

2016-05-20

Fråga-svar

Iran. Dubbel lagföring och bestraffning

Fråga

- Kan en iranier som återvänder till Iran straffas för narkotikabrott som begåtts och avtjänats i Sverige?

Svar

Nedan följer en sammanställning av information/länkar kring dubbel lagföring och bestraffning, samt straff för narkotikabrott i Iran. Sammanställningen gör inte anspråk på att vara uttömmande. Refererade dokument bör alltid läsas i sitt sammanhang.

Den iranska strafflagen (IPC) reviderades 2013 och omfattar numera bestämmelser avseende tillgodoräknande av straff avtjänade utomlands och förbudet mot dubbel lagföring och bestraffning. Dessa bestämmelser gäller dock endast för s.k. *ta'zir* brott.

Islamic Penal Code (IPC);

- [Book One and Book Two](#): omfattar bestämmelser och definitioner, resp. islamiska hudud som avser brott med bestämda och stränga straff (*hadd*).
- [Book Five](#): omfattar *ta'zir* brott och straff, brott mot rikets säkerhet, brott mot egendom och brott mot människor.

Dubbel lagföring och bestraffning

Nedan följer kommentarer från flera källor angående principen i iranska strafflagen:

Poorbafrani/Zamani (2015):

2. The Principle of Double Jeopardy

The inclusion of double jeopardy is the only uncontroversial development built into the 2013 Code as regards the personal principle.³³ Double jeopardy has become an important safeguard for protecting the rights of individuals in the field of international human rights.³⁴ According to this principle, respecting fairness and justice requires that an accused be held judicially responsible for an illegal action only once. 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.³⁵ 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.

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 it comes to offences of the kind susceptible to such types of punishments as hadd, 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.

(s. 127-8)

UK Home Office (2015):

10.5 Double Jeopardy

10.5.1 The Iran Human Rights Documentation Centre 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.'76

ACCORD (2015):

7.1.3 Information on fair trial guarantees and safeguards against double jeopardy

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As regards the issue of “double jeopardy”, Tellenbach 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 acquitted or has entirely or partially served his/her sentence in the country where the crime had occurred (Article 7). 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 judiciary 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 (Tellenbach, 2014, pp. 780-781). (s. 174-5)

Narkotikabrott

Enligt Irans Anti-Narcotics Law är narkotikabrott belagt med böter, fysisk bestraffning, fängelse eller dödsstraff. Lagen reviderades 2010; straffskalan för brott belagt med dödsstraff breddades då med en rad ändringar som trädde i kraft i januari 2011.

[The Anti-Narcotics Law](#); inkl. ändringar 1997, exkl. ändringar 2011.

En elektroniskt översatt version av 2011 års ändringar var vid söktillfället inte tillgänglig, men flera källor har kommenterat ändringarna:

I en [Amnesty-rapport \(2011\)](#) ges en sammanfattning av 17 brott som är belagda med dödsstraff under 2011 Anti-Narcotics Law (s. 45).

The Guardian (2011):

They amended the anti-narcotics law, which already imposed corporal punishment for less serious drug crimes and the death penalty for trafficking, possession or trade of more than 5kg of opium, 30g of heroin or morphine (and repeated offences involving smaller amounts) or the manufacture of more than 50g of synthetic drugs such as methamphetamines a capital offence.

IHRDC (2012):

Iran's Anti-Narcotics Law mandates the death penalty in cases of possession or trafficking of more than a specified amount of various drugs. The range of offenses punishable by death was broadened with a series of amendments to the Anti-Narcotics Law that came into force in January 2011. The amended law mandates the death penalty for a wider range of illegal drugs—including the possession or trafficking of more than 30 grams of methamphetamine.

University of Essex (2014):

The Anti-Narcotics Law seems to allow for even further expansion of the list of drugs, possession of which is punished by death, since it stipulates that, if passed by the Parliament, this list can be extended to other non-medical drugs affecting mental activity (i.e. non-medical psychotropics).⁶²
(s. 11)

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

Källförteckning

(Källor hämtade 2016-05-20)

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