

Preventing economic crimes in the criminal law of Iran, with respect to Article 44 of the Iranian Constitution and in light of the Convention against corruption

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Abstract: Economic crimes are among the greatest transnational organized crimes. Because of the high profits from one hand and the low risk on the other hand, these crimes are highly interested by international criminal organizations. However, the public opinion and parts of the government have their own meaning of the concept of corruption in the mind. Therefore, given the fact that economic crimes will harm human dignity and threaten all political, social, economic and cultural aspects of the life in countries, especially third world and developing countries, it is increasingly necessary to deal comprehensively with corruption relying on Article 44 of the Constitution and the convention against corruption.

Key words: Prevention; Economic crimes; Iranian criminal law; Article 44 of the Iranian Constitution; Convention; Fight against corruption

Introduction

Today, economic crimes among domestic and international authorities have an outstanding place. In this regard, international and regional organizations through criminalization have given special attention to the economic system, because the economy plays an important role in human life. This is why the fight against economic crimes has a unique position (Husseini, 2005). Different terms are used for economic crimes including economic corruption, white collar crimes, organized crimes and so on (Salimi, 2008).

Babai and Ansari (2015) did a study on the economic analysis of crime prevention. The results of this study showed that evaluation of the costs, resources and its optimal allocation are among the efficient economic analyses of criminal justice programs. Crime prevention is one of the criminal justice systems in response to the crime phenomenon. Criminologists with respect to various crimes have proposed many preventive programs for design and implementation. Nevertheless, policy makers due to lack of resources have to choose the most economical ones. In this situation, the economic analysis, on the one hand, by evaluation of each crime determines its costs. This way, crimes with heavy costs for the community receive the highest priority for preventive programs. On the other hand, we do cost-benefit evaluation for various preventive programs that are capable of implementing. This way, we can select the program that is of more economic efficiency than other programs.

Shams Nateri (2012) did a study on situational prevention of economic crimes. Results showed that in economic crimes, the criminal result, i.e. disrupting economic system of the country with the motive of gaining earnings at a widespread level, is of two indicators, which introduce difficulties and challenges in the prevention of such crimes. Preventive measures with respect to two above indices should both be extensive and disrupting motivates. In this paper, with giving emphasis to the criminal policy of Iran and documents of the United Nations, we examine some of the most important situational preventive measures in the face with economic crimes. Azami Moghadam (2012) did a study on the concept of economic crime or economic corruption and showed that the principal of consideration of economic issues is of great importance. Economic crimes affecting the financial, industrial and commercial policies implicitly face the government and the community with unwanted changes, damages and disturbances. In the long term and possibly middle term, this causes destructive and uncontrollable effects on economic body of the government, which cannot be cured easily.

Now, in our country because of the short history of the fight against economic crimes and unfamiliarity of administrators with its complexities and details, no proportional and practical practice still is done to define clearly economic crimes, the responsible organization and the process of tracking economic crimes. For this reason, the acting organizations are faced with confusion, parallel working, task overlap and inconsistencies within and outside the organization. Navadeh Toopchi (2011) studied challenges of implementing the UN Convention on the fight against corruption in the

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country. He showed that the feeling and concern of the international community about the seriousness of problems and threats posed by corruption to the stability and security of national and international communities through undermining entities and democratic values cause damages to the ethical values, social justice, sustainable development and governance of the law. Thus, corruption perceives as a transnational problem, which affects all economic, political, social and cultural factors. As a result, international cooperation for its prevention and control is necessary. Crimes aimed at the Convention that are considered in Article 15 and those after that include bribery to domestic public officials, bribery to foreign officials and international organizations, embezzlement, trading under the influence, abuse of authority, illegal wealth and property, bribery in private sector, embezzlement in the private sector, money laundering, concealment, holding properties resulted from the crime and preventing judicial proceedings. The generalities of Convention in public administration emphasize on public properties, public management, transparent decision making. Fighting corruption requires a comprehensive and multifaceted approach, as in the Convention it is emphasized on the basic legal principles in criminal, civil and administrative proceedings for adjudication of ownership and it has referred to the relationship between corruption and organized crimes. Farahmandfar (2010) investigated Iranian legislative requirements after being attached to the United Nations Convention against fighting corruption and showed that an effective international measure for fighting with administrative and financial corruption was approving the Merida Convention. This document provided the field for an international cooperation for fighting and preventing corruption. Ratification of this Convention by the Iranian legislator on 2009/08/20 caused requirements, because some new criminalization issues were incorporated in this convention, which provide new requirement for the State's Member. Compare of the crimes investigated in the convention with those in Iranian criminal law shows that there is no crime with this title in the Iranian penal code or it is criminalized with another name or it is possible that the Iranian penal code has addressed this crime partly and not fully. In general, in all of these three cases, requirement of Iranian legislator to criminalizing these acts has no conflict with the provisions of law and jurisprudence. Legislator by enacting these crimes in addition to completing the domestic laws associated with the administrative and financial corruptions will also participate in international cooperation to fight with corruption.

