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Damage compensation for innocent defendants and Convicts in Iran and the Canadian legal system

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Abstract. In the field of innocent defendants and convicts' damage compensation who have endured further losses due to issue criminal supply contracts or orders execution, their innocence has been cleared by issuing acquittance sentences. It counted as one of the most challenging issues in private and criminal law. In these recent years, based on positive changes in the rules of Iran, a lot of works done for innocent defendants and convicts' damage compensation have endured different and unfair punishments. But no integration or constructive work has been done for guiltless convicts' damage compensation who have endured some parts or all their punishments, and their innocence has been proved but not predicted. The reverse of this matter is true in the Canadian law system. Only a guilty convict who has tolerated some or all parts of unfair punishment deserves to receive damage compensation. This study attempted to research the subject's international binding rules, and many practical strategies for guiltless convicts' damage compensation will be considered in both systems by a comparative study.

Keywords. unfair conviction, judicial misconduct, indemnification, convicted and accused innocent

Introduction

Damage compensation for innocent defendants and convicts whose guilt will be cleared after enduring criminal supply contracts and execution of all or part of the punishment for specific reasons. This matter has been changed into one of the standards and rational rules in countries' legal systems worldwide.

Due to the lack of global standards and various criminal policies in countries, comparative research implementation will be so effective to the development and modification rules and regulations and also causing to come in existing of international inclusive standards.

Although with general rules and regulation which suggested in the international conventions in particular, about the necessity of compensation to the victims in judicial mistakes, the point is here that the principle of territoriality of rules and criminal laws and the main reference or final approach concerning to each country about damage compensation in this particular file, it is related to the common law and judicial procedure of that country.

In this study, an approach that has been determined for damage compensation guiltless defendants in two legal systems for Iran and Canada will be reviewed. The reason why chosen this two legal system by comparative study, it is only for main differences in recognitions damaged people during the wrong judicial process.

According to Iran, positive laws have always been paid to innocent defendants as damage compensation. Still, no mechanism or coherent affairs are anticipated as damage compensation for the innocent defendant who has endured punishment due to an unfair sentence.

On the other side, in the Canadian legal system, although the acceptance of damage compensation issue for an innocent defendant it is equal to endure criminal supply agreements to defendant counted as a part of the legal process of criminal investigation and damage compensation to the defendant because of her presence in the criminal process, damage compensation to the defendant has not been accepted at all (Patricia, 2012: 18).

A comparative study can be an important step in these mentioned legal systems for supporting these loser defendants. This study attempted that a comparative review to understand some main concepts concerning this issue from Canadian and Iranian legal systems viewpoints, and after a brief overview of the global trend, we will consider and evaluate some strengths and weakness points in both legal systems with a comparative review is facing damage compensation for the innocent defendants. At the end part of this article, the conclusion section is allocated some reforms in the positive laws in these countries in the form of some suggestions.

1. The concepts concerning to damage compensation for innocent defendants

According to Ghaffari in the comparative study, usually, with reviewing concepts and axial titles they can play so important role in the correct route of this study (Ghaffari, 2009:4).

In this regard, at the beginning of this research, first, some key words concerning this article such as suspicions titles, defendant, and the innocent convict have been reviewed in Iranian and Canadian legal systems

1. Suspicions, Defendant, The Innocent Convict

One of the most important pillars in damage compensation for innocent defendants and convicts is to assign the base for recognition qualified people in this indemnification (Baricloo,2006:60)

In the criminal process, only three groups of people will be exposed to damage under this trend they are included: suspicions, convicts and defendants (Elham, 2016:138).

In Canadian legal different texts, in order to express 2 words such as suspects and convict, a common word used in this case is the word of (*accused*) which means convict but still not given any particular word as suspects to them. In Iran legal system, although using this word such as suspect in legal texts (68 and 117) in the criminal procedure code (2013) this word has not any legal definition. In some early definitions that provided by Doctrine, not assigned any exact boundary between these titles and title of convict(Elham, 2016:131).

