penal Code stated that 'Article 15- Hadd is a punishment for which the grounds for, type, amount and conditions of execution are specified in holy Shari'a.'⁴

4.2.2 In a different article, dated March 2012, the IHRDC explained 'Crimes punishable by hadd (pl. hudud) are those with fixed and severe punishments in Islamic sources. These include crimes such as illicit sex, sodomy, homosexual behaviour between women, consumption of intoxicants, muharebeh, etc. and are punishable by the death penalty, stoning to death, amputation of the right hand and left foot, flogging, etc.'⁵

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² Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation, July 2015, <http://www.refworld.org/docid/559baae44.html>. Accessed: 18 September 2017.

³ Iran Human Rights Documentation Centre, 'English Translation of Books I & II of the New Islamic Penal Code', 8 April 2014 <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>. Accessed: 18 September 2017.

⁴ Iran Human Rights Documentation Centre, 'English Translation of Books I & II of the New Islamic Penal Code', 8 April 2014 <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>. Accessed: 18 September 2017.

⁵ Iran Human Rights Documentation Centre, 'All you need to know: a quick breakdown of findings from Dr. Ahmed Shaheed's UN report', 7 March 2012 <http://www.iranhrdc.org/english/human-rights-documents/united-nations-reports/un-reports/1000000065-all-you-need-to-know-a-quick-breakdown-of-findings-from-dr-ahmed-shaheeds-un-report.html>. Accessed: 18 November 2017.

4.3 Qisas/ Qesas

- 4.3.1 The IHRDC website's 2014 English Translation of Books I & II of the New Islamic Penal Code stated that 'Article 16- Qisas is the main punishment for intentional bodily crimes against life, limbs, and abilities which shall be applied in accordance with Book One of this law.'⁶
- 4.3.2 In a different article, dated March 2012, the IHRDC explained 'Crimes punishable by Qisas (retribution) are a category of crimes under Islamic criminal law which is best illustrated in the old maxim "An eye for an eye, a tooth for a tooth, and a life for a life".'⁷

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4.4 Diya

- 4.4.1 The IHRDC website's 2014 English Translation of Books I & II of the New Islamic Penal Code stated that 'Article 17- Diya, whether fixed or unfixed, is monetary amount under holy Shari'a which is determined by law and shall be paid for unintentional bodily crimes against life, limbs and abilities or for intentional crimes when for whatever reason qisas is not applicable.'⁸

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4.5 Ta'zir

- 4.5.1 The IHRDC website's 2014 English Translation of Books I & II of the New Islamic Penal Code stated that
- 'Article 18- Ta'zir is a punishment which does not fall under the categories of hadd, qisas, or diya and is determined by law for commission of prohibited acts under Shari'a or violation of state rules. The type, amount, conditions of execution as well as mitigation, suspension, cancellation and other relevant rules of ta'zir crimes shall be determined by law. In making decisions in ta'zir crimes, while complying with legal rules, the court shall consider the following issues:
- a. The offender's motivation and his/her mental and psychological conditions when committed the crime
 - b. Method of committing the crime, extent of a breach of duty and its harmful consequences
 - c. Conduct of the offender after committing the crime

⁶ Iran Human Rights Documentation Centre, 'English Translation of Books I & II of the New Islamic Penal Code', 8 April 2014 <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>. Accessed: 18 September 2017.

⁷ Iran Human Rights Documentation Centre, 'All you need to know: a quick breakdown of findings from Dr. Ahmed Shaheed's UN report', 7 March 2012 <http://www.iranhrdc.org/english/human-rights-documents/united-nations-reports/un-reports/1000000065-all-you-need-to-know-a-quick-breakdown-of-findings-from-dr-ahmed-shaheeds-un-report.html>. Accessed: 18 November 2017.

⁸ Iran Human Rights Documentation Centre, 'English Translation of Books I & II of the New Islamic Penal Code', 8 April 2014 <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>. Accessed: 18 September 2017.

d. The offender's personal, family, and social background and the effect of the ta'zir punishment on him/her.'⁹

4.5.2 In a different article, dated March 2012, the IHRDC explained 'Ta'zir: crimes punishable by ta'zir are those for which punishments are not fixed and instead are left to the discretion of the Shari'a judge. However, almost all ta'zir crimes are dealt with in the Penal Code and the judge may apply the punishments prescribed in the Code. They include the rest of the crimes other than hudud and qisas.'¹⁰

4.5.3 Amnesty International's report 'Growing up on death row- the death penalty and juvenile offenders in Iran' published in January 2016 stated that:

'The 2013 Islamic Penal Code defines ta'zir as offences not covered by hudud, qesas and diyah. The rules governing their definition, scope and punishment are prescribed by law (Article 18). Examples of ta'zir crimes include the financial offences of corruption, bribery and money laundering as well as national security-related offences such as "working with hostile governments" and "gathering and colluding against national security". These crimes are typically punishable with imprisonment but they may attract the death penalty if they are judged to amount to "corruption on earth" (efsad-e fel-arz) due to their scale, severity and organized nature.'

'Other ta'zir crimes that attract the death penalty include those covered in Iran's Anti-Narcotics Law. This law, which was introduced in January 1989 and amended in 1997 and 2011, prescribes a mandatory death sentence for trafficking more than 5kg of narcotics acquired from opium and specified synthetic, non-medical psychotropic substances (Article 4.4); and trafficking or possessing more than 30g of heroin, morphine, cocaine or their derivatives as well as specified synthetic, non-medical psychotropic drugs (Article 8.6).'

