

THE SANCTIONS OF THE ISLAMIC CRIMINAL LAW. ASPECTS REGARDING PENALTIES OF THE CRIMINAL LAW OF THE ISLAMIC REPUBLIC OF IRAN. RELIGION AND TRADITION VS. OBSERVING HUMAN RIGHTS

Ciprian-Vasile MAFTEI*

ABSTRACT: *Islamic penal law is a system of rules based on the religion of Coran and, most of the penalties applicable to the penal crimes are in discordance with the actual age and the culture of democratic law, which guards human life and the property observing the principles of The Universal Declaration of Human Rights.*

This work presents, from an intrinsic point of view, a possible classification of the punishments comprised in The Penal Code of Islamic Republic of Iran, and, also refers to: the applicable punishments for women and minors; the similarities between Islamic law and democratic law; abilities and tentative of observing human rights within Islamic law; contact areas between Islamic law and democratic world.

KEYWORDS: *Islamic religion, Islamic law, human rights, Koran, punishment, offense, Iranian penal code.*

JEL CLASSIFICATION: *K 14, K 49.*

1. HUMAN RIGHTS AND ISLAMIC LAW

According to the Universal Declaration of Human and Citizen Rights adopted and proclaimed on December 10, 1948:

- All human beings are born free of rights and dignity (art. 1),
- Rights and freedoms mentioned in the declaration are equal regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (art. 2),
- Everyone has the right to life, liberty and security of person (art. 3),
- No one shall be subjected to torture, punishment or cruel, inhuman or degrading treatment (art. 5),
- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination (art. 7), etc.¹

* Officer, Ministry of the Administration and Internal Affairs, Romania.

¹ Universal Declaration of Human and Citizen Rights, art.: 1,2,3,5,7.

As we see in this paper, Islamic criminal law is a special law and many of its rules are contradictory to the democratic precepts established in the Universal Declaration of Human and Citizen Rights.

Islam is the cult with the most followers worldwide and as a personal opinion, Islamic law promotes in a limited and discretionary way the values emanating by the items from above.

The right of states to establish and apply laws shall not be judged and challenged, while the citizens of that state consider the social contract fair and acceptable and while, it doesn't affect the other states or its citizens.

History has led humanity to an interaction between countries, cultures and peoples with all the consequences arising from this: political, cultural, legal, religious, diplomatic, etc., so that, currently, many Islamic people live in democratic states and vice versa, the first being forced to comply with a different law than that attached to their private education and persuasion and the other to ward themselves of the drastic consequences of a legal system with ancient origins.

Although Islamic law, seen in light of the Qur'an, contains elements contrary to the aforementioned articles, some countries, which embrace Muslim legal system, attempts to align its national law to the terms of the Declaration.

In this regard, we exemplify Palestinian State Constitution, revised on April 27, 2003, which states the following:

- Art. 18. Palestinian state must comply with the Universal Declaration of Human Rights (...),
- Art. 22. (...) Women shall have the same rights, freedoms and duties as men,
- Art. 25: right to life is guaranteed by the Constitution,
- Art. 5. (...) The Constitution guarantees equal rights and duties to all citizens, regardless of religious belief.

As we have seen, Palestinian State Constitution contains rules, which encourage Islamic law possibilities of reformism towards human rights.

Professor Sami Aldeeb (Doctor of Laws, Professor of Comparative Law at the Institute of Comparative Law in Lausanne), makes, in the analysis of the Palestinian Constitution, justified guidance on the wording of certain items, such as Article 25, suggesting to that the following presentation: "The right to life guaranteed by the Constitution", giving in addition to the original, "Capital punishment may not be imposed".²

2. ISLAMIC LEGAL SYSTEM DESCRIPTION

The Koran is considered a true religious, moral and legal code, covering all daily activity: political, religious, civil and criminal and it was inspired by The Old and The New Testament and holy books of the ancient Israelites (Thora and Talmud).

