

Flygtningenævnets baggrundsmateriale

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Titel:	Udenrigsministeriets høringssvar af 22. februar 2016 vedrørende dobbeltstraf i Syrien
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Emne: Svar på høring vedr. dobbeltstraf i Syrien (UM id: _____)
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Til: Udlændingestyrelsen
Att.: Landedokumentation, Majid Behbahani

Udlændingestyrelsen har med skrivelse af 25. september 2015, til brug for behandlingen af anklagemyndighedshøringer, anmodet om Udenrigsministeriets bistand til at søge oplyst, hvorvidt syriske statsborgere, der i udlandet er straffet for lovovertrædelser, ved tilbagevenden til Syrien risikerer at blive straffet for samme lovovertrædelse på ny.

Udenrigsministeriet blev anmodet om at søge følgende spørgsmål belyst:

1: Giver Syriens straffelov mulighed for dobbeltstraf, således at en syrisk statsborger, der har begået en strafbar handling i udlandet, og har afsonet sin straf herfor, kan straffes for den samme lovovertrædelse efter indrejse i Syrien?

2.: Findes der nylige eksempler, hvor dobbeltstraf er blevet anvendt i praksis i Syrien?

Udenrigsministeriet har forelagt spørgsmålene for en juridisk kilde i Syrien, som har afgivet det på arabisk og engelsk vedhæftede svar.

Med venlig hilsen

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[den arabiske version af høringssvaret er udeladt
på Flygtningenaavnets baggrundsmateriale]

In the course of answering the subject herein presented:

we must point to the legal description of a crime as stated in article 178 of the code of general punishments, and the gathering of material crimes as stated in article 179 and following articles.

Firstly: legal description

Article 178

- 1- A crime is a felony or a misdemeanor depending on whether it is punishable, as a felony, misdemeanor or disturbing the peace.
- 2- In legal description, the law is the term of the highest punishment prescribed.

Secondly: compilation of property crimes

Article 179

The legal description of a crime does not change if the punishment is changed from that which is prescribed to a lesser punishment upon considering mitigating circumstances.

Article 180

- 1- If an act is of many descriptions, all is mentioned and the judge is to order the highest punishment.
- 2- If an act is subject to both general and particular description, the particular description should be followed.

Article 181

- 1- An act is only charged once.
- 2- However, if the criminal results of the act are aggravated after first charge, and the act becomes eligible for a stronger description, the act is charged as such and only the higher

punishment is meted out and executed. If the original punishment has been served, it is then dropped.

In the course of clarifying the currently standing legal frame, it must be pointed out that the elements of crime are three, the legal element, the ethical and the financial element.

The legal element is the illegality of the act subject to a legal text criminalizing the act and lack of justification for it because absence of justifying reasons is a condition for the act to remain unlawful as prescribed the criminalizing text.

Crimes are varied and they vary based on the elements they stand upon, such elements are derived from the criterion of the crime which is classified as felonies, misdemeanors and infractions based on the magnitude of the crime where the most severe is the felony, the least in severity is the infraction and misdemeanors stand in the middle, as stated in article 178.

It is easy to differentiate between felonies on the one hand and misdemeanors on the other. But the punishments of imprisonments and fines are shared amongst misdemeanors and infractions which makes them which makes them distinguishable from one another based on the kind of punishment, as stated in article 51 of the code of general punishments, where imprisonment may range from 10 days to 3 years.

The difference between misdemeanors and infractions lies in the upper limits of punishments. In infractions, it is a maximum of 10 days.

Description of a crime is not that which is charged in the law suit, what matters is court's findings and the authority of such court granted by the legislator. If the law recognizes two or

more crimes, the point is in the upper limit of the most severe one as stated in article 179 of the code of punishments.

Rule 325

Drug smuggling is subject to the legislative decree number 13. Punishment for smuggling is the same as for smuggling any other type of merchandise and no difference except for amount of fines. The fine for drug smuggling is six times the value of the smuggled merchandise whereas all others are twice the value of the smuggled merchandise.

The moral confluence of crimes as recognized by legal scholars is the multiplicity of description to one criminal act where it is possible to say that the act carries many crimes in that every description carries a separate crime and it is possible to state here that there are many applicable texts to this act, the perpetrator is only held to account once, and that is what is meant by the legal term *res judicata*.

Rule 342

The power of *res judicata* overcomes all irregularities and errors even those violating procedural code because affirmation supersedes general procedure.

Article 181 of the code of punishments currently in force in Syria stated that an offense is only charged once and once an accused is tried and punished for an act, or found not guilty of it, he may not be tried again for a prior act. This principle is known as "*res judicata*", and it is conditioned upon the acts be joined as to subject, cause or adversaries.

For example, if a thief is charged with stealing a few items at the same time at the same place, he is considered to have committed one crime even if there was a multiplicity of

people and monies. Trying him for some of the acts precludes trying him for others because the act is considered one, it is theft. An employee that steels the company's cash on several occasions and is put on trial, he is considered to have been tried for all prior acts even if such acts were not presented the court because the objective was one, embezzlement.

If an offender is put away on murder charges, he cannot be tried for the same act based on whether the killing was deliberate or accidental.

But if the elements of crime are different, and so are the material events, then, prior judgement does not preclude a new charge for the new act. If an offender was found not guilty of theft, he still may be charged with concealing the stolen money if found in his possession.

If an act has many descriptions, charging the most severe of it precludes charging the same act under different descriptions.

Rule 389

If an offender attacks a person for the purpose of ending that person's life, and in the process attacked another person, the act is not considered two separate crimes, but one complex crime as long as there was only one act even though there were multiple results, however such aggravating circumstances would call for a more severe punishment.

This principal is still practiced in all Syrian courts.

Rule 323

Hash smuggling from Lebanon to Syria so it can be smuggled to Vienna is considered one act as the collection of acts are considered parts of the one act and the text to be applied is

that with the harshest punishment for the crime of smuggling drugs.

Rule 334

If an act has many descriptions, charging the most sever of it, precludes charging other descriptions.

Rule 339

Once one has been tried for an act and sentenced or exonerated, he is not to be tried again for the offense for which he was tried the first time. Article 181 code of general punishments.

These rules are decisions of Syrian courts of appeal and has no opposing decisions. Decisions of the Syrian courts of appeal are a part of the law until repealed by a new court of appeal, finding even though it is not in the text.

Article 19 code of punishments

1- The Syrian law applies to every Syrian or foreigner whether an actor, an instigator or an interventionist, who has undertaken a felony or a misdemeanor jeopardizing the security of the country or counterfeited the country's seal or its currency or its financial documents legally exchanged in Syria.

2- these rules do not apply to a foreigner whose conduct is not in violation of international law.

Article 27

Except for felonies stated in article 19 , and various crimes on Syrian land, no Syrian or foreigner is to be charged in Syria having been completely tried abroad.

Also In the case he has been sentenced and the sentence was served, suspended or mitigated.

As such, there is no legal consequences for a Syrian national who has served his sentence abroad per article 27 and there is no changes in the law.

Respectfully..