4.5.4 Book five of the Islamic penal code deals with ta'zir crimes and deterrent punishments, crimes against national security, crimes against property and crimes against people. The English translation of Book Five can be found on the [Iran Human Rights and Documentation Centre](#) webpage.¹²

4.5.5 For more information on punishments prescribed in Sharia law, see the report produced by Penal Reform International titled '[Sharia law and the](#)

⁹ Iran Human Rights Documentation Centre, 'English Translation of Books I & II of the New Islamic Penal Code', 8 April 2014 <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>. Accessed: 18 September 2017.

¹⁰ Iran Human Rights Documentation Centre, 'All you need to know: a quick breakdown of findings from Dr. Ahmed Shaheed's UN report', 7 March 2012 <http://www.iranhrdc.org/english/human-rights-documents/united-nations-reports/un-reports/1000000065-all-you-need-to-know-a-quick-breakdown-of-findings-from-dr-ahmed-shaheeds-un-report.html>. Accessed: 18 November 2017.

¹¹ Amnesty International, 'Growing up on death row- the death penalty and juvenile offenders in Iran', January 2016 https://www.amnesty.org.uk/sites/default/files/growing_up_on_death_row.pdf. Accessed: 18 September 2017.

¹² Iran Human Rights and Documentation Centre, 'Islamic Penal Code of the Islamic Republic of Iran – Book Five', 18 July 2013, <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000351-islamic-penal-code-of-the-islamic-republic-of-iran-book-five.html>. Accessed: 18 September 2017.

[death penalty Would abolition of the death penalty be unfaithful to the message of Islam?](#) published in July 2015.¹³

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5. Application of Article 7 in practice

5.1.1 In a September 2013 compilation of Country of Origin Information for Iran, ACCORD provided information in relation to the application of Article 7 of the Islamic Penal Code taken from a 2004 Journal of Financial Crime article by Mansour Rahmdel, 'Attorney at Law in Tehran'. In his article, Rahmdel made reference to Article 7, having noted:

'This Article has caused some problems for people who have committed offences abroad and have been punished. When they come back to Iran, especially when there is a private complainant, the court prosecutes the accused. Most problems arise from the difference between the kinds of punishment in Iranian law and those in other penal systems, especially of non-Islamic countries, because in Islamic countries many similar acts are criminalised, but some of these acts committed in non-Islamic countries either are not criminalised or have shorter sentences.

'The post-revolutionary legislator in Iran does not accept not only the ne bis in idem rule [double jeopardy] but also the reduction of punishment rule, because it considers foreign judgments to have no validity and says 'every Iranian national who commits an offence abroad will be punished according to Iranian penal laws upon return', whether he has been punished or not and whether he returns to Iran voluntarily or not, and in some cases the accused can be punished twice.

'The ambiguity of Article 7 of the Iranian penal code has led judges to make differing interpretations. Some judges believe that whether the accused has been convicted abroad or not, he could still be prosecuted and punished in Iran.'¹⁴

5.1.2 The September 2013 ACCORD compilation also outlined information provided in October 2008 by the Swedish embassy in Tehran on the subject of double jeopardy in Iran. The information provided indicated that, for a 'double proceeding' to occur in relation to a crime that had been committed by an Iranian national abroad, it would require a complaint to be made by a private party in Iran who had been adversely impacted by the crime in question. The crime also had to be a qesas or hadd crime. The relevant information read:

'1- According to the Iranian Penal Procedure Act, the double proceeding has not been recognized.

¹³ Penal reform international, Sharia law and the death penalty 'Would abolition of the death penalty be unfaithful to the message of Islam?' July 2015 <https://www.penalreform.org/wp-content/uploads/2015/07/Sharia-law-and-the-death-penalty.pdf>. Accessed: 18 September 2017.

¹⁴ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) 2013, Iran: COI Compilation, September, UNHCR Refworld, p.153 <http://www.refworld.org/docid/522ec5aa4.html>. Accessed: 18 September 2017.

Notwithstanding to the above, in practice, the Iranian Prosecution Office and the criminal courts accept to examine the complain of a private party for further examination of the case in order to apply the Iranian Law when the punishment is Qesas and Hodoud punishment. This issue of double proceeding is currently practiced by the Iranian Legal system and reflected in the newspapers and I have not noted any law for out ruling the above.

2- The risk of being exposed to double proceeding, occurs when a private party who sustained damages resulting from a crime committed by an Iranian in abroad, or a victim of the crime, complains to the Public Prosecutor Office and the Penal Court and request examination of the case according to Islamic Penal Code in order to rule the punishment of the Qesas and Hodoud, in which case, all the criteria for proving the case, such as hearing the witnesses and confession, etc. and other Islamic evidences would be required by the court.

3- There is no difference between the crimes. All crimes which are considered under the Qesas and Hodoud, will be examined and the punishment will be ruled by the court subject to the requirement for proving the case according to the Iranian Legal System.

4- There is no higher or lower risk for any particular groups or individuals with regard to double proceeding.