Islamic criminal law is a system of law based on Muslim religion, and the punishments of the criminal offenses are largely at odds with the realities and the culture reflected in the democratic systems of law, which respect and protect human life, property and human rights, especially, using rules of its criminal law.

² Sami Aldeeb, "Report on the Arabic version of third draft of the Constitution of the State of Palestine revised".

Islamic law, known as “SHARIIA” is based on 4 sources of law, the most important being the KORAN (the Chapter III, verse 131 reads: “God sent the law now before you, walk the earth and see that they finally got the What kept the lie “). The others are:

- SUNNE (tradition): practices and rules inspired by the life and teachings of Prophet Muhammad (according to Muslim faith, the teachings of Allah revealed to Muhammad, who create the Quran).³

- IGJÂMA: consensus of the highest Muslim religious authority, in those areas not covered by the provisions of the Qur’an and Sunni.

- KIIAS: similar cases.⁴

Inside Islam, there are different movements and schools that allow certain flexibility, depending on the cultures that have adopted Islam, but, nevertheless, Muslim religion and Islamic law contain major similarities in every branch.

Taking as its starting point the schism in the years 655-661, at the moment, there are several branches of Islam, the law being promoted by each school related to a branch, each having some different rules, in addition to the common basic issues.

The schism started from the debate on the legitimacy to lead Arab Caliphate, which started, after Muhammad death, fights between the blood relatives of the prophet and his closest persons without family ties.

Those who believe that the legitimacy of succession belongs to relatives of Mohamed are called Sunni and these are about 90% of Muslims.

Another branch is the Shiites, whom consider ALI, a relative of Muhammad, the legitimate successor (9.8% of Muslims).

0.2% of Islamic believers are called “kharighits”, being a branch split from Shiites.

In addition to these, there are other sectarian movements of less importance.

It should be noted that each branch has its own schools of law, for example, Sunni schools: malekit school, hanefit school, Safi and handbalit school, the name of these being inspired from their founders names.⁵

3. A POSSIBLE CLASSIFICATION OF SANCTIONS UNDER CRIMINAL LAW OF THE ISLAMIC REPUBLIC OF IRAN.

Iranian penal code was adopted in 1991 and completed in 1996 with Chapter 5, referring to “taazirat” (punishments which depend largely on the judge).⁶

We chose the Iranian Penal Code for a brief review of sentences of Islamic law, because of Iran’s international impact and friendly manner of presentation of the code.

Thus, the penalties prescribed in its content could be classified as:

1. by way of materialization of the penalty: Capital punishment: hanging, shooting, killing with stones, beheading, crucifixion, etc., Whipping, Cutting of the hand or leg (in case of theft), Imprisonment, Fine, etc.

³ Silvestru Octavian Isopescu, “Coranul“, Ed. “Cartier”, Chişinău, pp. 9-25.

⁴ Silvestru Octavian Isopescu, op.cit., pp. 45-50.

⁵ www.wikipedia.org.

⁶ http://mehr.or/Islamic_Penal_Code_of_Iran.pdf.

2. In terms of the degree of flexibility on their application (classification presented by the Iranian Penal Code): Hudood-fixed penalties set by Quran and Sunna; Quiias or ghesas-sentence as “eye for an eye and a tooth for a tooth”; with financial alternatives or forgiveness of the perpetrator, which is specific for murder and bodily injury; Dyeh-financial penalties; Taazir-discretionary punishment.

3. Material punishments (fines or dyeh) and bodily punishments (flogging, stoning, etc.).

4. Single or cumulative punishment.

The Art.88 provides an example of simple sentence: penalization of adultery with 100 lashes, and for cumulative punishments, we can exemplify the art. 84, which provide that old married doers, will be flogged before being stoned.

5. Preventive punishment established by the Government in the form of fines, scourging or imprisonment, and subsequent punishment.

