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## Investigating the comparative approaches of criminal law in Iran with the United States and the European Union regarding the espionage crime

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### ABSTRACT:

Crimes against national security including espionage are serious crimes. Espionage crime is an organized and transnational crime in which the vital information of a country is provided to other country or countries through organized and human resources. Examining the basis of criminalization of espionage, its interaction with the main crime and the constituent elements of this crime in Iranian law are among the most important issues that have been addressed in this research through descriptive-analytical method and from library sources. Considering that Iran's legal system in criminalizing espionage has been influenced by the German Roman system and at the top of them France, espionage is one of the crimes that has a special place in all the classifications presented in the field of crimes against security. Investigating espionage in the European Union laws (case study: England, Germany and France) as the cradle of the modern and American legal system and its adaptation to the legal articles related to espionage in the laws of Iran, in showing the gaps and legal deficiencies of this crime in the laws of Iran, is very fruitful. From the comparative analysis of the crime of espionage, it was concluded that despite the Iranian legislator's attention to this crime and placing it in the chapter of crimes against security, there are flaws in the legislator's approach, which does not provide the possibility of effectively dealing with the perpetrators of this crime. Also, Iran's legislator has expanded the scope of cases of violations of the principles of criminal law more than necessary, and this is not only in the interest of the society but it will also have harmful effects on the government in the long terms.

### Introduction

Espionage is one of the crimes that has a special place in all the divisions presented in the field of crimes against security. The main reason for this privileged position should be considered without a doubt in the high level of danger created by this crime and for the security of every country. When it comes to espionage, the common mind of the people who

have little information about the details of this crime is more aware of the famous spy networks and organizations of different countries. However, it should not be assumed that espionage in the world is limited to these organizations, but this crime is committed in different countries by different people and organizations, and the 80s were called the decade of espionage due to the growth of this crime in this decade. About five hundred books about this crime have been written



by historians, journalists, military analysts, politicians and by lawyers and criminologists to a lesser extent. One of the clear and old examples of crimes against security is the crime of espionage, which is usually an organized crime and time transnational at the same, because the vital information of a country is provided to the country or other countries through an organized system and human resources, not like the information satellites of the countries. This research is trying to answer these questions: What are the differences between Iranian and French espionage laws regarding the material element of espionage, and what is the difference between Iranian and French laws regarding the psychological element of espionage? The assumption of the current research is that the criminalization of espionage in French law in terms of the material element of espionage is much more than espionage in Iranian law. Differences in the subject of espionage, new criminalizations and the use of general terms are among these cases. In French law, as a rule, general malice is sufficient, but in Iranian law, in addition to general malice, special malice is required.

## Basics and concepts of the research

### Espionage

Espionage is one of the criminal titles that have been used in the criminal texts of different countries, and in some countries' laws, espionage is clearly defined and separated from other similar crimes such as treason. In the criminal laws of some other countries, the espionage crime is not defined, but some examples of espionage are mentioned. It can be said that the legislator in these countries has tried to define espionage in a vague manner so that at any stage he wants to match an issue with the crime of espionage according to the requirements of the time and place so that there is no legal obstacle in its way. Despite the numerous criminal laws of our country, the legislator has not defined the crime of espionage and related crimes. This means that the lack of a comprehensive definition of the espionage crime has caused that espionage cannot be separated from the crime of treason in some cases and has led to the mixing of these two concepts

in the subject laws of Iran<sup>1</sup>. Currently, the lack of a legal definition of the espionage crime has caused that the examples of this crime are not easily recognizable and also there are no clear and certain sources to identify the nature of the espionage crime and its conditions and elements. For this reason, it is necessary for the legislator to fill this legal gap and put effort into this matter.

### Defending of political sovereignty

Security is one of the most important issues that plays a vital and decisive role in the stability of governments and the independence of countries. According to this, crimes against the country's security including espionage can be considered as the biggest threat to the security and independence of countries. One of the clear and old examples of crimes against security is the espionage crime, as an organized crime in which foreign hands are usually observed. "Espionage has been one of the most important tools for military supremacy, overthrowing governments and realizing coups, a clear example of which is the American coup on August 28, 1332 in Iran, which was realized with the direct intervention of the American spy organization (CIA) and during which the CIA cooperated with the Britain government overthrew Mossadegh's government in a plan called "Ajax".<sup>2</sup> However, it should not be assumed that espionage in the world is limited to these organizations, but this crime is committed in different countries and by different people and organizations. The 1980s have been called the "decade of espionage" due to the growth of committing this crime. The importance of the espionage crime is such that about five hundred books have been written about the espionage crime by historians, journalists, military analysts, politicians, and to a lesser extent, lawyers and criminologists. Spies are also called "secret eyes of politics".

### Historical developments of crimes against the country's security in contemporary times

#### Europe

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<sup>1</sup> Validi, Mohammad Saleh, special criminal law, vol. 1 and 3, second edition, Tehran, Dad publishing house, 1373, page 103.

<sup>2</sup> Zaeem, Koorosh, National Front of Iran, first edition, Tehran, Iran Mehr Publications, 1378, page 258.