5- For initiating the double proceeding, there must be a private complaint and the crime must be Hodoud or Qesas.¹⁵

5.1.3 The Electronic journal of Islamic and Middle Eastern Law published a 'Comparative Critique of Regulating the Personal and the Passive Personality Principles in the Iranian Penal System' in 2015, which read:

'Article 7(b) posits that "[i]f the committed crime is punishable by ta'zir, the accused person is not tried and acquitted in the place of the commission of the crime, or in the case of conviction the punishment is not, wholly or partly, carried out against him". As a result, if an Iranian national commits a crime outside Iran, and is subjected to trial and punishment there, he cannot be tried and punished in Iran again. However, if he has not served punishment either in part or in total, it is possible to bring him before an Iranian court on another occasion. Obviously, in a scenario where the sentence of a convict is only partly carried out, it will not be the Iranian judiciary's responsibility to carry out the unexecuted part of the sentence. Rather, in these cases, the Iranian judiciary must establish a new trial for the accused to be tried in accordance with Iranian criminal laws. This is because, save for some exceptional cases such as the international agreements on the transfer of persons sentenced to terms of imprisonment in foreign countries, states do not execute the sentences of those convicted in foreign jurisdictions. However, an Iranian judge can reduce the punishment of those who have served part of their sentence abroad by invoking the diminutive factors of punishment articulated in Article 22 of the Islamic Penal Code of 2013.'

¹⁵ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) 2013, Iran: COI Compilation, September, UNHCR Refworld, pp.153-154 <http://www.refworld.org/docid/522ec5aa4.html>. Accessed: 18 September 2017.

'However, the principle of double jeopardy in the Iranian courts is respected only insofar as its application relates to ta'zirat, whose specific cases and punishments are not prescribed in sharia law. Hence, when at issue are offences of the kind susceptible to such types of punishments as hodood, qisas and diyat, and ta'zirat prescribed by sharia law, Article 7(2) cannot generally be applied. This means, for example, if an Iranian national accused of murder is tried and punished in England, he can be subjected to another trial and punishment in Iran for the same crime upon his return to Iran, since his crime is punishable by qisas.'¹⁶

5.1.4 A legal expert identified and contacted on behalf of the Home Office by the FCO in Iran, stated in a report dated March 2017 that:

'While according to the provisions of the aforesaid Art.7 of the Islamic Penal Code, Iranian courts will not have the jurisdiction to re-try a matter which had occurred outside Iran, there are however, notable exceptions as respect for this principle are subject to limitations. Indeed the principle of double jeopardy is on the proviso that and only insofar as its application relates to ta'zir at (plural of ta'zir, Cf. supra; lawyers note), whose specific cases and punishments are not prescribed in sharia law. Hence, when at issue are offences of the kind susceptible to such types of punishment as hodood (crimes which have been specifically dealt with by the Koran and for punishment of which the judge has no room for manoeuvre such as first degree murder, adultery, sodomy, taking alcohol, defamation; lawyers note), qisas (lex talionis: law of retaliation) and diyat (blood money or bloodwite as formerly known in Scotland;) Article 7(b) cannot generally be applied. This means, for example, if an Iranian national accused of murder is tried and punished outside Iran, he can be subjected, both in theory and in practice as we shall see later on to another trial and punishment in Iran for the same crime upon his return to Iran, since crime is punishable by qisas.

'Furthermore, it is noteworthy that crimes or offence against Iranian security are explicitly ruled out and excluded from this rule of "ne bis in idem". This is of prime and vital importance as some asylum seekers and applicants for refugee status have been actually involved in attacks on Iranian interests (breaking into diplomatic and consular premises entailing destruction of property or even physical aggression and assault on Iranian diplomatic and consular officers) or openly hostile publicized activity [such as through public speeches, interviews, rallies, demonstrations, mock executions, sit-ins.. in a bid to arouse public awareness and to win sympathy for their cause) against the Iranian state and its dignitaries or, at least, are blamed in Iran for such counts of charges (penalized under the Islamic penal code). In this connection, please note that such offenses go explicitly beyond the purview of Art. 7(b). Therefore, in more concrete terms and for the sake of clarity by way of exemplification, while a person having been say, convicted outside Iran of drug trafficking [...] and served a prison sentence outside Iran

¹⁶ Electronic journal of Islamic and Middle Eastern Law, University of Zurich, A Comparative Critique of Regulating the Personal and the Passive Personality Principles in the Iranian Penal System by Hassan Poorbafrani and Masoud Zamani, Vol. 3 (2015) pp. 117-133 https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2713296_code1476382.pdf?abstractid=2713296&mirid=1. Accessed: 18 September 2017.

for it, is not liable to be tried or punished in Iran, however, if such a crime involved an Iranian interest, then “double jeopardy” would not apply, and that person may be tried for the same offense in Iran regardless and irrespective of whether he or she already stood trial in the host country.

‘Thus, in practice too, no cases of double jeopardy have been reported in recent times for ta’zirat cases’...

‘Indeed, apart from offenses dealing with state internal and external security of the state (for which odds, logic and common sense would be against an eventual voluntary return of the perpetrators back home) and as far as the undersigned can personally recollect [...] none of the cases opened before Iranian courts at the initiative of next of kin of the victims in Iran after the murderers were deported to Iran at the expiry of their jail terms got anywhere and, while in almost all those cases first degree murder [...] could not be disputed, Iranian judges (still at a time when “double jeopardy” as such was not clearly enshrined in the Iranian law) dismissed, one way or the other i.e. by a combination of both legal and technical or logistical issues raised such as questioning “reliability” of confessions made (obviously free from any duress or coercion, let alone torture) by the perpetrators before a “non-Muslim judge” or arguing that the “indispensable” reconstituting of the crime scene in the presence of a “Muslim clerical/canonical judge” was impossible because of “lack of cooperation on the part of Japanese authorities”) coupled with discrete behind-the-scene pressure on the heirs and assigns of the victims to acquiesce and consent to collection of diyya (or blood money) so much so that this concurrence of carrot and stick culminated in the dismissal of cases opened by the next of kin before the Iranian judiciary....