6. Another criterion of classification could be the offence itself (for every offence is provided a certain sentence).

1. In terms of the materialization of punishments, they could be:

a. Capital punishment, prescribed in the Iranian penal code, and, also, in other Islamic criminal codes, have roots in the Koran (Chapter VI, verse 152: “... don’t kill any soul, except this is right...”; Chapter IV, verse 94: “who kills a believer by will, will be sent to hell”)⁷ and apply for:

- Murder committed with intent (in this case the victim’s family members may choose capital punishment, financial compensation or forgiveness of the perpetrator),

- “Fasad fil Ardhe” in translation means: Spread of evil in society, and could refer to the following things: treason, terrorism, air or land piracy, rape, adultery, homosexuality.

Islamic courts may decide to replace capital punishment with other punishments, if consider that the act is not proved enough.⁸

Capital punishment may be applied through several methods:

- Killing with stones (stoning), for example art. 84, book 2, chap. 3, which provides that old married doers, will be flogged before being stoned.

- Crucifixion-for example art. 190 (Iranian Penal Code), regarding the armed attack on people.

b. Iranian Penal Code provides *whipping*, and it’s exemplified with the art. 174-176, book 2, chapter 6, which provides that the penalty for public intoxication is 80 lashes.

Examples of the Qur’an: Chapter 24, verse 4 “Those who defame honest women, and aren’t sustained by 4 witnesses, will receive 80 lashes ... “⁹

c. *Amputation* (e.g. of the Koran: Chapter V, verse 42 “cut the robbers” hands, as a reward for what they did”), is the penalty prescribed, particularly for theft (Article 201, Penal Code of Iran). In this case, for the first offense the doer has his right hand fingers cut (without palm and thumb), for the second offense he has half of left foot cut, the third act is punished by imprisonment and the fourth time the sanction will be the death penalty.

⁷ Silvestru Octavian Isopescul, op.cit., p. 143.

⁸ www.islam.about.com.

⁹ Silvestru Octavian Isopescul, op.cit., p. 261.

There are some exceptions to the amputation, if the theft is committed under the following circumstances: during famine; if a worker steals from the employer who didn't pay him; if the object is taken from public property; if the value of the property is insignificant; if the object stolen was left as temptation for thieves. In these cases, a judge may replace the punishment.

d. *Prison* is provided for the offense mentioned in art. 609, which is penalizing the insults of certain people with high or religious rank except in severe cases). This offense is punishable by imprisonment from 3 to 6 months, 74 lashes or a fine from 50,000 to 1,000,000 rials.

e. *The fine* is a penalty applied to different crimes; an example may be at the top.

f. *Exile* (e.g. the penalty for pimping), etc.

2. In terms of *the degree of flexibility* on the implementation of sentences, they are classified into:

a). *Hudood* (plural of *Haddad*) - penalty whose form, extent and character is defined in shariia. (Article 13 Iranian Penal Code).

This type of punishment is provided for the following offenses:

Adultery-sexual intercourse, including anal sex between a man and a woman (at least one of them must be married), unless the act is committed involuntarily.

Adultery is punishable as *Hadd*, if adulterous is mentally healthy, have the age of criminal responsibility and free will (art. 64-65, CP Iranian).

Penalties imposed for this offense are whippings and stoning, depending on its severity.

In Article 75, it is said that adultery is punishable by flogging if proved by the testimony of 2 men or 3 women. If the adulterous confesses and repents before the witnesses' testimony, his deed will not be punished as *Hadd* and the judge may impose a *taazir* penalty.

Capital punishment for adultery is applied in the following cases (Art. 82, Iranian Penal Code): when committed by a close blood relative; between stepmother and her stepson; if a Muslim woman and a non-Muslim man commit the adultery, the man will receive the death penalty.

According to the art. 83, the capital punishment, materialized by stoning, is applicable for married adulterous, be it male or female, who may have free sex with spouse. If their sexual life was affected by the fact that their spouse was away on long journeys, was in jail, etc., their offense is not punishable by death.

A whipping is applicable in case of adultery, in less serious cases, for example, if a woman commits adultery with a minor, the last will be whipped.

Also, Iranian Penal Code provides as punishment for not married adulterous, 100 lashes.