With looking carefully in legal concepts which used the word of the suspect (or accused) can understand that the word of suspect refers to someone who is under accusation but there are still not any reasons he /she enters into the criminal trend. So he / she does not include this research.

the defendant or accused in the criminal terminology, the defendant is a someone who imputed false and damaging statements to him/her as slander and the charges against his/her has not yet begun or led to a vote.A defendant who enters into the criminal trend should be accounted innocent until his / her innocence in a fair trial proven. In overall, an innocent person is a someone who has no role in the process of forming the criminal act (Dressler, 2001:18).

Therefore, it is seen that the accused of a crime is a someone who enters into the criminal trial process as practically. Thus, it is possible, some damages to the accused, the compensation will be necessary that if proven his/her guiltiness it needs to be considered. some possible

damages to accused including his/her deprivation of liberty and temporary detention in preliminary investigations steps based on law and by a competent judicial authority (Mosadegh, 2017:173).

But the criminal trial trend will be ended in somewhere and this case is done by a final vote. so, it is assumed that the proof of charge and end of complete the trial process if the conviction of the accused proven as unchangeable, entry into force sentence will be issued in order to execute punishment to the criminal trial trend till the end that they consider them as a final matter (Ahmadi, 2015:8). After a definitive sentence about guilty and affirmation of accused's guilt called him / her as a (convict) or (defendant).

In this step, based on the rule of the validity of the criminal trend the accused's punishment trend as the convict begun by the court and the same early stages, many damages, and losses will be endured on the accused by executing punishment (Mohseni, 2008.4).

II. Judicial Mistake And Improper Conviction

The judicial mistake means, mistake in interpretation, trend or law executing especially some mistakes which caused violating in reviewing trend and usually lead to accusation an innocent convict (Shavell, 1995:10).

The judicial mistake in handling trend counted as an inevitable matter by Possibility Theory ¹viewpoint.

Wrongful conviction is the result of judicial error, which is attributable to judicial error, public and especially absolute. When the wrongful conviction occurs based on new evidence, an innocent individual conviction is affirmed while this one has not committed any crimes and his/her conviction must be canceled. One of the most common factors in occurring wrong conviction can attribute it some reasons such as lack of officers' information resources in police researching, wrong results in temporary investigations, improper methods in researching and handling or maintain the reasons for the crime, insufficient access to reasons, removing or unavailability some reasons and documents, false confession or testimony and media pressure (Smith & Hattery, 2011:75).

In 2014 and 2015 in the USA only 288 people after issuing a final definitive sentence and starting the trend of punishment due to vindication, they became innocent and exoneration. Although in Canada there is not obvious the real and exact number of unfair convictions but it is estimated that these numbers of innocent accused people can be more than expected (Patricia, 2012:1).

Every year almost 1900 files in Canadian criminal trials at least lead to arrest an innocent someone. Only with considering 0.05% wrong judicial rates and unfair convictions, the numbers of these judicial errors lead to executing punishment but as annually it will be 450 cases in this way. In Canada while there are up to 20 cases of unfair convictions in the Canada each year (Roach, 2013:3).

(Exceptio Rei Judicatae) counted as one the common obstacle in correcting wrong judicial and unfair convictions which there is a direct relationship between this rule and occurring wrong judicial. Of course, Exceptio Rei Judicatae means that when in tracking a charge and its definitive sentence (it doesn't matter whether issued a sentence or an agreement for that) it should not be considered at all. (Rahmdel 2016:9)

Therefore, reconsidering this case and Even requesting for considering to this subject again it is unlike the principle and without legal authorization unless it is gained some new reasons to affirm innocent defendant which in this case, in order to prevent occurring wrong

¹Probability theory is a branch of mathematical science that analyzes and predicts random and probable events.

judicial, there are possible to trial again in most legal systems and sometimes after issuing the final vote it is possible to find a reason which shows the innocent defendant. In this time, it is possible the punishment has been executed or is being executed or starts executing. Definitive validity to *Exceptio Rei Judicatae* in criminal affairs is a kind of exaggerating because during this trend many an innocent human got punished and it is a wrong judicial which the Society's trust in justice is undermined (Ashori, 2006 :232)

2. *Government Responsibility In Damage Compensation*

Given to the coefficient of probability of wrong judicial and issuing unfair conviction, establishing a mechanism for damage compensation to victims due to wrong judicial, this is counted as one of the main rationale obligations of the fair legal system.