The punishment for espionage and treason has undergone various changes and developments throughout history. As we mentioned, in the past times, criminals against the security of the state were treated with great severity in the country, and in contemporary times, due to the popularization of the opinions of lawyers and politicians after the great French revolution, this way of thinking arose that this kind of criminals must have leniency and the society's treatment to them should be far from any insult and humiliation. For example, this procedure is followed in France, but in recent years, the French legislator has a tendency to act strictly in the case of crimes against the security of the country was restored and the death penalty, which had been abolished before, was implemented. Dr. Sanei writes about this: Punishment of political criminals has always been harsh and severe throughout history. Only after the revolutions of 1830 and 1840, there was a change in jurists minds towards political crimes, and as a result of this change, the penal regulations of France and, following this country, many South American countries and the Middle East, including Iran, became more lenient and amenity considered it necessary in the case of political criminals. In recent years, there is a tendency to be stricter regarding political crimes. In court, it should be noted that the concept of "political crime" and the need for different treatment in the case of political criminals is specific to the codified law, and in "Common Law" countries, there is no distinction between different crimes in this regard. In addition, in communist countries laws, political crime does not have a separate title, and the punishment for treason which refers to actions against the internal and external security of the country is death, like some other crimes<sup>3</sup>. On the other hand, in the beginning of the 19th century (around 1810), according to the French penal code, which was prepared and regulated under the guidance and influence of Napoleon, political crimes (treason against the internal and external security of the country) were separated from ordinary crimes, and this separation compared to previous times was due to the increase in punishment for crimes such as espionage and treason. After the fall of Napoleon, public repentance was drawn towards political criminals and the growth of

libertarian and revolutionary opinions caused positive and supportive attention towards this group of criminals to appear in many revolutionary circles. New laws and reforms in the past penal laws started with the revolution of 1789. In fact, in the following years, it created a rapid movement to eliminate the injustices that existed in the previous criminal laws. The laws of 1790 and 1791 and the laws after that and Bekaria's reform recommendations regarding punishments implemented principles such as establishing the principle of equality in criminal matters and personalizing punishments and the wording of the minimum and maximum punishment, eliminating the death penalty and accepting the jury. After the world wars, which caused changes in most countries, it caused the border lines to change. At that time, when the statistics of crimes of espionage and treason against the country showed an increasing trend and the activities of opponents of the governments led to the expansion of actions against the governments until the territorial integrity and security of the country was threatened, as a result, the governments are thinking of developing more severe criminal measures against such actions were taken. This strictness is clearly seen in most countries of the world.

## Iran

In recent centuries, the laws of Iran, especially the laws related to political crimes and treason, have undergone many changes and ups and downs. One of the sharp differences of opinion from the legal point of view in contemporary times has been about the nature of the above crimes, and different opinions have been expressed by jurists which were examined in the previous discussions and in our opinion the principle agreed with the normality of the above crimes. During the time of Naser al-Din Shah Qajar, laws and systems were created in imitation of western societies, and the Italian Dumont Fort was invited to travel to Iran in order to establish public order and establish the police. After arriving in Iran, he was appointed to the service of the Iranian government and by imitating the European countries, he prepared the law book containing 58 articles. In this booklet, articles 1, 11, 20, 28 are related to crimes of espionage and treason against the

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<sup>3</sup>Sanei, Parviz, General Criminal Law, Volume 1, pages 390-391.



government, the king, his relatives and agents.<sup>4</sup> With the constitutional movement and the establishment of the constitutional monarchy and the drafting of the first constitution of Iran in 1285 A.D and its signing by Muzaffareddin Shah, a change took place in the determination of crimes and the quality of proceedings and the execution of punishments. This constitution which was approved in 51 articles, was actually nothing more than a resolution and many basic issues were not discussed in it, so a commission composed of eight people was formed after the death of Muzaffareddin Shah to prepare the amendment to the constitution. The influence of Western-oriented intellectuals and the neglect or trust of spiritual leaders in these elements led to the increase of western tendencies in the amendment of the constitution, and if it were not for the opposition of Sheikh Fazlullah Nouri to add an article to the amendment of the constitution, the supervision of five scholars of each age over the approvals of the parliament was not approved either. Subsequently, in 1304 A.D., the general penal law was approved, which created a new codified penal system regarding espionage in some of its articles, as well as subsequent disputes. The second chapter was about misdemeanors and crimes against the country's security that in the first topic of this chapter, articles 1-7 of the amendment of Khordad 22, 1310, as well as articles 61-68 of the general penal law approved in 1304, were discussed in the crimes against the country's external security and in the second section of articles 69-75, crimes against the internal security of the country are assigned, which are crimes such as cooperation with the enemies of the country, war and fighting, espionage or encouragement to arm against the national government, attempt on the life of the head of state, or insulting him With the approval of subsequent amendments, some legal articles related to treason and espionage, which were approved in 1304 A.D were repealed. After the victory of the Islamic Revolution in 1357 A.D, new laws regarding espionage, treason and political crimes were approved. In fact, 168 of the constitution of the Islamic Republic of Iran states: The handling of political and press crimes is public and

takes place with the presence of a jury in the courts of justice, and the definition of a political crime is determined by the law based on Islamic standards. In our opinion, espionage and treason are not rare cases of political crimes. In 1358 A.D, with the approval of the legal bill, the effects of past political convictions suspended, and by this means, the effects of convictions such as actions against the country's security, opposition to the royal authority, espionage, etc., were removed. On 27/03/1378 A.D, the regulations of the revolutionary courts were approved, and some of its articles mentioned crimes such as espionage and treason.

## Findings and discussion

### Crime subject

Article 24 of the criminal law of the armed forces approved in 1382 A.D states several examples of espionage crime. In paragraph A of the aforementioned article, documents or information or objects with informational value are considered the subject of espionage crime, and in paragraph C of the article, secrets are divided into military, political, security, economic, or industrial, and the subject of the espionage crime is ruled in more detail in the law on punishment for publishing and disclosure of confidential documents of government approved on 29/11/1353 A.D and article one of the aforementioned law states: "Government documents are any type of written or recorded information related to the duties and activities of the ministry and government and government-affiliated institutions and government companies, such as correspondence, offices, files, photographs, maps, stereotypes, charts, films, microfilms, and audio tapes prepared in the aforementioned authorities or received by those authorities, according to the aforementioned materials to some extent, the subject of espionage crime in terms of the law."<sup>5</sup> But in general, it can be said that the subject of espionage crime is divided into information and objects:

### Information

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<sup>4</sup> Damghani, Mohammad Taqi, Iran's first laws before constitutionalism, Behzad Publications, first edition, Tehran, 1357, Pages 7-28

<sup>5</sup> Taji, Hossein, Espionage in the territory of crimes of the armed forces in Iranian criminal law, master's thesis, Damghan, 2016.