Islamic law provides clear procedures for applying sanctions. Thus, if the punishment is whipping, the man will be stripped, and strikes will be applied, while standing without touching the head and genitals, and the woman will sit with clothing linked to the body.

In case of stoning, the man is put in the ground up to waist and women up to breasts and they will be hit with stones (art. 100-102).

Sodomy is sexual intercourse between two men and the punishment for that is death, the way of materializing being chosen by the judge (art. 110).

To be punished with death, offenders must be physically healthy, mature and have free consent.

For juveniles who commit sodomy, the punishment is 74 lashes (Article 113).

The proof for adultery is the testimony of 4 just men (Article 117) and whether witnesses are less than 4, they will be guilty of false accusation (*quazf*), sodomy not being proven.

Lesbianism (*mosaheqeh*) is punishable by 100 lashes for each party, and if the offender has previously committed this type of offense 3 times and each time she was punished, the fourth time will be sentenced to death (Article 129).

Pimping is punishable with 70 lashes and banning from the area of residence for a period from 3 months to one year for men and for women sanction being 75 lashes (Article 138).

False sexual accusations (*quazf*) are punishable with 80 lashes (Example from the Qur'an: Chapter 24 / 4 " Those who defame honest women, and aren't sustained by 4 witnesses, will receive 80 lashes.").¹⁰

Theft is punishable, as we previously noted, by amputation, with the exceptions mentioned.

Armed attack on people is attacking one or more people using weapons: firearms or arms (Art. 80-Iranian Penal Code) and is punishable by: execution, crucifixion or exile (Art. 190 Penal Code of Iran).

b). *Ghesas* is the punishment that should be equal to the offense (Article 14), (can be translated as "eye for an eye"), and it is applicable to homicide and injuries.

In this case, the victim (in case of personal injury) or its heirs (in case of murder) may require the same punishment as the act, a financial compensation (*dyieh*) or may decide that the perpetrator be forgiven (Art. 261) (Example of Koran: Chapter IV, verse 24: "that, who accidentally kills another believer must give a ransom to the victim's relatives, unless he is forgiven...").

From case to case, sentencing may have specific issues, pointing through art. 209, which states that if a Muslim man intentionally kills a Muslim woman, the death penalty could be applied, but before implementation, relatives of the victim has to pay to the killer " of financial compensation related to that case.

c). *Diyeh* (redemption of blood) is a financial penalty imposed by the judge, applying for: killing (Book 4, Part 2); bodily injury (Book 4, Part 9); strikes; abortion.

d). *Taazirat* is the sentence whose type and degree is not specified in shariia, being chosen by the judge, and may take the form of imprisonment, scourging, or fine is applicable for: insulting state officials or religious sanctities; personal insults; offenses against public moral; libels and revilements; escaping from prison, etc.

This kind of punishment is similar as manner of presentation (not in content) with those established in European penal codes. As an example we mention the art. 608 (Iranian Penal Code) that describe personal insult as: swearing and using profane language against a person (unless the act is considered false accusation and punishable by hood) and should be punished by 74 lashes or a fine to 1000000 of ryal.

¹⁰ Silvestru Octavian Isopescu, op.cit., pag. 261.

3. Another classification of the sentences of Islamic law could be: preventive punishments and subsequent sanctions, imposed for offenses committed and proven.

Preventive punishments are those imposed by govern in order to maintain order and public tranquility and could take the form of imprisonment, fine or scourging.

4. Also, penalties could be: material (fines, *dye*) or tangible (capital punishment, whipping, etc.)

5. Another classification could be: simple sentences (e.g. Article 88, which provides 100 lashes as punishment for adulterous man or woman) and cumulative (e.g. Article 84: old married adulterer or adulterers shall be flogged before being stoned).

We observe that proving offenses under Islamic law is quite strict and rigid (Article 74, stipulates that adultery is proved by the testimony of 4 women or that of 3 men and 2 women). If the number and composition of the witnesses aren't observed, these could be punished for false accusation (Art. 76).