‘As a result, if an Iranian national commits a crime outside Iran, and is subject to trial and punishment there, he cannot be tried and punished in Iran again. However, if he or she has not served punishment either in part or in total, it is possible to bring him or her before an Iranian court on another occasion’

‘[...] in a scenario where the sentence of a convict is only partly carried out, it will not be the Iranian judiciary’s responsibility to carry out the unexecuted part of the sentence. Rather, in these cases, the Iranian judiciary must establish a new trial for the accused to be tried in accordance with Iranian criminal laws. This is in recognition of the fact that, save for some exceptional cases such as the international agreements on the transfer of persons sentenced to terms of imprisonment in foreign countries (and Iran has indeed entered into agreements of this nature with several states, neighbouring or otherwise), the Iranian state cannot execute the sentences of those convicted in foreign jurisdictions. However, an Iranian judge can reduce (i.e. commute) the punishment of those who have served part of their sentence abroad by invoking the diminutive factors of punishments articulated (formerly under Article 22 of the Islamic Penal Code of 1996) under Art. 36, 37 and 38 of the 2013 version which factors couched in different wording.’¹⁷

¹⁷ Legal Expert report, 31 March 2007, available at Annex A.

- 5.1.5 ACCORD noted in a document titled ‘Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation’ dated July 2015 that:

‘As regards the issue of “double jeopardy”, Tellenbach [Silvia Tellenbach, a specialist on Iranian criminal law at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg (Germany), noted in a 2014 commentary on the new Islamic Penal Code (IPC) of 2013] states...

‘In practice, no cases of double jeopardy have been reported in recent times. But since Iranian law previously did not prohibit double jeopardy and the judicature did not arrive at a clear position on this matter, there was always a degree of uncertainty with regard to this issue. This matter has now been clarified in the IPC of 2013’ [see [Article 7 of the Penal Code \(‘double jeopardy’\)](#) for the updated Penal code].¹⁸

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6. Cases involving Article 7

- 6.1.1 Kurdistan 24 reported in December 2015 that:

‘Hamid Sameie, an Iranian-American was executed in Iran for a crime [...] he allegedly committed a crime in Los Angeles in 2008. An Iranian court convicted Sameie of murdering another Iranian-American citizen in California in 2008. The state-run Iranian newspapers reported the execution but provided few details. A Norway-based Iran Human Rights organization revealed on Tuesday that Iranian authorities carried out the death sentence for Hamid Samiee at Karaj’s Rajai Shahr Prison last month.’¹⁹

- 6.1.2 The Guardian reported in the same month, however, that ‘it was not immediately clear if Sameie [sic] was charged for the murder in the US – or even sought by police.’ It was also reported that ‘details of the crime remain hazy’ and that the Los Angeles Police Department had stated that ‘case files appeared to show no record of a criminal investigation into the death of a person named Janmohammadi.’²⁰

- 6.1.3 The Australian Immigration Department in a document on common claims from Iran and published in September 2017 noted that ‘There have been no recent reports of this provision having been applied in practice.’²¹

- 6.1.4 There are older examples of cases where murders have been committed and re-prosecution proceedings were initiated but failed to result in a

¹⁸ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation, July 2015, <http://www.refworld.org/docid/559baae44.html>. Accessed: 18 September 2017.

¹⁹ Kurdistan 24, ‘Iran hanged an Iranian-American for a crime committed in California’, 3 December 2015 <http://www.kurdistan24.net/en/news/65063dfb-50a8-4aaa-9ddf-8f54199fbf8b/iran-hanged-an-iranian-american-for-a-crime-committed-in-california>. Accessed: 18 September 2017.

²⁰ The Guardian, ‘Iranian-American man hanged in Iran for alleged crime in California’, 3 December 2015, <http://www.theguardian.com/world/2015/dec/02/iranian-american-man-hanged-iran-alleged-california-usa> Accessed: 30 August 2016

²¹ Australian Government, Department of Immigration and Border Protection, ‘Common claims- Iran’ 5 September 2017, available on request. Accessed: 18 September 2017.

conviction mentioned in the report by the legal expert approached by the Home Office and which can be viewed at Annex A (pages 3 and 4).

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Annex A: Letter from legal expert

The legal expert was asked to write a report on the provisions of 'double jeopardy' in Iran i.e. the current legal position regarding double jeopardy- specifically what crimes it refers to the application of this in practise- establishing if in fact people who return to Iran and re-prosecuted for crimes committed outside the country and empirical evidence to support/counter this.

UK Visas & Immigration
C/O British Embassy, Tehran
Ferdowsi Street, Tehran 11

Tehran 31 March 2017

Dear Sirs ,

Reference is, hereby, made to your instructions contained in your mail of 19.02.2017 and the hand-delivered hard copy and exchanges of mail that followed with [REDACTED] regarding provisions of double jeopardy in Iran.

In this connection, please be advised as follows:

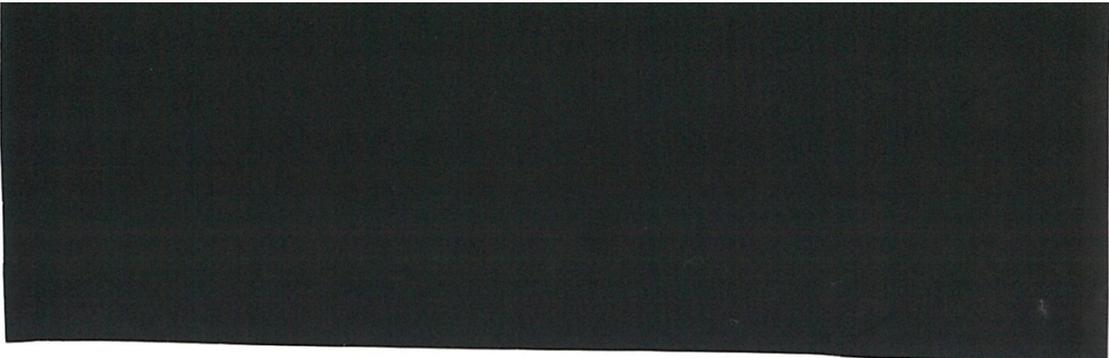
Double jeopardy exists in the Iranian legal system and is dealt with under Art. 7 of the Islamic Penal Code of 2013 which posits and sets forth its provisions as follows (Quoting):