Collecting and studying information has always been introduced as one of the examples of the crime of espionage. The Iranian legislator has mentioned it in Article 505 of the Islamic Penal Code and Clause 24 of the Military Responsibility Law, and the French legislator has also mentioned this issue in Article 411-7 of the new Criminal Law and Article 1-476 of the Military Justice Law. But it should be noted that in the field of including secrets and information, the criminal policy of Iran and France have many differences. The Iranian legislator is more concerned with providing general classifications in this field and has left its types and types to the executive authorities, as it can be seen that the legislator has not given any definition about classified information in Article 505 of the Islamic Penal Code. But the criminal policy that the French legislator has followed in this regard is a little different. By changing the scope of this crime, the French legislator has extended the subject of this crime to economic, social, cultural and industrial activities.

## Objects

In addition to information, objects can also be subject to espionage crime. From analysis of the Iran's laws, we can conclude that Iran's criminal policy is limited to information and documents, but on the other hand, France's criminal policy in Article 411-7 accepts objects (tangible material property) as the subject of espionage crime.

## Criminal behavior

Criminal behavior is an act or an omission:

Action: The actions used in the case of espionage are: collecting information, transferring it to unauthorized persons, entering prohibited places, transferring false information to the authorities, complicity with a foreign power, transferring territory and reformed forces to a foreign force.

## Gathering information

Article 505 of the Penal Law approved in 1375 A.D indicates that "anyone who collects classified information by any means with the aim of disrupting the security of the country under the guise of the officials of the system with government agents or any other means... shall be sentenced from one to five years in prison." Therefore, gathering information is

known as one of the examples of criminal behavior of espionage offenders. In France, the legislator has mentioned this issue in Article 411-7 of the new Criminal Law and Article 1-476 of the Military Justice Law. However, with the difference that our legislator has considered the necessity of classifying information as a condition in Article 505 (Q.M.A.), but from the point of view of the French legislator, information must be inherently against the basic interests of the French nation. It should be noted that in the new criminal law of France, by expanding the scope of the espionage crime, the legislator has actually increased the scope of the information that may be the subject of espionage crime, so according to the new law, it can be said that industrial and commercial information is also possible. become the subject of espionage.

## Transfer to unqualified persons

As in Article 26 of the Armed Forces Crimes Punishment Law approved in 1383 A.D, it is stipulated that "any military personnel who provides documents, negotiations, decisions or classified information to persons who do not have the authority to know about them, or If he informs them of its contents in any way, he will be punished according to the classification of the relevant documents or information." What is foreseen in Article 26 of the Criminal Law of the Armed Forces is related to cases where secrets are given to unauthorized persons, who are not necessarily enemies. Article 501 of the Criminal Code is also an example of this criminal behavior, which has many ambiguities. The first ambiguity is that in the mentioned article, it did not provide a definition of documents and plans or secrets and decisions of foreign and domestic policy. Some legal writers have said that the meaning of the legislator is all that is related to government affairs. On the other hand, some other jurists see it as a supervisor of domestic and foreign security policies. But this difference is not seen in France due to the policy of expanding the scope of criminalization. Because in France, anything that is against the basic interests of the French nation can be an example of espionage. Another difference between Iran and France in this field is the necessity of secrecy. In Iran, there is a consensus among lawyers on the necessity of secrecy of information, But in France, according to the policy of expanding the scope of criminalization even in other



economic and social fields, the necessity of secrecy seems unnecessary.

## Entering prohibited places

Article 503 of the Penal Law approved in 1375 A.D has the words: "Anyone who enters the relevant positions with the intention of stealing or mapping or obtaining information about political, military or security secrets, and also such persons who enter without the permission of the agents or competent authorities, caughting while mapping or filming or taking pictures of military fortifications or prohibited places, will be sentenced to six months to three years in prison. Paragraphs D and H of Article 24 of the Law on Punishment of Armed Forces Crimes approved in 1382 A.D foresee crimes similar to the crime mentioned at the beginning of Article 503. In France, articles 413-5 and 413-7 can be cited in this regard. In spite of the fact that the permission or impermissibility of entering security places in our country has been faced with the lack of clarity of the legislator, but in France, the impermissibility of entering security places is explicitly foreseen in articles 413-5 and 413-7. Even in France, there is a difference between a case in which a person entered without the permission of the competent authorities and a case in which a person entered with false and fraudulent titles. The punishment of the first case is six months of misdemeanor imprisonment and a fine of 750 thousand euros, and the punishment of the second case is one year of imprisonment and a fine of up to 150 thousand euros. But the Iranian legislator does not distinguish between different types of entry. It should be noted that the French legislator's only recognition of general malice has made this act recognized as one of the crimes against the armed forces, but in Iran, due to the fact that the legislator considers special malice to be a necessary condition this act is an example of espionage crime. Another point worth mentioning is that the realization of the material element of Article 503 of the Islamic Penal Code is not dependent on entering military and security places, but taking pictures or mapping from outside can also be included in this example. It should be noted that in 1375, by adding the clause "prohibited places" to Article 503 of the Islamic Penal Code, the legislator has also increased the scope of this crime.

## Transferring false information to authorities

Transmitting false information to authorities is a new crime that the French legislator has recognized as an example of espionage. Article 411-10 of the French Penal Code mentions that the realization of this crime has conditions.

- The receiver or receivers of the information are the responsible military and national officials, so spreading information among ordinary people cannot be an example of this crime.

- The provision of information should usually have conditions that make its recipients make mistakes and are harmful to the basic interests of the French nation. According to Article 411-10, the perpetrators of this crime are subject to seven years of misdemeanor imprisonment and a fine of up to one hundred thousand euros.