Also, although hood is a fix penalty, there are both cases of unpunished (article 81 which states that if adulterer or adulteresses confess and repent, they won't be punished) and mitigating circumstances (Art. 86 IPC) or aggravating, for example: the theft or 3 times repetition of adultery.

4. WOMEN AND PUNISHMENTS IN ISLAMIC LAW

(Qur'an, Chapter IV, verse 38: "Men are ahead of women, because God made those before them... Those women of which you are afraid that will upset you by their behavior, tied them in their rooms and beat them ...")

Article 2 of the Universal Declaration of Human Rights provides that the rights (mentioned in the declaration) are equal regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Unlike democratic penal codes, where the provisions are applied consistently and equally to both sexes (of course, except those related to natural intrinsic quality of being male or woman, for example the penalty for infanticide), Islamic law discriminate, especially concerning the penalties applicable to men who have committed crimes against women and also the role they play in crime prove.

Thus, Article 209 (Iranian Penal Code) requires that if a Muslim man intentionally kills a Muslim woman, before penalty, women's family must pay to murderer half of the blood money.

So, female relatives might decide that the perpetrator should be put to death, pay *dye* or be forgiven.

From the analysis of this article we find that in fact the killer pays only half the money if *dye*, or if it receives the death penalty, his successors will receive an amount of money.

Also, art. 630 P.C.I. provides that a man, who surprises his wife in a suspicious position suggesting that she has committed adultery with a man, he may kill both of them, but if she is reluctant, husband should kill only the man. Women don't have the same right if their spouse is caught in a similar position. ¹¹

¹¹ www.islam.about.com.

This article violates certain rights established by the Universal Declaration of Human Rights as: presumption of innocence, the right to benefit of a fair trial and equality of the sexes.

Promotion of private justice is, also, very dangerous.

Regarding the crime prove, we observe that accusation made by woman worth half of man's (e.g. Article 74- adultery can be proved by the testimony of four men or three men and two women), which notes that the testimony of a man is equal with that of two women's or Article 117 which requires that evidence for sodomy is the testimony of 4 men, women's testimony being ignored.

5. THE IRANIAN PENAL CODE AND MINORS

Iran adopted the Convention on the Rights of the Child, in 1994, art.37 mentioning that death penalty or life imprisonment for people who have not reached 18 years, aren't allowed.

In order to avoid this article, in Iran, minors who committed crimes punishable by capital punishment, are imprisoned and executed after the age of 18 years.

For example, certain convicted minors were put to death just before 18 years, Iranian officials saying that they hadn't been sentenced to death by a decree of a court, but as subject to "*ghesas*", and the decision of execution had been taken by the family of the victim.

Iran is the country with the most executions of juveniles worldwide, for example, in June 2009, at least 160 children were waiting to be executed (in order to reach 18 years).¹²

Under Islamic Criminal law, and also under article 1210 Civil Code, boys are considered civil and criminal responsible from 15 years and girls from 9.

Article 49 of Penal Code of Iran provides that if a minor commits an offense, the parent / guardian (if the minor is arrested) is responsible for his education, including applying corporal punishment, in a limited and appropriate way.¹³

Islamic law provides mitigating circumstances or special penalties for minors, except some cases, for example, Art. 113- Iranian Penal Code, which states that if two minors commit sodomy, they will be punished with 74 lashes (punishment for adults is execution).

6. INTERACTION BETWEEN ISLAMIC LAW AND DEMOCRATIC SOCIETIES

Currently, in Europe and in other democratic areas of the world, there live billions of Muslims, many of them observing the laws due to the punishments provided by them and not due to intimate belief, being convinced that Islamic law is better than democratic law.

As a consequence of that, there are people, who, in the spirit of democracy, have required implementation of certain issues of Islamic law in the law of the states where Muslims are an important community.

¹² www.stopchildexecutions.com/updates/SCE-Iran-UPR-NGO-submission-Sept-2009.

¹³ www.endcorporalpunishment.org/pages/progress/reports/iran.html.

Moreover, there are states where function illegally “sharia” courts.