Art. 7- : In addition to cases discussed under the foregoing articles, any Iranian citizen who perpetrates a crime ,in the event he (male pronoun importing both genders in this law article; lawyer's note) is found or extradited to Iran, shall stand trial and be punished in accordance with the laws of the Islamic Rep. of Iran provided that:

- A- Acts committed are penalized in accordance with the laws of the Islamic Rep. of Iran,
- B- In the event that the crime committed is punishable by "ta'zir" (crimes not specifically discussed by the sharia either because they did not exist 14 centuries ago or on which Sharia is otherwise silent for which crimes severity of punishment is left at the discretion of the judge to be applied within a maximum and minimum; lawyer's note) ,defendant has not stood trial at the place of commission of the crime or has not been acquitted or, in the event of conviction, punishment has not been administered against him in whole or in part,
- C- In accordance with the Iranian law, there are no grounds for discontinuation of the prosecution or stay of proceedings or stay of execution of punishment or its falling into abeyance" (Unquote).

Additionally, opinions sought by judges from "Legal Bureau of the Judiciary " (Sort of think-tank regrouping learned judges and Islamic scholars whose legal positions ,though asked for a purely advisory and consultative purpose , are widely respected, albeit not binding) have systematically espoused and upheld this principle even well before its explicit incorporation into the latest amendment (2013) of Islamic Penal Code of Iran.

Thus, as we can see, the principle of "ne bis in idem" or res judicata or the prohibition of double jeopardy, meaning that a person may not be tried or punished again for an offence for which he or she has already been finally convicted

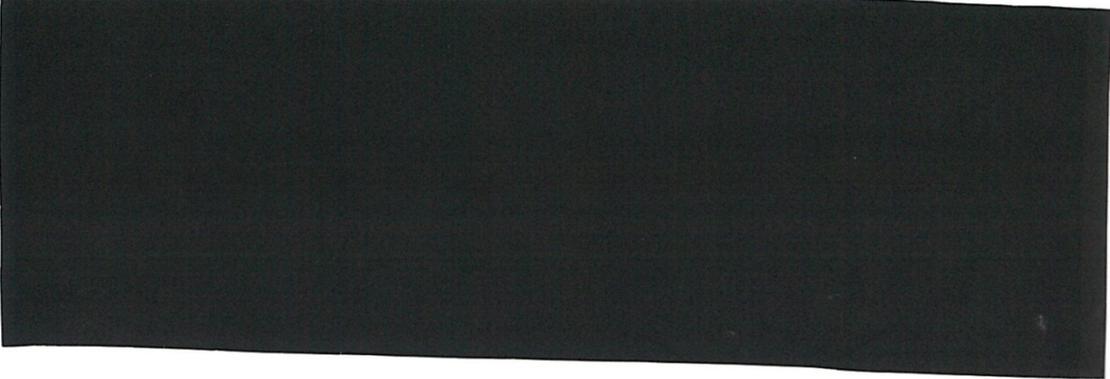


or acquitted exists and is explicitly mentioned under the existing criminal code of Iran (and in a more crystal clear manner than was the case in the former penal code of 1996). In other words (except in matters categorized under *hodoood*, *qisas* and *diyya*), in application of the principle of *autrefois acquit/autrefois convict*, a plea in bar of arraignment that has been acquitted/convicted of the offense and cannot be re-prosecuted for the same offense are heard and sustained before Iranian penal courts.

As to the historical background to the principle of double jeopardy in Iran, please be apprised that the potential effectiveness in Iran of criminal judgments passed abroad was originally provided for in the 1926 Penal Code (last amended before the revolution in 1973) but was abandoned during amendment processes after the Islamic Revolution. With the exception of crimes committed abroad by Iranian or foreign civil servants in connection with their professional activity as well as by Iranian diplomatic and consular agents (Cf. Art. 6 *ibid*), *ta'zir* crimes will not be punished for a second time if the perpetrator has been acquitted or has entirely or partially served his/her sentence in the country where the crime had occurred (Article 7).

While, according to the provisions of the aforesaid Art. 7 of the Islamic Penal Code, Iranian courts will not have jurisdiction to re-try a matter which had occurred outside Iran, there are, however, notable exceptions as respect for and application of this principle are subject to limitations. Indeed, the principle of double jeopardy is on the proviso that and only insofar as its application relates to *ta'zir* at(plural of *ta'zir*; Cf. *supra*; lawyer's note), whose specific cases and punishments are not prescribed in sharia law. Hence, when at issue are offences of the kind susceptible to such types of punishments as *hodoood* (crimes which have been specifically dealt with by the Koran and for punishment of which the judge has no room for manoeuvre such as first degree murder, adultery, sodomy, taking alcohol, defamation; lawyer's note), *qisas* (*lex talionis*:law of retaliation) and *diyyat* (blood money or bloodwite as formerly known in Scotland;), Article 7(b) cannot generally be applied. This means, for example, if an Iranian national accused of murder is tried and punished outside Iran, he can be subjected, both in theory and in practice as we shall see later on to another trial and punishment in Iran for the same crime upon his return to Iran, since his crime is punishable by *qisas*.