## Collusion with a foreign force

Collusion with foreign powers has been criminalized by the legislator in Article 508 of the Islamic Penal Code. One of the important points in Article 508 is the legislator's use of the two terms "government" and "hostile" in the text of Article 508. The use of the term government causes foreign organizations to leave the scope of the above article. that the French legislator has prevented the exit of foreign organizations from espionage cases by using the term "foreign force or organization or their agents". The term hostile has also made it include only countries that have hostile relations with Iran. But the French legislator has not limited this case only to states that have hostile relations. Complicity with a foreign power is also recognized in French criminal law. This example of espionage has been affected by the policy of sentencing. The penalty of life imprisonment of the former law has been reduced to a penalty of up to 30 years of criminal imprisonment and a fine of up to 450,000 euros. In French criminal law, providing means of complicity with a foreign power is also criminalized. And the amount of the punishment is equal to the punishment of being in complicity with a foreign power. However, in Iran's law, the act of acting as a deputy in complicity with a foreign power will not have an independent criminal title and will be subject to general regulations.



## **Transferring the territory and armed forces to a foreign force**

Surrendering all or part of the territory, the armed forces to a foreign power is mentioned as the first example of espionage in French law. Articles 411-1 and 411-2 refer to this case in French law and the punishment is life imprisonment and a fine of 750,000 euros. However, for surrendering material means, supplies and facilities, it is up to 30 years of criminal imprisonment and a fine of up to 450,000 euros. Of course, the surrender of the territory and armed forces to foreign force is also foreseen in Iran's criminal laws. Article 62 of Civil Law 1304 A.D and also Article 2 of the Penal Law of 1362 have general titles that can include the surrender of the armed forces and the national territory.

## **Leaving mission**

Both Iran and France agree on not accepting the crime of espionage, at the same time, laziness and failure to preserve information and news in both countries is an example of espionage. In our country, Article 506 of the Islamic Penal Code has criminalized this act. In Iranian criminal law, this case is limited to government officials who were responsible for security affairs. But on the other hand, in French criminal law, any person, including self-employed and government employees, who have been a trustee, can be subject to Article 413-10 of the French Criminal Code. Another difference between Iran's and France's criminal law in this regard is that in Iran's law, government officials who are subject to information protection must release information, but in France's law, the act of negligence is sufficient for this crime. But on the other hand, in Article 27 of the Civil Code of the Armed Forces in addition to the disclosure of documents, the legislator has also mentioned the loss of information, so we conclude that the Armed Forces Law is more complete than the Islamic Penal Code in this regard.

## **Spiritual pillar**

This speech includes 3 parts: general malice, specific malice and criminal motive.

### **A- General malice**

General malice is a necessary and necessary element to commit any crime. In Iranian criminal law, unlike French

criminal law, the existence of both malice (both specific and general) is necessary to commit espionage crime, but in French law, only general malice is required to commit the crime. Espionage is enough and there is no need for special malice in this field. In fact, in French law, doing the act with the specific intention of espionage is not required in this field. For example, according to French criminal law, whenever a person enters prohibited places with the intention of curiosity, this person is known as a spy because he has the element of general malice, but the same person in Iran is not known as a spy due to the absence of specific malice. In only two cases in French criminal law, specific malice is required for the crime of espionage. The first example is about complicity with a foreign power (the subject of Article 411-4), which the legislator has clearly stated, and the second case is the provision of false information to government officials (the subject of Article 411-10), which the legislator has pointed to the specific malice of the perpetrators. Is. But in other cases, the French legislator has limited himself to general bad faith.

### **B- Specific malice**

As mentioned before, in Iranian criminal law, the existence of specific malice is recognized as necessary. For example, in Article 505 of the Islamic Penal Code, the legislator requires, in addition to general malice, special malice, which is actually the intention to disrupt public security. For example, in another place in Article 501 of the Islamic Penal Code, the legislator, in addition to the necessity of a deliberate and complex action in the direction of transmitting and submitting information, which is actually the general malice of the said victim, the presence of specific malice, which also requires the commission of this act with the intention of espionage has known or in the crime of unauthorized entry into military and security places, in addition to the fact that the perpetrator's action to enter these military places is considered necessary, the presence of specific malicious intent, which is stealing and acquiring information, is also considered necessary. Therefore, in French criminal law, except in exceptional cases, in the remaining cases of espionage, general malice is sufficient and there is no need for special malice.



## C. Criminal motive

Criminal motive should not be criminalized based on principles and according to general legal rules, but in our country, the legislator in Article 505 of the Islamic Penal Code, stipulates that: "Anyone collects classified information under the guise of government officials or government officials or in any other way with the aim of disrupting the security of the country by any means; If he wants to make it available to others, and succeeds in doing it, he will be sentenced to two years in prison, otherwise, he will be sentenced to one to five years in prison. As we can see, the legislator has criminalized the perpetrator of the crime even if he failed to transmit the information, in fact, contrary to the general legal principles of this case, he has criminalized the criminal motive, which seems remarkable from this point of view.

### The third speech: the legal pillar

One of the general pillars of all crimes is the legal pillar. In fact, the foundations of the legal pillar are the rational rule of the indecency punishment, and it is based on some traditions of the innocents, peace be upon them, and the honorable verse, "The tormentors are not even sent by messengers."<sup>6</sup> According to the above principle, we examine the laws of two countries, Iran and France.