The first discussion: the concept and the amount of economic and financial crimes

The first paragraph of the concept and the amount of economic and financial crimes

The term "economic and financial crime" largely refers to any non-violent crime that causes financial damage. Thus, these crimes include a wide range of illegal activities including fraud, tax withholding and money laundering. Definition and determination of the group of "economic crime" and proposing a precise meaning of it still is difficult. This task with respect to the rapid advances in technology, which provides new opportunities for such offenses, has been more complicated. It is difficult to determine the overall extent of this phenomenon. The reason for part of that is the lack of a clear and accepted definition of this crime and the fact that methods of recording economic and financial crimes varies greatly from one country to another and as companies and financial institutions prefer to deal internally with these cases, some cases remain unreported. However, there is a growing sense that economic and financial crimes, especially embezzlement and fraud, are among the crimes with rapidly growth (Najafi Abrandabadi, 2008, p. 3).

The second paragraph: economic crimes' nature

Economic crimes usually occur in the context of an enterprise, institution or company. Economic criminal laws include both commercial criminal law and beyond it (Najafi Abrandabadi, 2008, p. 2).

In fact, the economic criminal law has two main responsibilities:

- A. Protecting the private interests of people,
- B. Management of administration of the country's economy (guarantee of collective interests and the interests of the state).

If we want to distinguish between above two cases, it should be said that commercial criminal law guarantees the private interests of businesspersons and companies. While economic criminal law is beyond the interests of a particular group, but the nature of economic criminal law depending on our economic system, which can economically be liberal or guidance, is different. In the guidance system, the state is actively present, thus, economic criminal law is broader. However, in a liberal system, given the importance of protection of the capital, economic violations will be answered by corporative, administrative and non-criminal guarantees.

The third paragraph: definition of economic crime

In the case of economic crimes, there is no comprehensiveness in its definition and examples. However, on the specific procedure of penalties and crimes, most of attorneys have reached to a general conclusion, which fall under the economic criminal laws. In domestic civil law, there is no precise definition of economic crime and we are faced with a legal vacuum. However, it can be concluded that economic crimes are said to those crimes that are against the integrity of public and state properties. It causes disturbance in the economic system of the country and by deviating the economic affairs out of

its safe and correct course results in unfair possession of great wealth by a few individuals who have some relationships with some political officials. Also, abuse of the information, political, economic resources and other ways or connections provide the possibility of gaining the wealth and the property of public illegally (Kosha, 2008, p. 23).

The fourth paragraph: concept of economic criminology

Economic criminology means "the study of the reason of committing economic crimes as well as studying the characteristic of who commit economic crimes" (Najafi Abrandabadi, 2008, p. 3). More in detail, it studies a specific economic crime and its causes.

The fifth paragraph: dimensions of economic crimes

Examples of economic crimes in our country can be seen in the following laws: the punishment law of disturbers in the economic system of the country, the implementation of Article 49 of the Constitution, the law forbidding getting a commission on foreign transactions, penal Code of collusion in public transactions, criminal laws of Supreme Audit Court of Iran, intensified punishment against bribery and embezzlement (Act 75), intensified punishment against who counterfeit the money and currency, intensified punishment against traffickers, Governmental Discretionary Punishments law, the law of fighting against money laundering and finally Articles 588 to 597 of the civil code. However, there is no specified and documented categorization in this area. Scholars based on minds and the empirical findings have proposed different categories, which there is often no agreement on. Currently, there are about two thousand criminal topics in series of criminal laws, which many of them can be considered as examples of economic crime, but the most important economic crimes include:

- Smuggle of goods and exchanges,
- Money laundering;
- Hoarding,
- Usurious and interest,
- Bribery,
- Disruption in the monetary and the currency system of the country,
- Disruption in the distribution of public necessities,
- Disruption the production system of the country,
- Trafficking of the cultural heritage and national wealth,
- Establishment of a similar partnership companies,
- Disruption in the country's export system,
- Establishment of pyramid companies,
- Tax crimes,
- Offenses relating to the securities market (Saki, 2011, pp. 30-31),

The main items based on the draft of United Nations Convention against Corruption (Palermo) in the discussion of financial and administrative corruption at the international level are as follows:

- Promise of giving an illegal advantage to the public broker or by him,
- Bribery, embezzlement and theft of public properties,
- Ignoring earnings obtained by crime and preventing occurrence of justice,
- Improper use of influence and abuse of functions and authorities,
- Concealment of assets and earnings resulted from crime,
- The use of public properties and facilities illegally (Fatahi Ardekani, 2011),

Other categorization of properties is as follows:

- Illegal banking facilities,
- Speculator,
- Illegal ownership of lands,
- Fraud and collusion in auctions and tenders,
- Insurance charges,
- privatization-related offenses,
- Embezzlement, etc. (Tadbir institute of economic research, Bit, p. 5).

If we consider economic crimes as criminal behaviors, which cause disturbance in the production, distribution and monetary systems, in the criminal law some punishment or supportive actions will be considered for it. The most important examples of economic crimes include smuggling of goods and currency, bribery and corruption, embezzlement, commission, money laundering, tax crimes, customs crime, counterfeiting of currency and securities, usury and bribery (Education vice-president of Judicial system of Iran, 2009, p. 2). The other examples of economic crime include usury, bribery, rent, low-selling, selling impure goods, the lack of payment of Vajeb property, multiplicity of wealth, wealth monopoly by a small number of people, artificial monopolies, abusing problems of seller or buyer, lie oath, betrayal to public funds, the private use of public funds, fraud, scam, embezzlement, extortion, collusion in favor of individuals, groups, or parties, the lack of payment of financial rights of the poor, etc. (Mohaqeq, 2011, p. 7).

The sixth paragraph: the most important causes of economic crimes and the need factors for preventing of it

A: the most important causes of economic crimes

Four factors are essential for the creation of economic crimes, including:

1. The existence of healthy economic structures and foundations: economic crime in a normal bed and through a contract and economic relations with government agencies or independently occurs,

2. The withdrawal of violence element,
3. Economic crime requires type of criminal opportunism. This opportunism is closely related to the degree of intelligence and professional competence of committers as well as the extent to which other people trust to them. These offenders are more dangerous for the society, because they have great consistency with the community.
4. Overall, offenders of economic crimes look for excessive profits and making more money.

B: the most important economic factors preventing economic crimes

1. The recognition and the exact definition of economic crimes,
2. Serious attention to reforming laws and preventive measures,
3. Development of administrative structures,
4. Expansion of activities of judicial system in fighting with economic crimes and corruptions,
5. Training and movement of judges towards fighting against economic crimes and corruptions,
6. The change of people's responsibility from the actual to legal,
7. Increased attention of executive and judicial systems in the area of combating economic crime,
8. Establish of financial institutions and entities besides banks,
9. Prohibition of publication of financial and professional secrets.

International instruments: There are two important international documents related to economic crimes. One of them is UN Convention against transnational organized crimes (Palerm, 2000). Mentioned convention only deals with the definition of crimes and gives on criteria about the economic crimes.

Second discussion: Iran's constitution for fighting with economic crimes

The first paragraph of Iran's constitution for fighting with economic crimes

the ban law of government on negotiations and contracts related to oil privileges with foreigners, provision 1945 about the banning law of intervention of ministers and parliament's representatives and government officials in transactions with government, the law of investigating properties of ministers and officials of the state, and the law limiting having more than one governmental job.

- Article 606 of the Islamic Penal Code,
- Public Audit Act,
- The law of fourth economic, social and cultural development plan,
- Program of promoting administrative health and fighting against corruption,
- Public Service Management Act,

- The law of establishing General Inspection Office of Iran,
- The law of implementing Article 44 of the constitution,
- The law of holding public tenders and auctions.