In this regard, Article 4, paragraph 9, of the United Nations International Convention on Civil and Political Rights pointed out to prohibition of detention and unlawful trial and in article 5 pointed out that these prisoners should be identified for damage compensation (United Nations, 1966:199)

In the year 1972 Canadian government and in the year 1975 Iranian Government joined to this convention. Based on Article 9 of the convention, these governments against damage compensation to innocent defendants who have been arrested or detained for illegal reasons, all are responsible and should pay as damage compensation to innocent accused.

To the author, since detention or arrest is reasonably unique to the sovereign, the reparation for damages is also with the sovereign.

Government civil responsible refers to some responsibilities in the field of damage compensation due to government acts which can be administrative system defects or human error

And accordingly, the legal structure of the country must clearly recognize the civil responsibility of the government till citizens with relying on these laws can achieve to their own citizen rights (Khani, 2001:36)

3. *Historical Past*

In 19 centuries till the first early years of 20 centuries, the damage compensation to innocent accused in different countries was not so serious issue and never considered and in many legal systems of countries there is not approved any law in this matter yet. The reason behind this matter and according to some opponents in this case, one side, the damage compensation to acquitted defendants and with issued their prohibition of prosecution and another side it is incompatibility with reviewing some main and legal rules caused the government responsibility should be represented again. Therefore, the subject of damage compensation to innocent accused till first years of 20 centuries had not been anticipated in many countries. Because there was no unity of opinion about the principle of indemnification of innocent convicts between jurists. One of the most important reason of jurist's opponent about damage compensation, contrary to the acceptance of this principle with some certain legal rules and the principle of non-accountability of the government against some damages which endured to society or enforcement of judicial justice and maintain public order or social cases & interests may be effective on society. (Yazdanian, 2002:242)

However, the principle of damage compensation for innocent accused from the second half of the twentieth century accepted by many countries. Damage compensation of innocent accused based on many countries' rules such as Canada, France, Germany, Japan, Netherlands, Austria, Sweden, Romania, Switzerland, Belgium and Poland under particular conditions has

been anticipated. But some of the Common Law system countries such as the African, Arab countries didn't accept the damage compensation to innocent prisoners (Khazayee, 1999:60)

Beginning of the rules governing on the damage compensation process for innocent defendants over international levels led to UN international convention about civil and political rights in 1966 and entering into force to this convention in 1976 which final result of this matter was to join main countries to this convention.

Based on article 5 and paragraph 9 of political and civil international right in the field of damage compensation to innocent defendants and convicts (if someone arrested or detained as illegally, he/she will have right for damage compensation. (United Nations, 1966:199)

4. Iran Legal System

Until the year 1906 and establishing legislative assembly and subjecting laws in Iran the religious law played an important role in subject rights. on the other hand, the religious right was instead of subject rights (MehrAbadi, 2005:93).

in Jurisprudence of Imamiah especially civil responsibility, the state against each damage due to any wrong in the judicial trend, civil responsibility of judges and necessity of compensation for damages from treasury or from the house of wealth, a has high responsibility and there is a lot of documentation such as many narratives which tells how Muhammad the holy Prophet of God deals with Khalid ibnWaleed and Ma'ez²(VahdatiShabiri, 2017:155).