#### A- In Iranian law

In the first constitution of Iran, which was drafted in the parliament on 14 Jumadi al-Akhr 1324 and approved in Article 51, there is no explicit reference to the crime of espionage. However, in principles 79, 77, 72, 24, 52, 23, 22, 35, it is vaguely and comprehensively mentioned. For example, in the seventy-ninth principle, it was stipulated: In the circuit of political and press crimes, the jury will be present in the courts<sup>7</sup>. But in the law of 1304, in the first topic of the first chapter, under the title of misdemeanors and crimes against the country's foreign security, it has discussed

espionage. In the General Penal Law of 1304 and the amendment of 1310, the crime of espionage can be considered in the following three categories:

A) Cases of the General Penal Law are formulated in such a way that they have a general concept and meaning, and it can be said that espionage is one of its examples, for example, from Article 2 of the amendment dated 22/03/1310 and Articles 62 and 63 of the General Penal Law in 1304 A.D. For example, in Article 63 of the above law, it is stated: If anyone communicates or communicates with a government citizen who is at enmity with the government of Iran...is execution<sup>8</sup>.

B) According to some articles of the General Penal Law of 1304, espionage has been explicitly stated. For example, the final part of Article 63 and Articles 67 and 67 can be mentioned in this part. For example, in article 67 of the law, we repeatedly read:... The previous article will also include those who commit the crime of espionage for the benefit of a foreign government and to the detriment of another foreign government in Iran<sup>9</sup>.

C) Article 66 of the General Penal Law of 1304 refers to the concealment of spies: whoever identifies and hides the spies or soldiers of the enemy government who were the agents of investigation will be sentenced to imprisonment from two to ten years.

### The legal bill to establish an extraordinary court to deal with anti-revolutionary crimes approved on Tir 13, 1358 A.D.

In the above law, espionage is mentioned explicitly in some cases and implicitly in some articles. For example, it is stated in paragraph A of Article 4: All the crimes foreseen in the first and second topics of the second chapter and the twelfth chapter from the third chapter of the General Penalty Law to the end of Article 261 of the law<sup>10</sup>. It refers to all the crimes foreseen in the first and second chapters of the second chapter of the General Penalty Law, the same Law of Predecessors

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<sup>6</sup> Sarikhani, Adel, Espionage and Betrayal of the Country, Publications of the Islamic Advertising Office, first edition, Qom, 1378.

<sup>7</sup> Kamangir, Ahmed, page 28.

<sup>8</sup> Kamangir, Ahmed, page 59

<sup>9</sup> Kamangir, Ahmed, page 59 and 60.

<sup>10</sup> Hojjati Ashrafi, Gholamreza, Collection of Criminal Laws, Ganj Danesh Publications, 11th edition, Tehran, 1366 page 188.



against the State approved in 1310 and other cases of the law of misdemeanors and crimes against the security of the state approved in 1304, part of which is about espionage belongs. And in paragraph and article 4, it is stipulated: the actions of those who, according to the relevant rules, engage in espionage for the benefit of a foreigner and surrender military secrets to the enemy.<sup>11</sup> As it can be seen, in the legal bill to establish an extraordinary court to deal with anti-revolutionary crimes, the same crimes of espionage before the revolution have been approved and sentenced, and it seems that the relevant laws, in clause and article 4, are the same laws before the revolution. be a revolution

## **b) Regulations of courts and tribunals of the revolution approved on Khordad 27, 1358 A.D**

In Article 2 of the mentioned law, the handling of several crimes, including the crime of espionage, is under the jurisdiction of the courts of the Islamic Revolution. Clause 4 of the above article stipulates: conspiracy against the Islamic Republic of Iran or armed action and assassination and destruction of institutions and espionage for the benefit of foreigners.<sup>12</sup>

## **c) The Islamic Penal Law approved in 1362 and 1370 and the Criminal Law of the Armed Forces of the Islamic Republic of Iran approved in 1371**

Article 12 of the Criminal Law of the Armed Forces stipulates:

The following persons are recognized as spies and are sentenced to the following punishment:

- Any soldier who acquires documents or information or administrative objects of intelligence value and provides them to the enemy and his action is harmful to military operations or to the security of installations, fortifications, bases, etc., will be sentenced to warrior against people.
- Any soldier who acquires documents or information for the enemy and fails to hand them over to the enemy for any reason, will be sentenced to imprisonment from 3 to 15 years.
- Any soldier who surrenders military or economic secrets etc. to a foreign enemy will be sentenced to the punishment of

warrior against people, is sentenced from 2 to ten 10 years in prison.

- Any foreigner who enters the bases, etc. to obtain information for the benefit of the enemy, will be sentenced to death from 2 to ten 10 years in prison. In addition to this article, Article 8 of the Islamic Penal Code (Punishments) approved on Mordad 18, 1363 also mentions the crime of espionage.

## **B: In French law**

Collecting and getting information and documents in French criminal law is an example of the crime of espionage. In article (411-7), the French legislator has included the collection of information, documents, objects, computerized and archived data with the intention of surrendering to a foreign power or their agents under the title of espionage. And on the other hand, if the said acts are done without the intention of surrendering to a foreign power or organization, is considered as a criminal offense of "damaging national defense secrets". In other words, it can be said that the legal element of the crime of giving secrets and information to unqualified people in French criminal law is of two categories.

**The first category:** If the information and secrets are submitted to a foreign force or organization and are subject to espionage regulations (Article 411-6)

**The second category:** It is when information is transferred to the general public or to unqualified persons, which is subject to the provisions of damage to national defense secrets (paragraph 3 of M. 413-11), which according to the new criminal regulations of France, the first category is punishable by up to 15 years political criminal imprisonment and a fine of up to 225,000 euros are sentenced. And the second group will be sentenced to 5 years of misdemeanor imprisonment and a fine of 75 thousand euros. In addition, if the act of transmitting information is committed by an employee, according to the penal regulations (Article 413-10), the punishment will be up to 7 years of misdemeanor imprisonment and a fine of up to 100,000 euros. In the new criminal law of France, new criminalizations have also

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<sup>11</sup> Hojjati Ashrafi, Gholamreza, page 188