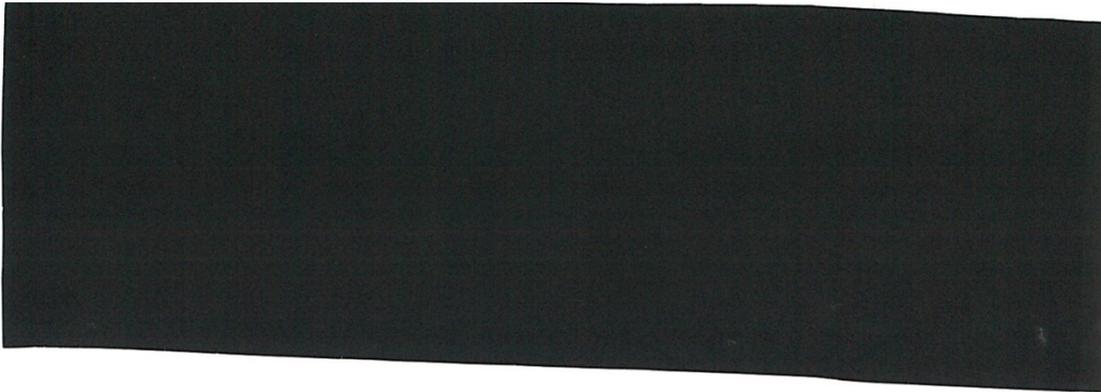
Furthermore, it is noteworthy that crimes or offenses against Iranian security are explicitly ruled out and excluded from this rule of "*ne bis in idem*". This is of prime and vital importance as some asylum seekers and applicants for refugee status have been actually involved in attacks on Iranian interests (breaking into diplomatic and consular premises entailing destruction of property or even physical aggression and assault on Iranian diplomatic and consular officers...) or openly hostile publicized activity (such as through public speeches, interviews, rallies, demonstrations, mock executions, sit-ins.. in a bid to arouse public awareness and to win sympathy for their cause) against the Iranian state and its dignitaries or, at least, are blamed in Iran for such counts of charges (penalized under the Islamic penal code). In this connection, please note that such offenses go explicitly beyond the purview of



Art. 7 (b) . Therefore, in more concrete terms and for the sake of clarity by way of exemplification, while a person having been, say, convicted outside Iran of drug trafficking (and there are indeed many Iranians currently serving long jail terms outside Iran and specially in South East Asia ,basically Thailand and Malaysia, but also elsewhere in Japan and surrounding Persian Gulf sheikdoms as well as in neighboring Rep. of Azerbaijan) and served a prison sentence outside Iran for it, is not liable to be tried or punished in Iran, however, if such a crime involved an Iranian interest, then "double jeopardy" would not apply, and that person may be tried for the same offense in Iran regardless and irrespective of whether he or she already stood trial in the host country.

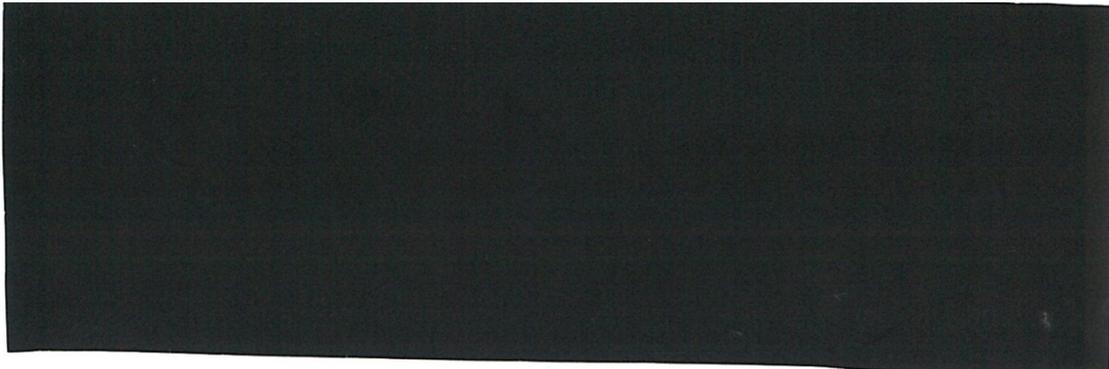
Thus, in practice too , no cases of double jeopardy have been reported in recent times for *ta'zirat* cases (regarding *qisas* and focusing on empirical evidence to support my contention, Cf. infra). But since Iranian law previously did not prohibit double jeopardy and the judicature did not arrive at a clear-cut position on this matter, there was always a degree of uncertainty with regard to this issue as the legal provisions in this respect contained in the 1996 version of Islamic Penal Code were rightly considered as being too succinct. This matter has now been rectified and clarified in the Islamic Penal Code of 2013 and ambiguities accordingly dispelled .