In the second phase, that relates to the stage of after occurrence of economic crimes, it deals with determination of criminal and repressive answers. Criminal policy of Iran in the second stage has several ambiguities and shortcomings, which causes fight against economic crimes to be slow, deterrence and insufficient so that achievement to the expected results may be impossible. There are some noteworthy points in this regard. First, most of the laws and institutions in the state departments have supervisory duties and less attention is given to the private sector. Given the growing trend of privatization in our country, the need to reviewing and approving the legislation in this regard seems to be more than before. Secondly, given the growth of science and technology, it is likely that offenders especially in economic crimes and financial corruption may use new electronic technologies and the Internet to conduct their criminal acts. Therefore, in the face with the existing risks, there is clearly a need to establish specialized centers for fighting against economic crimes (Education vice-president of Judicial system of Iran, 2009).

The second paragraph of Iranian criminal policy in the fight against economic crimes

According to the opinion of jurists, economic criminal law defines as "Set of rules and regulations that discusses about economic crimes and disruptions it may cause in the economic regulation of the country (Saki, 2011, p. 25). The criminal policy in Iran in addition to taking repressive measures also uses of non-criminal and preventive approaches. What is undeniable is that for the success of an effective penal policy, preventive measures should be given the first priority and importance. Investigating the laws and regulations concerning the legal status of economic crimes in the legal system of Iran, we get to the conclusion that these laws mainly and in terms of time are related to two separate stages. The first stage is the stage before occurrence of economic crimes and financial corruption that legislator has predicted some tools for preventing corruption. In addition, state agencies attempt through a comprehensive and legal monitoring to prevent occurrence of such crimes.

The third discussion: UN Convention against corruption

First paragraph

UN Convention against corruption in (2003) can be considered an example of these treaties, as the

issues and concerns raised in the introduction in turn prove the claim:

1. Fear of deterioration, problems and threats posed by corruption to the stability and security of societies and democratic values, which endanger and hurt to the ethical values, justice, sustainable development and the rule of law,
2. Concerns about the relationship between corruption and other forms of organized crimes and economic crimes including money laundering,
3. Concern that corruption covers plenty of financial storages, which constitute a substantial share of the nation's resources and threats political stability and sustainable development of these countries.

Second paragraph

4. In Article 3, non-criminal prevention is considered so that by strengthening people imposed to victimization, it decreases the possibility of committing crimes. The article has also pointed to rehabilitation of convicts,
5. Article 9 considers personal and moral barriers as an effective preventer for committing crime,
6. In Article 23, preventing payment punish for criminals is issued,
 4. Articles 24 and 25 support victims of transnational organized crime (Merida, 2003).

First, at the international level, United Nations Convention in fighting drug trafficking and psychedelic drug was issued in December 20, 1988, through Vienna convention. It is important to note that the fight against money laundering at the international level alike the fight against drugs has had its origin in many countries. Therefore, all the provisions that were designed to fight drug trafficking in United Nations Convention generalized to the transnational organized crimes (Palermo, 2000) as well as all the serious crimes. However, at the beginning, it was Vienna Convention in 1988 that at the international level first determined regulations for incomes obtained from crime or money laundering. Mentioned convention obliged governments to criminalize money laundering, set rules for identifying and proceeding incomes obtained from crimes, to block financial properties, keeping financial records and to ensure that the financial institutions will keep financial records and cancels abolition of banking secrecy. However, only in Merida Convention, economic crimes such as the acquisition of illegal wealth (Article 20), Bribing to public officials (Article 15), embezzlement of property in the private sector (Article 22), laundering the proceeds of crime (Article 23) and so on have been directly investigated.

Third paragraph: international activities of European countries in the field of controlling corruption

Some international activities as well as activities by European countries have done in controlling

corruption. A summary of them is presented in the following:

1. Corruption as a matter of priority in issued in the area of foreign and domestic policies,
2. The criminal law should include comprehensive legislation so that it covers corruption in the public, private, political and trade sectors as well as cross-border cases,
3. The liability of legal persons as part of an efficient and effective approach to criminal justice for controlling corruption is accepted,
4. Mutual judicial assistance and confiscation of properties in confiscation cases, including return of illegally obtained properties, is of particular and specific relevance,
5. Report of cases suspected to corruption should be encouraged through supporting witnesses, because in such crimes there no one directly victim,
6. Control of corruption should be expanded through binding internal and external auditing and encouraging auditors to pay more attention to corrupt practices,
7. The collecting evidences confirming claims should be facilitated through proactive and special investigations,
8. Approach based on repressive criminal laws should be equipped with a comprehensive system of prevention,
9. Self-controlling should be enhanced through "moral motives". Execution of legal documents should be supported through giving grants and other assistances to developing countries as well as evaluating implementation of national anti-corruption legislations and policies (Hans-Yorg, Qorchi Beigi, 2011).