These jurisprudential sources tell us about the rule of state or government against compensation due to wrong judicial and unfair sentences and this rule counted as a principle reflected in the current Iranian constitution³

Islamic jurisprudence believes that the damage due to error or wrong government broker or a judge should be compensated by house of wealth in the country (MohagheghDamad, 2001:17).

in Iran law, although establishing a legislative assembly and ordaining subject rights done since 1906 until 1955 had not been anticipated anything about damage compensation due to detention or legal prison of accused even in the legal or right texts. The first legal text in the field of damage compensation due to conviction or unfair punishment in Iran rights can point out to note 4, paragraph 18, article 18 of the law related to medical & Medicine or foods and drinking affairs regulation which approved in 20 June 1955⁴. In line with the international community, Iran in 1968 joined to political and civil international convention as formally and in 1975 the law allowed the accession of the imperial government in Iran to join, to the civil and political international Covenant rights approved by the National Assembly of Iran. In following this rule, in Civil rights, the accused has the right to protest against his/her own arrest warrant. On the other hand, every violation in the punishment and punishment of judges and officials it is predicted (Habibzadeh, 2009:163)

With making some change in constitution of Iran in 1989 and approving article 171 of the constitution as this title (The necessity of compensation for material or moral damage) due to interpretation or judge's mistake and compensation for the damage by government if judge has no fault, a now rule should be made for damage compensation to innocent accused or defendants. For the first time, in the date of the legislative in Iran, judge's civil liability including

²To read more see Tabari, Mohammad IbnJarir, Translated by AbolghasemPayandeh, Tehran, Bina Publication, 1996, The Tribulation of BaniJazima and the Story of the Ma'ez

³Article 171 of the Constitution of the Islamic Republic of Iran

⁴Note 4, Subject to Article 18, Section 18 of the Law on Medical and Pharmaceutical and Food and Beverage Regulations adopted 20 June 1955

fault, as well as government civil liability (legal), recognized against damaged defendants (AsghariAghmashadi, 2007:27).

This shows importance of Iranian legislator and respect of Iranian legislative trend in this country to the provisions of the international covenant on civil and political rights.

In following this matter and with approving article 85 related to penalty Code of 1991 which was only a little different from the text of Article 171 of the Constitution, in this case, a practical and realistic process than to damage compensation started for damaged defendant due to wrong judicial as, this legal Article can be regarded as the first ordinary law for the compensation of innocent convicts. It is important to note that in Article 58 of the Penal Code, compensation against a judge's fault is the responsibility of the judge herself. Otherwise, if it is not the judge's fault, and it is the consequence of judge's action in executing, thus if this action caused enduring any damages to innocent accused it must be compensated by the government.

In fact, this criminal politic governing on criminal right system had no attention to the indemnification of innocent defendants' subject before approving the new code of procedure in 2013 and in the field of desired indemnification from all endured damages to these groups of citizens, there was no total definitive option and many psychological, emotional and emotional damages to these groups of people never been focused. (Moradie, 2014: 40).

Criminal procedure code approved 1392 because of recognition of damage compensation and facilities or omitting many uncertainties and creating particular code of procedure in this field counted as one of the most progressive criminal-law laws in Iran and its compliance with the conventions and documents required by international law is very high. With adoption this rule as definitive subject, can be said that in the field of damage compensation due to detention or illegal imprisonment of the defendants there is no doubt. To put it better, based on this law the damage compensation to innocent defendants who endured a period of time in detention. Due to supposedly legal after the trend of proceedings and their innocence has been proven or they received prohibition of prosecution and sentence of acquittal has been marked. In Iran current law and about indemnification there are many positive points such as notice to (The principle of individualization in indemnification). but in contrast, many laws in developed countries in the world, seen a lot of disadvantages such as lack of anticipation to damage compensation for the innocent defendant or his / her acquittal who endured all or some parts of unfair punishment. The lack of creating (clinics or mental rehabilitation and social health of innocent defendants⁵) lack of indemnification of innocent defendants who endured punishment or criminal supply agreements except other than imprisonment⁶.

Lack of paying damage compensation to legal entities, lack of anticipation of specific support institutions for suspects and defendants in criminal proceedings.

5. Canadian legal system

In Canadian legal system, Malicious Prosecution counted as (Tort) which reminds us 2 principles, first: The principle of the freedom of the citizen and to protect them from prosecution which may deprive them of liberty, damage to reputation or financial loss, second: maintaining the interest of public and order in the effective pursuit, without restriction, of the perpetrators. (Osborne, 2007:245)

⁵In order to enforce and expedite the process of indemnification of innocent defendants and convicts these clinics or rehabilitation centers are support-based institutions As well as facilitating the possibility of their being tricked.