<sup>12</sup> Hojjati Ashrafi, Gholamreza, page 188



happened. The drafting of Article 411-8 about engaging in an activity for a foreign force or organization, in order to give or receive information and documents, as well as the drafting of Article 411-10 of that law, about providing false information to national and military authorities are among these cases. Article 411-8 of the French Criminal Code states in this regard, "Employment of the perpetrator in an activity in order to provide for a force, company or foreign organization or under foreign control, or their agents means, information, methods, objects, documents, Submit or receive computerized and archived data in such a way that their use, disclosure or collection is inherently harmful to the fundamental interests of the French nation, will have up to 10 years of misdemeanor imprisonment and a fine of up to 150,000 euros. In the Criminal Law of 1994, punishment has also been set for those who enter military facilities or those related to national defense without permission. Surrendering all or part of the national land and facilities, complicity with a foreign force is one of the other cases that the French criminal law legislator has dealt with in articles of the new law. In French criminal law, vandalism is given as an example of espionage in article 411-9. article 411-9 stipulates "destroying, causing damage and also changing the nature of any document, device, building, equipment, facilities, devices, technical equipment or automatic information processing system or creating defects in them so that these actions are inherently for the interests of harmful to the fundamentals of the French nation will be punishable by up to 15 years of criminal imprisonment and a fine of up to 225,000 euros.

## **Repressive criminal responses**

The criminal responses that we discuss in this speech as repressive criminal responses include the death penalty, imprisonment, and fines.

### **A: Execution**

The most important and severe punishments that have existed in the criminal laws of some countries since ancient times until today is the death penalty. Death penalty is very important because it is not possible for the criminal to return to the society. The inclusion of the components of the death penalty has been associated with many ups and downs throughout history. Even today, it has been one of the most

controversial punishments in the criminal law among different countries of the world. Different schools of criminal law also have many differences of opinion in this field. In Iranian law, the death penalty is a major part of crimes against security and the reason for that may be, in addition to the existing legitimate basis, the belief of the ruling powers in the political stability in the society. Before the revolution, the death penalty was for crimes such as cooperation with the enemy to enter the country, communicating with the enemy, disclosing information by government officials, espionage documents, and several other cases. However, after the victory of the Islamic Revolution, with the increase in the scope of Mohareb punishment, the death penalty also increased in the punishments. Effective incitement of the armed forces, cooperation with hostile foreign countries, assassination attempt on the lives of political officials, community and collusion to commit crimes against security are such cases. As can be seen, the death penalty is the most common punishment for crimes against security. In French law, the death penalty has changed a lot, it has changed in the sense that the country, which had a hundred crimes in its criminal laws before the revolution, which had the death penalty, gradually moved towards the elimination of the death penalty. Although the death penalty was abolished in France in 1981, statistical studies in France show that the legislator decided to abolish the death penalty in the distant years. Therefore, during the years 1970 to 1981, during these 18 years, only 3 executions have been carried out. It should be noted that with the abolition of the death penalty and the replacement of life imprisonment, life imprisonment could not be a good alternative to execution. In other words, life imprisonment is not a good guarantee to eliminate the dangerous state of the criminal. Despite this, French jurists still do not believe in reviving the death penalty in this country, and the reasons for this include the existence of mistakes in the decisions issued by the judicial courts, the lack of attention of the perpetrators of these punishments, especially terrorists, to the punishment determined by the legislator.

### **Prison**

In Iran, before and after the Islamic revolution, these freedom depriving punishments have always been the focus of the



legislator. The former General Penal Law approved in 1304 A.D also defined imprisonment with hard labor as an important part of crimes against security. Imprisonment with hard labor disappeared with the reformation of the General Penal Law of 1352. After the Islamic revolution, imprisonment was also taken into consideration by the legislator in the punishment section. In the Islamic Penal Law approved in 1375 A.D, the legislator wanted to use imprisonment instead of whipping. Imprisonment has been used in many crimes against public security. Such as articles 508, 501, 498 and 506 of the Islamic Penal Code. In French law, the punishment of imprisonment has been taken into consideration by the legislator in many legal articles. For example, in the new criminal laws of France, the maximum amount of criminal imprisonment is 30 years and the minimum punishment is one year. In general, there are three types of criminal and political imprisonment in French criminal law: First, political criminal imprisonment of up to 30 years is designated as a punishment for crimes such as handing over property, facilities and equipment belonging to national defense to a foreign power and assassination and secondly, political criminal imprisonment up to 20 years is also the punishment for some crimes against the basic interests of the nation, such as vandalizing facilities and equipment for the benefit of a foreign force and committing collusion by government employees, and thirdly, political criminal imprisonment up to 15 years for crimes such as surrendering or making available information and sabotaging facilities without the intention of benefiting a foreign power are specified. The table of types of disciplinary imprisonment in the new penal law includes 1, 2 3, 5, 6, 7 and 10 months. The initiative that has been made in the new criminal law of France in this field is that if the court judge does not order the suspension of misdemeanor imprisonment, it is necessary to state the reason for it in a well-reasoned manner. In the new criminal law, imprisonment has been set for terrorist crimes.

## **Fine**

A fine is one of the main or supplementary punishments and according to the definition, it is the obligation of the convicted person to pay an amount of cash for the benefit of the government based on the conviction. A fine is not against the payment of debt, which is settled on the responsibility of the