Indeed, apart from offenses dealing with state internal and external security of the state (for which odds, logic and common sense would be against an eventual voluntary return of the perpetrators back home) and as far as the undersigned can personally recollect (based on accounts of two or three stories, given personally to me for seeking legal advice and assistance and exploring further possibility of recourse before a higher authority, by friends and relatives of the two parties i.e. the murderers and the victims or slain parties during a visit to Tokyo some 8 years on the occasion of legal representation of a former Iran Air steward having served sentence in Japan for possession and trafficking of narcotics during a scheduled Tehran-Tokyo flight) none of the cases opened before Iranian courts at the initiative of next of kin of the victims in Iran after the murderers were deported to Iran at the expiry of their jail terms got anywhere and ,while in almost all those cases, first degree murder (as they basically occurred within a ruthless settlement of old scores between feuding Iranian drug lords over control of a certain zone or sector of some parks or public gardens in Japan considered as their exclusive "reserves" or "market") could not be disputed , Iranian judges (still at a time when "double jeopardy" as such was not clearly enshrined in the Iranian law) dismissed ,one way or the other i.e. by a combination of both legal and technical or logistical issues raised such as questioning "reliability" of confessions made (obviously free from any duress or coercion, let alone torture)by the perpetrators before a " non- Muslim judge" or arguing that the "indispensable" reconstituting of the crime scene in presence of a "Muslim clerical/canonical judge" was impossible because of "lack of cooperation on the part of Japanese authorities") coupled with discrete behind-the-scene pressure on the heirs and assigns of the victims to acquiesce and consent to collection of *diyya* (or blood money) so much so that this concurrence of carrot and stick culminated in the dismissal of cases opened by the next of kin before the Iranian judiciary.



Perhaps this point can be best epitomized by the case of University of Seattle double murder in which Azizollah shot dead, out of mere jealousy, her perceived fiancée Marjan (who happened to be his cousin) together with another Iranian student by the name of Mohammad whom he suspected of being her boyfriend. The fatal shooting took place right on the university campus back in late July 1989. Immediately disarmed and arrested by those watching the scene before even the police arrives to arrest him, he was sentenced to 17 years of jail but was set free after 7 years allegedly in recognition of good behavior and what was believed to be out-of-court settlements between the parties. However, upon his return to Iran in mid-Feb. 2001, he was arrested at the airport of Ahvaz (his hometown) and taken to custody upon a petition for *qisas* filed by Marjan's father and he was remanded in custody after a substantial bail offered by him was denied. The case was then referred to Bench 1602 where the presiding judge, the Right Hon. Esmaili (respected for his expertise and experience in forensics) dismissed the prayer for *qisas*, arguing that the murder was a second degree one occurring after a dispute with the female victim and there was not premeditation. An appeal by the slain party's next of kin before the Court of Cassation (Iranian Supreme Court) got nowhere where Chamber 11 judges argued that by collecting compensation which they equated with "*diyya*", those entitled to demand *qisas* (i.e. next of kin) had actually signed away and forfeited this right. And the apotheosis was the immediate release of the murderer notwithstanding the fact that no less than two male eye witnesses (requisite number for conviction of a murderer under Sharia) had testified before the US court against him despite and confessions by the murderer himself. However, counsel for the disgruntled next of kin did not give up and this time he knocked at the door of the Head of the Judiciary in person or Chief Justice under the Iranian law, invoking alleged defects in the investigation. Upon this recourse, Chamber 2 of the Court of Cassation (considered to be ranking *pari passu* with the former Chamber 11) reversed the trial court's opinion and remanded the case for new trial whereby Judge Hematyar of Chamber 1156 (at Besat Judicial Complex in Tehran) issued and sent out summons for appearance of Defendant (murderer) only to find out that he had already left the Iranian territory immediately after the previous ruling in his favor. To make a long story short, Azizollah was sentenced to death in absentia by judge Hematyar for murder after his contempt and contumacy of court but his counsel successfully fought back, lodging appeal against the death sentence by default before the appellate court and ultimately winning a long legal battle against the next of kin.

Thus to sum up or wrap up this discussion, one should recognize that while the Islamic Penal Code of Iran presents, even in its latest version of 2013, some erratic, extravagant and unpredictable notions on such points as the right to retain an attorney (although protected under Iranian Criminal Procedure Code through its Art. 346 and 347 as well as Article 3 of the "Citizenship Rights Law" of 2004 and Art. 35 of the Iranian Post-Revolution Constitution of 1979), however, the right to counsel during the pretrial and trial stages varies depending on the offence. Counsel is not usually permitted for *Hodoob* offences, with the exception of theft and defamation. While counsel is likely allowed into the court room where the trial of *Qisas* and *Ta'zir* offences are held however, judges systematically encourage direct litigant input even when lawyers are present. Furthermore, the nota bene below Art. 48 of Criminal Procedure Code of 2013 effectively undermines this right by providing that "for matters dealing with state internal or external