⁶These clinics or rehabilitation centers are support-based institutions Established to enforce and expedite the process of indemnification of innocent defendants and convicts and to facilitate the exercise of their fraudulent rights and the core axis of performance on the implementation of the "personalization principle of damages" and compensate and repair all damages, especially spiritual, emotional and emotional damages.

Canadian law emphasizing speed and accuracy in prosecution Criminal Prosecutions, the illegal detention of an accused of committing a crime by police officers or through the issuance of a judicial order this is considered as a part of the legal process and document the principle of the immunity of the prosecution in this field there is no warranty or damages in respect of damages sustained by the defendant, of course, maybe nothing has been anticipated (except in some cases that the grudging of the researcher was not clear) (Patricia, 2012: 18).

In the Canadian legal system, prosecution authorities and investigating (except in some cases that the prosecution is unlawful or without reasonable cause) from a different aspect, they are immune (Osborne 2007,245).

In this particular and in the field of innocent defendants due to some future factors or reasons caused their innocence is proven these trends for them will other way.

In Canadian code of procedure after appeal and its stage there is only a possible trend for revision definitive sentence therefore, the appeal will be sent to the federal minister of justice for reviewing conviction based on section 1-696 criminal code (Section 696.1 – Criminal code of Canada-1985) If a judicial error became clear, the minister of justice will be allowed to issue a new and other sentence or refers the case to the state or district court of appeal, If this request for reviewing is a subject to the agreement of the reviewing authority, at the end of this new trial or appeal, the accused will be acquitted (Katz, 2011:207).

Obviously, in this case, the accused is released and can return to its own past life. Certainly, for an innocent accused who has spent his/her life behind the bar and his/her name or reputation damaged by unfair punishment, returning him/her to previous its own life would be impossible. These people have suffered emotionally, socially and economically, also they have passed a costly judicial trend. (Patricia, 2012: 18).

in Canadian legal system although this country is a member of The UN International Covenant on Civil and Political Rights (ICCPR) and the acceptance of the necessity of compensation for the defendants and innocent convicts, in order to its state and federal structure, federal and state legislators there is no definitive ordinary law due to determine the process and how to compensation for innocent defendants, because for this matter there is only a limited guideline.

Thus, there is not any legal mandatory sentence or sustainable judicial trend about how to Canadian legal structure feedback to the damage compensation for innocent accused and various or issued unanimity in this case and in trials or different states is approved (Patricia, 2012: 6).

The main reason is that many international agreements which they deal with issues of state qualifications without the consent and approval of state legislators, won't be an obligation topic for that state, In Canada as well as other countries around the world such as Iran, an international agreement cannot be the basis for executing domestic courts.

On the other side, Canadian domestic courts cannot supply the implementation of the provisions of an external treaty without Internal legitimacy. Because the only way to apply an international treaty in Canada is to incorporate that treaty into domestic law (Robin, 2008:7).

So far in Canada, The ICCPR regulations did not go through the legislative process independently and Canada's obligations against the ICCPR have been limited to a wrongful conviction or imprisonment instruction which determines the requirements for compensation

The Canadian charter of right and freedom was approved in 1982 and Canadian Charter of Right and Freedom (CCRF) also was one the main required text which presented individual freedoms and rights.

The provisions of this charter is from 7 till 14 which related to protecting the most fundamental rights and freedoms of individuals against unlawful acts by the government. In note

1 and article 24 of this charter tells that (everyone who his/her rights or freedoms guaranteed, violated, or denied by this charter, can refer to the competent court for its own damage compensation). Thus in this charter like other ICCPR regulation, we will face with presenting the rules which refers to a principle and Waiting for approving of federal or state binding laws.

It should be mentioned that regulation with this title (state and federal guidelines in the field of damage compensation for innocent accused and imprisoned approved in 1988 which it was very important and necessary) (AIDWYC,2018:1). These guidelines provide for specific conditions for payment of compensation such as factual innocence.