convicted person and can be claimed from his estate after his death. In addition, the fine cannot be reconciled and is not awarded to the victim or his heirs. Fines, like other punishments, have advantages and disadvantages. An example of its advantages is that the criminal may get used to the prison environment after being sentenced several times, but in the case of fine, no matter how many times he is sentenced, it is still annoying for the criminal, and one of its disadvantages can be said that being sentenced to a monetary penalty causes a deduction. Property and the possibility of bankruptcy and difficulty in living a normal life, which can be criticized in a small way. In our country, the amount of fine is either fixed or relative. But nowadays, the determination of fixed monetary punishment is less common in our country. In other words, determining a fixed amount as a fine is seen less in the relevant laws. An example of it can be seen in the traffic fine for the violation of drivers. But the most common method in our country is to determine the minimum and maximum fine. The philosophy of fine is relatively related to Bentham's theory that a person may refrain from doing more by weighing his profit and loss if he knows that justice has placed a heavier punishment in front of him. In Iranian law, before or after the Islamic revolution, the legislator does not have the desire to use fines for crimes against security, but it can be said that if the abbreviation of M. 22 of Islamic Penal Code is there in order to convert and mitigate the crimes, in the crimes against the security, a fine can be issued. In the legal texts of France, it is clear that the legislator tends to use non-fixed fines more. Of course, it should be noted that in France, fines are imposed as supplementary punishment for criminal offenses and as the main punishment for misdemeanor and misdemeanor crimes. French law has welcomed fines to punish crimes against the basic interests of the nation, but in terrorist crimes, the French legislature believes more in custodial punishment.

## **leniency criminal responses**

leniency criminal responses are calmer and more moderate compared to repressive criminal responses and include suspension of punishment, parole and amnesty.

### **A- Suspension of punishment**

Suspending the execution of the punishment is one of the ways of postponing the punishment, and postponement in the



word means to hold back, throw back and push back. Postponing the execution of the punishment means postponing the execution of the punishment according to the opinion of the court issuing the final sentence. In this section, we will discuss one of the ways of postponement, i.e. suspending the execution of the punishment. Suspending the execution of punishment means stopping the punishment of a person who has been sentenced to penal or deterrent punishments, so that if he does not commit another crime within a certain period of time, and if he follows the orders of the court during this period, his conviction will be considered complete.<sup>13</sup> The idea of suspending the execution of punishment is actually a western initiative that was first manifested in our country in the General Penal Law of 1304 A.D and is considered one of the foundations of criminal law in the part of custodial punishments. Suspending the execution of punishment is actually an encouraging and friendly policy is for the criminal to correct his behavior by following the orders of the court. The suspension of the execution of the punishment was initially to stay away from the criminals who were sent to prison for short-term imprisonment, and since the poisonous atmosphere and environment of the prison does not affect them, their punishment is suspended.

In Article 30 of the Islamic Penal Code the legislator mentions crimes that cannot be suspended. In Article 26 of the Islamic Penal Code the legislator has declared that when the fine is accompanied by other punishments, the fine cannot be suspended. In addition, the granting of suspension is limited to detainer crimes and punishments. In Iran, depending on the legal conditions and discretion of the judge, suspension can be used for the perpetrators of punishable crimes against security, but in France, we see three types of suspension: simple suspension, suspension with probation, suspension with obligation to do public service.

**1- Simple suspension:** Simple suspension is an institution that allows the conviction of the perpetrator to be declared null and void, provided that he does not commit another crime within a certain period of time. The suspension period in

French criminal law is 4 to 5 years. And its application is also at the discretion of the court judge. In France, some perpetrators of crimes against the fundamental interests of the nation and terrorist crimes can also benefit from simple suspension. These people can be both natural and legal persons.

## **2- Suspension with probation:**

This suspension means suspending the implementation of disciplinary imprisonment, provided that the convicted person complies with the requirements and tasks set during the probationary period.<sup>14</sup> The French Penal Code has put forward the provisions governing probation suspension in articles 132-4 to 132-53. The duration of this probation is 18 months to 3 years. This suspension is optional like a simple suspension from the court. But suspension of care does not include fines and additional punishments. The application of preventive suspension, unlike simple suspension, does not require the absence of an effective conviction. In France, perpetrators of crimes against the fundamental interests of the nation and terrorist crimes with a sentence of up to 5 years of disciplinary imprisonment can benefit from the establishment of preventive suspension.

## **3- Suspension along with the obligation to do public service**

As its title suggests, this suspension is a suspension with doing public works, for example, working in a charity organization for a limited period of time can be the subject of this suspension. In France, only those perpetrators of crimes against the fundamental interests of the nation and terrorist crimes that are not recognized as having a political nature can benefit from this suspension.

## **B- Parole**

Parole is an opportunity that is given to convicts before the end of their sentence, so that if they show good behavior during the period determined by the court and execute the orders of the court on time, they can enjoy absolute freedom.<sup>15</sup> The history of parole in our country goes back to the law on

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<sup>13</sup> Ardabili, Mohammad Ali, General Criminal Law, vol. 2, Mezan Publishing House, first edition, Tehran, 1379, page 240.

<sup>14</sup> Majidi, Seyyed Mahmoud, page 337.

<sup>15</sup> Ardabili, Mohammad Ali, page 248.



forcing non-political prisoners to work, approved in Esfand 1314. Lawmakers have favored parole because they see it as a way to prevent recidivism and because it encourages inmates to behave well while serving their sentence. The scope of parole is limited to deprivation of liberty, both temporary and permanent. The conditions for the use of parole are imprisonment, and the conditions of parole are not having a history of imprisonment, serving part of the prison sentence, good morals and behavior, compensation for the harm suffered by the crime. Those sentenced to imprisonment in the field of crimes against security can use this establishment if they have legal conditions. In France, there has been a parole institution since 1885, and like Iran, this institution is related to deprivation of liberty. However, unlike Iran, in French criminal law, it is not necessary for the perpetrator to have committed a crime punishable by deprivation of liberty for the first time. In France, the possibility of parole for life imprisonment has been predicted, which is possible after 15 years of imprisonment. There is a difference of opinion in Iranian law. In French criminal law, the perpetrators of crimes against security can use parole if they have legal reasons.