Fourth paragraph: legal strategy to fight economic crimes

Legal measures to combat this ominous phenomenon can be divided into two categories: preventive strategies and treating strategies. According to Article 156 of the constitution, judicial system should follow its tasks in two section of prevention and punishment of criminals simultaneously and in parallel. Implementing research projects to find causes of economic crimes from the judiciary perspective and finding appropriate solution for dealing with them is one of the most important tasks of judicial system to prevent economic corruptions. This approach surely and steadily will result in preparation of appropriate legislation, which will fill the vacuum of the criminal provisions. Revising in judicial and administrative structure of the judicial system, training good judiciary and administrative manpower resources and attracting and strengthening brave judges are among substantial actions that will eradicate crimes in general and economic crimes in particular. Currently, rebuilding, reforming and strengthening structures of Supreme Audit Court and Governmental Discretionary Punishments of Iran as

two main arms of judicial system is very necessary in dealing with economic crimes. Reforming structure of the judicial system of corruption of judiciary and administrative human resources through vaccinating them against corruption by increasing their wages, improving their welfare, and ensuring their job security and preventing authorities from interfering in their judicial decisions could greatly contribute to fight against economic crimes. Next to the above guidelines, which were mentioned as the preventive actions, there are also other therapeutic solutions. Decisive punishment for the first order criminals is one of the most important strategies in this field that judicial system should decisively pursue it. In the context of revising criminal codes relevant to legal punishments for economic corruption crimes, it seems that the lack of criminal laws does not play a fundamental role so that existing provisions are able to adequately deal with criminal justice and in fact, the reason is weakness of some judges in implementation of the laws. Establishment of special courts for fight with economic crime and strengthening the status of judges and employees of the judicial system materially and intellectual is another practical approach for enhancing the power of judicial system in dealing with economic crimes. Development of economic cooperation among economic centers and banking, monetary and financial institutions along with information protection certainly will help to discovery of the causes of economic crimes, which interrupt general security and the economy. On the other hand, the implementation of the legislations that either are not implemented or are implemented partially such as the implementation of Article 49 of the constitution and the law of punishment disruptors in the economic system of the country are other appropriate solutions. The noteworthy points here is that performance of judicial system should be such that reflecting it does support somehow any of parties or policies, because it results in negative viewpoint of people to the judicial system.

Conclusions

Consideration of international documents shows that economic crimes international are increasing. In aforementioned documents crimes such as money laundering and corruption are considered as in international crimes and it is requested of different countries to fight with ominous phenomena. The solution to overcome on these criminal acts is an international willing in accepting associated conventions by various countries, in particular in Iran it can be done relying on Article 44 of the constitution as well as in the light of the Convention against corruption. Interaction between international and national law systems in the realm of economic crimes shows that countries have a positive and active attitude in cooperation with the International Criminal Policy. International instruments relating to money laundering and exclusive Anti-Corruption Convention have already

been adopted by most countries so that they have formally accepted the aforementioned documents. However, some countries such as the Islamic Republic of Iran have only signed these documents, but they have not completed the accession. Naturally, in the case of accession, the national criminal policy must be consistent with international criminal policy. This requires removing legal obstacles and revising criminal provisions. The nature of the economic crimes is such that it has given to the laws certain shape and form. Although there is not still a comprehensive definition of these crimes and their examples, but based on attempts by juristic, there is an agreement in this field so that they issue and define it under the economic criminal law. Referring the dispute to the arbitration or the International Court of Justice is possible only if all parties of dispute are agreed. About economic criminals, there are specific methods for their reformation and socialization. Likewise, in the international documents relating to economic crimes, we observe allocation of certain substances to these crimes in terms of aspects such as preventing crime, reformation and rehabilitating offenders. Economic offenders in terms of consistency with the community are typical people who are consistent with the community's requirements that use of shortages of governing norms to commit their crimes. In order to prevent and fight with economic crimes, we should resolve the existing legal gaps and prepare the society for preventing the creation of proper beds for committing these crimes. This way, we may be able to provide a society free of economic crimes for our future generations.

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