In many cases such as state court sentences, although the acquittal sentences issued according to logically doubtful, from the payment for compensation to the accused or convicted acquitted on the mere suspicion of committing the crime will be avoidance (Patricia 2012:12).

in this guidelines there is something about the necessary conditions for compensation which in many compensation cases have been eliminated solely due to the lack of one of these conditions, the payment of compensation or damage resulting from the tolerance of supply or punishment (Roach 2012:27).

Also in Canadian legal system, estimation, restriction, and access to damages are permitted to convict the offender, which may render it obligatory, the sum of three estimates that include non-financial losses, financial losses, and legal costs (Roach, 2012:33). In financial loss, the amount of compensation with regarding the loss of freedom and physical difficulties and spiritual or imprisonment offensive, Loss of credit, which is determined by taking into account all previous criminal records and determining the loss or damage of family or other personal relationships. Executing these guidelines, the amount of non-pecuniary damage is estimated in accordance with this instruction but in any condition it should not be much more than 100,000\$canada which this legal restriction is inconsistent with the logic of criminal justice and the rule of restoring the former status (Harris,2004:2).

In the field of estimating financial losses will be based on this guideline which it is including livelihood losses, personal income which is taking into account tax deductions and duties or loss of ability to generate income in the future and loss of property and other financial loss resulting from imprisonment. It also considers, calculates, and reimburses all reasonable costs incurred by the applicant to prove his / her innocence. The impact level on the applicant's unreasonable conduct on the wrongful conviction and the extent of accused's effort to discover the truth and his/her emphasizing on the need for compensation is also among other things that should be taken into account when calculating financial losses. It is obvious that with this definition, more parameters in calculating and determining damage, more equitable figures can be obtained. However, with regarding to these personal variable parameters this subject is not possible. (Karaffa,2017:723)

6. Conclusion

In this comparative review of Canada and Iran legal system and the criminal policies of these two countries in the field of damage compensation to innocent accused or defendant we are witness of some weakness or strengths points in 2 legal systems. in overall, in Iran legal system, the subject of damage compensation due to arrest of the defendant acquitted will be identified because especial things anticipated and in the issued vote by judicial courts of Iran, and in practical trend related to pay compensation this subject can be seen obviously . while in Canadian legal systems, the period of accused detention although with final acquittal sentence would reach to damage compensation but not by government because entering this damage won't be recognized by Canadian legal system.

But reverse of above, in many Canadian legal systems although there are many integrated affairs to damage compensation for accused that Consequently, his/her innocence has been finally established any detention or damage to accused acquitted counted as part of legal trend obligation and primary investigation but not anticipated any approach to damage compensation or any judicial trend for these group of defendants. in Canadian social or public custom also there are many Humanitarian associations and popular institutions for these innocent accused which called as The Association in Defence of the Wrongly Convicted (AIDWYC) and disregard for compensation and the detention of defendants found in a preliminary investigation of non-assignment of a crime which means it can be a sign of social acceptance of the need for system immunity and judicial authorities in prosecution and preliminary investigations, as well as a social emphasis on compensation for people who have been wrongfully punished.

While in the Iranian legal system, despite the precise policy of compensation for the detention of defendants, there is no specific and precise mechanism for indemnifying innocent convicts and compensation for these people should only be based on general rules and proof of one's fault.

At the end of this article, it is mentioned, that in a desire legal system and in the field of ordinary and territorial laws, some regulations in this regard should be created to make possible for damage compensation to innocent accused as well as defendant acquittal. This trend should be done with no damage to Public interest and order. On the other hand, in the Canadian and Iranian legal systems, only the imposition of temporary detention or imprisonment leading to an acquittal has been recognized as a factor in the calculation and compensation. while in many other cases without occurring temporary detention or executing punishment such as prison, likely some damages will be reach to innocent accused or defendants due to the application of other security arrangements or the execution of penalties other than imprisonment which intellectual logic and justice beside the general rules, civil liability is required to monitor and compensate for these damages.

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