### C- Forgiveness

Forgiveness has various meanings in the word, including: pardon, amnesty, remission, absolving, tormenting, asking for favors and etc. However, in the term of criminal law, forgiveness means an action that takes place with the approval of government institutions, including the leadership body and the legislative assembly, in order to suspend the prosecution of the accused or to forgive all or part of the punishment of the convicted.<sup>16</sup> Granting amnesty seems useful to repair the errors and mistakes of the judicial system of a country. Forgiveness is actually divided into two types: public amnesty and private amnesty. Private amnesties include all punitive and deterrent punishments. Granting amnesty depends on the request of the convicted person or his family. Private forgiveness also stops the execution of the punishment, as a result, the convicted person is exempted from all or part of the punishment. Private forgiveness is mandatory in compensating the losses caused by the crime and the losses must be compensated. The effect of private forgiveness is

immediate. That is, as soon as it is granted, the criminal is released from punishment. Granting forgiveness to political criminals is also possible in Iran. As in the events of 1988, the leader of the revolution pardoned some political criminals who were in prison. General forgiveness is another reason for the fall of punishment. which is stipulated by the law, which means that criminal acts are pardoned as a group without considering the personality of the criminals. The power of general forgiveness is with the legislature. But the legislature has rarely benefited from its powers in declaring forgiveness. In French criminal law, three types of forgiveness have been considered by the legislator until today. The first type is related to the time when the legislator granted amnesty to create relative peace and stability after severe political and social damage, and its purpose was to create peace and stability in the society. Another type of it is that the legislator clarifies the previously ambiguous texts in order to legalize some of the actions that were crimes until now. Like legalizing the financial support of political supporters. The third form of forgiveness is "presidential forgiveness" which occurs after the presidential election. General de Gaulle was the creator of this forgiveness. In recent years, the legislator has tried to reduce the many forgivenesses that have existed until now due to the return of criminals to their actions. In this regard, some terrorist crimes and participation in the community of criminals have been exempted from forgiveness. Private amnesties have been criticized more than public amnesties. Because the principle of separation of powers is not observed in it. In the end, it should be said that both in Iran and in France, as long as forgiveness is not separated from political criminals according to a regulation, these forgiveness measures can be used in the case of criminals against national security.

### Conclusion

By comparing the espionage offense between Iran and the European Union and Iran and the United States, the said offense between these two countries has many differences. The first difference between the two countries is that in France espionage has a wider scope than in Iran. In France, even sabotage or economic, social and cultural issues can be

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<sup>16</sup> Ardabili, Mohammad Ali, page 261.



examples of espionage. Another difference is the clear and unambiguous laws of the countries of France, England, Germany and the United States, which lead to the exclusion of crimes that could have been the subject of a crime in the case of ambiguity. As an example, we can mention the legality of financial support for political supporters. Another difference between the criminal law of these countries and Iran is in the field of distinguishing espionage from treason. The French legislator has chosen the criterion of nationality for this distinction, but the legislator of our country has remained silent in this case. Another difference that can be seen in this context is the issue of crime and in our country only information can be the subject of espionage crime, but in those objects can also be the subject of espionage. In terms of the psychological element, the said goat is also different in Iran. For example, in France, the French legislator is satisfied with general bad faith, but the Iranian legislator has recognized special bad faith as a necessary condition in addition to general bad faith. In Iran, the punishment for many crimes against security is death. But in the European Union, over time, the country's criminal policy has moved towards eliminating the death penalty. Another aspect of the difference in Iran's criminal law is its departure from France, England, Germany and the United States in the matter of aiding and abetting espionage. In fact, aiding and abetting espionage is an independent crime in those countries, but in Iran, aiding and abetting espionage is a crime. It has not been criminalized independently and it can be criticized because if the mastermind of the crime is freed from punishment, the deputy in espionage will not be prosecuted. In addition to the differences, there are similarities between the laws of the two countries, which can be referred to the collection and study of information, which in both countries has the criminal title of espionage. Another similarity that exists in the laws of all countries is the non-acceptance of omission as a material element of the crime of espionage. First, it should be noted that this non-acceptance is subject to espionage crimes and espionage-related crimes do not include it.

## Sources

- [1] Ardabili, Mohammad Ali, General Criminal Law, vol. 2, Mezan Publishing House, first edition, Tehran, 1379.
- [2] Sanei, Parviz, General Criminal Law, Volume 1, Ganj Danesh Library, 6th edition, Tehran, 1374
- [3] Omid, Hassan, Farhang Amid, second edition, Tehran, Amir Kabir Publications, 1359.
- [4] Validi, Mohammad Saleh, special criminal law, vol. 1 and 3, second edition, Tehran, Dad publishing house, 1373.
- [5] Zaeem, Koorosh, National Front of Iran, first edition, Tehran, Iran Mehr Publications, 1378.
- [6] Damghani, Mohammad Taqi, Iran's first laws before constitutionalism, Behzad Publications, first edition, Tehran, 1357.
- [7] Taji, Hossein, Espionage in the territory of crimes of the armed forces in Iranian criminal law, master's thesis, Damghan, 2016.
- [8] Mir Mohammad Sadeghi, Hossein, Espionage crime, Judicial Monthly, No. 18, February and September 2018.
- [9] Zeraat, Abbas, political crime, Qaqnoos publishing house, first edition, Tehran, 1377.
- [10] Zeraat, Abbas, Description of the Islamic Penal Code, Volume 1, Faiz Publishing House, Tehran, 1377.
- [11] Sarikhani, Adel, Espionage and Betrayal of the Country, Publications of the Islamic Advertising Office, first edition, Qom, 1378
- [12] Kamangir, Ahmed, Collection of Criminal Laws, Tehran, Tavangar Printing House, [Bita].
- [13] Hojjati Ashrafi, Gholamreza, Collection of Criminal Laws, Ganj Danesh Publications, 11th edition, Tehran, 1366
- [14] Ardabili, Mohammad Ali, General Criminal Law, vol. 2, Mizan Publishing House, first edition, Tehran, 1379.
- [15] Majidi, Seyyed Mahmoud, Crimes against security, first edition, Tehran, Mizan publishing house, 2016.