Thus, it seems that in Great Britain there are 12 such courts, called Islamic Sharia Councils, especially, focused on noncriminal aspects.

As well as this, even non-Muslim state and religious officials recommend the inclusion of specified issues of shariia in the law of their countries, among them, even the archbishop of Canterbury, Rowen Williams, who recommends that the legal system should adapt to the ethnic-religious reality of U.K..

Also, Marion Boyd, a former governor of the Canadian province of Ontario suggested that Muslims be able to solve civil and marital disputes under Islamic law.¹⁴

Achieving such goals isn’t impossible in the future if we look other events, such as gay marriage, which, seemed impossible, 30 years ago, but, currently, there are legal in many countries, due to democracy and human rights.

7. CONCLUSIONS

In the regard of the above, we conclude that Islamic criminal law does not ensure a proper observance of the provisions of international conventions and pacts on human rights or ensure that only formally, avoiding their essence (for example in Iran, the executions of the minors sentenced to death are delayed until they celebrate 18 years).

As a personal point of view, Islamic religion should not be considered as the main culprit, but the governments of the states which apply inhuman and degrading punishments and measures, which could be: absolute monarchies, such as Saudi Arabia, authoritarian regimes (e.g. Iran) or primitive forms of leadership (in Africa).

Also, another impediment is the basic interpretation of the Koran or other religious writings, which are imposed to society by the discretionary forms of government and educational systems of these countries.

In spite of democracy extending, Islamic law and Muslim world can exist if the legal and religious precepts are adjusted to the current reality.

An encouraging example could be the Constitution of Palestine.

Turkey, whose most citizens are Islamic, but the law and society are adapted to democracy, could be, also, a good example.

I believe that we should not blame the Islamic law for providing the death penalty, because many states of the U.S.A. provide this, but we should blame the methods that bring out the punishments.

Of course, tradition slow down the process of modernizing Islamic criminal law, but I think that is possible, both observing human rights and preserve the tradition.

As a personal point of view, I would suggest using symbols to comply tradition of Koran in Islamic criminal law. For example, as a punishment for theft, I would suggest the imprisonment and as an ancillary punishment, a „symbolic amputation” by tattooing the

¹⁴ Ana-Maria Vieru and Catalina Mihai, “Legea islamică, în Europa?”, feature from newspaper “Adevărul”/ 13.02.2008.

offender's hand, in order to show to the citizens the offense he committed. I consider that, this way, the effects of punishment would be quite important¹⁵.

Mentioning these, I wouldn't say that the criminal law of the democratic states is perfect, and as an example of imperfection I mention that the law of such states allow an interpretation of human rights more in favor of the offender, than for the victim or witness (e.g., according to Romanian criminal law, a rapist can avoid or postpone preventive arrest, claiming a procedural defect, and because of this, witness could be afraid, and might change his statement).

As a positive conclusion of studying Islamic law is that applying a strict criminal law (without excess), including procedural terms, may lead to a decrease of criminality and may help the authorities to fight more efficiently against offenders.

REFERENCES

- Ana-Maria Vieru and Catalina Mihai, "Legea islamică, în Europa?", feature from newspaper "Adevărul"/13.02.2008,
Penal Code of Iran, http://mehr.or/Islamic_Penal_Code_of_Iran.pdf.
Universal Declaration of Human and Citizen Rights.
Sami Aldeeb, "Report on the Arabic version of third draft of the Constitution of the State of Palestine revised April 27, 2003", Laussane, May 3, 2003.
Silvestru Octavian Isopescul, "Coranul", Ed. Cartier, Chişinău.
www.wikipedia.org.
www.islam.about.com.
www.stopchildexecutions.com/updates/SCE-Iran-UPR-NGO-submission-Sept-2009.
www.endcorporalpunishment.org/pages/progress/reports/iran.html.

¹⁵ This is a personal opinion, presented with the necessary excuses for anyone who feel offended or upset by this, but my point of view is that trying to restrain the area of the extreme punishments and starting to use symbols is a step forward for a real consensus between Islamic criminal law and human rights.