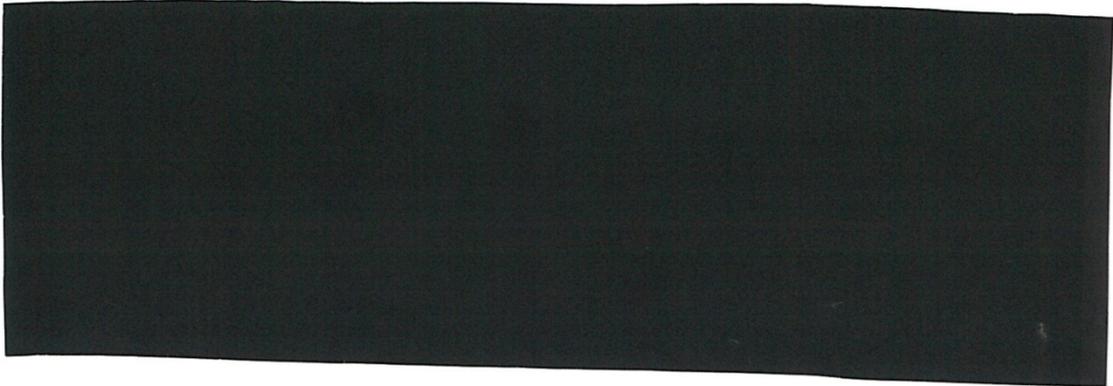


security or organized crimes, counsels during the investigative phase must enjoy the trust and confidence of Head of the Judiciary and are to be appointed from among a list to be published later (sic) . Apart from this vagary or ,rather, over and above it to make things worse, the dominant mood at Public Prosecutor's office is that counsel may be denied "in cases where the issue has a secretive aspect or the judge believes that the presence of anyone other than the accused may lead to corruption." Thus, leave of the court could be necessary for his/her presence. The bad thing is that while the investigative phase may last up to a month, a judge may practically renew the detention phase indefinitely),**one can dare say that the inclusion of double jeopardy is the only uncontroversial positive development built into the 2013 Code.** As a result, if an Iranian national commits a crime outside Iran, and is subjected to trial and punishment there, he cannot be tried and punished in Iran again. However, if he or she has not served punishment either in part or in total, it is possible to bring him or her before an Iranian court on another occasion.

Obviously and in reply to the question raised in the captioned letter of instructions, in a scenario where the sentence of a convict is only partly carried out, it will not be the Iranian judiciary's responsibility to carry out the unexecuted part of the sentence. Rather, in these cases, the Iranian judiciary must establish a new trial for the accused to be tried in accordance with Iranian criminal laws. This is in recognition of the fact that , save for some exceptional cases such as the international agreements on the transfer of persons sentenced to terms of imprisonment in foreign countries (and Iran has indeed entered into agreements of this nature with several states , neighboring or otherwise) , the Iranian state cannot execute the sentences of those convicted in foreign jurisdictions. However, an Iranian judge can reduce (i.e. commute) the punishment of those who have served part of their sentence abroad by invoking the diminutive factors of punishment articulated (formerly under Article 22 of the Islamic Penal Code of 1996) under Art. 36,37 and 38 of the 2013 version which factors are couched in different wording .

On a separate but related note ,please be apprised that the prevailing mood and current practice at the Iranian Judiciary, Ministry of Foreign Affairs and Ministry of Intelligence (both also closely involved in the process) is to approve only voluntary returns and to reject systematically cases which they consider, rightly or wrongly, as "re-admission" despite, in some cases, receiving generous offers of repatriation compensation to encourage return and partially support resettlement at home purportedly made by some states ,inter alia, Australia (which has allegedly offered to pay up to \$ 5,000.00 per returnee).

Last but not least and as to the rationale for inclusion of these provisions (or their broadening in the new Islamic Penal Code of 2013), please note that, while Islamic jurisprudence (or ,more precisely, the Jafari School Duodecimal Shiite version of Islamic jurisprudence)does not recognize the primacy of rights that exist elsewhere in the world such as under common law and Continental Europe legal systems, but it stresses the paramount importance of duties under Islamic religious law (Sharia). And (fortunately!) , double jeopardy has been among the few areas where a successful attempt has been made to modernize the Iranian Islamic criminal justice system so as

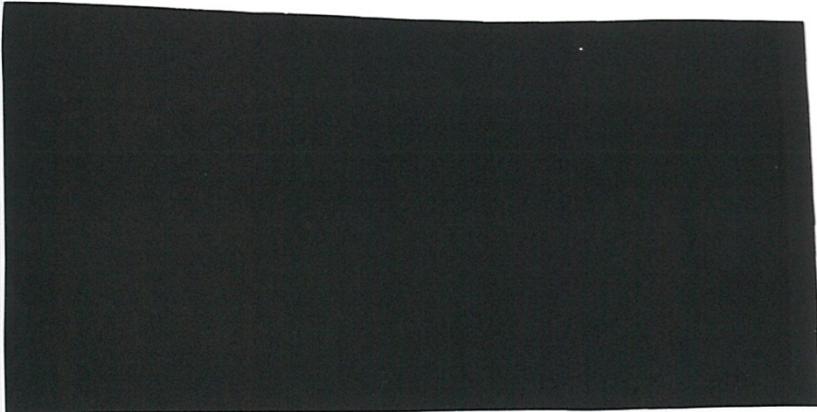


to make it compatible with progressive international human rights standards while regarding some other aspects of Iranian criminal law and procedure (involving fundamental human rights or such subjects as age of criminal liability, juvenile age , capital punishment or distinction between private rights and “divine” or “God’s right -which is itself a manifestation of the depth of the rift between the secular and religious legal theories and the resulting dichotomy), protected under international law and also ostensibly enshrined in the Iranian Constitution, they are, nonetheless, qualified by subjecting them to poorly –articulated and ill-defined “Islamic criteria.” . Thus, an attempt (similar to that made for incorporation of double jeopardy into the Iranian law) to reconcile even *mtatis mutandis* the two could well be doomed to frustration and failure, to the extent that the goals and requirements of Sharia law are not met, making the reconciliation ,practically, impossible.

The foregoing was what the undersigned , freshly back from an oversea visit abroad ,had immediately to say or write ,within time constraints (on a remaining last day Iranian new year second batch of protracted public holiday and in the run up to resumption of business on this upcoming Monday) as pertinent on or in relation with the scope defined in the captioned instructions. Please do feel free (and you will be more than welcome) to revert for any additional information or eventual clarification so as to dispel any ambiguity. Thank you .

In the meanwhile, I remain with,

Kind Regards



Version control

Clearance

Below is information on when this note was cleared:

- version **1.0**
- valid from **31 January 2018**

Changes from last version of this note

First version in CPIN format.

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