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TRIAL IN ABSENTIA AND ITS PRINCIPLES IN THE INTERNATIONAL CRIMINAL LAW

HOSSEIN HOSSEINABADI[1], MOHAMMADJAVAD JAFARI[2], HASSAN HOSSEINI[3]

1: Department of law, Kermanshah Branch**, Islamic Azad University**, Kermanshah, Iran

2, 3: Department of law, Kermanshah Branch, Islamic Azad University, Kermanshah, Iran

ABSTRACT

One of the issues discussed in the national and international criminal procedure is a question of trial in absentia. In contemporary legal systems on one hand, and national and international criminal procedures on the other hand, there are many controversies surrounding the issue. Each of the systems of criminal procedurehas their own reasons and justifications to ban trials in absentia. In internationaljustice systemcharges, primarily, trial in absentia is not allowed. In contrast, Inquisitorial justice system,allows for a trial in absentia for the defendant,the principles involved to ban or to give permit for the proceedings of a trial in absentia refers also to the nature of both justice systems mentioned before. Even though, in criminal proceedings in the national and international scale, the presence of the defendant is a requirement and usually the majority of the trials are held with the presence of the defendant, But still trials in absentia are an exceptional case, and although the principle should not be considered as a procedural rule, it's still worthy of study and attention as a necessity.

It should be noted, however, that under international law there are many doubts about the prescription or prohibition of trial in absentia because the criminal justice system of international law is still a nascent system, and so far there has been only a small number of international criminal tribunals held to prosecute international criminals.

The International Criminal Court as a nascent institution so far have not created a significant legal precedent, so we can say that the trials in absentia in the international criminal law has not been seriously discussed in detail.

But it's not the case in the field of international criminal law for such trials in absentia to be prohibited or banned, but from Nuremberg to Lebanon, once again the close link between international events has been established, which is listed explicitly in the statute of both of those courts. .

However, it seems that prescription or prohibition of trial in absentia depends on the conditions. According to the international documents the right of the defendant to have his presence at the hearing does not prevent the proceedings of trial in absentia.

Key words: trial in absentia, impunity, international law, international criminal court, punishment

1.1 INTRODUCTION

The main topic of this articlereviews the trial in absentia and its principles in the international criminal law.

Trial in absentia is used directly in the international criminal law and domestic criminal law to deal with criminals and perpetrators of crimes to make sure they won't remain without punishment.

In fact, in domestic law and international criminal law, although no one believes that trials in absentia are a favorable hearing, but most agree that in order to prevent the perpetrators of crimes of domestic and international law from escaping their punishment, trial in absentia could be acceptable.

Impunity is the lack of punishment for someone who has broken a rule of law which has had criminal sanction.

In other words, immunity of a person after doing a forbidden act is called impunity.

By taking a variety of actions incomplete international legal rules, the three main types of violation of obligations or infringes the rules to be seen.

After taking a variety of incomplete actions of international legalrules into account, there are three main types of violation of the rules or obligations which include:

1.thenon-criminal violations and deficiencies.

2. The criminal violations and deficiencies which are per se a violation ofpublic orderwithin one ormore member countriesof the international community as well as attacking international public orders which are known as an international crime.

3.The criminal violations anddeficiencies which areper se a violation of international public order as well as internal public order of other countries. These are also known as international crimes.

The impunity that this research is focused on is related totheactions of the third category. Sincethese actsare notnecessarily againstpublic orderofthe countryor other countries and there are manyexamplesofthese actsthat are lead, plannedorexecuted with the assistance of governments, despite its inherent importance in violation of international public order and even endangering international peace and security. Butunfortunately,most of themunder the established principles of law include a variety of immunities, privileges, national amnesty laws, impunity, Observing unjustified discounts under both substantive and procedural terms in determining penalty in the proceedings and even punishment.

To prevent the impunity of those accused in domestic and international proceedings, trial in absentia is the way to approach the defendant accused to international crimes. In this type of proceedings, after access to the accused wasn't provided, the court will handle the charges trough a trial in absentia.

In this thesis, the main goal is to discuss and examine the principles and requirements of working on trial in absentia in international trials.

3-1-expression issue

In criminal proceedings, physical appearance in court is a requirement and trials in absentia are only for exceptional cases and should not be considered as a rule of procedure. That's why in the administration of justice under international law there are many uncertainties about trials in absentia.

Customary international law and have both failed in coming up with a common solution that can protect fundamentalrights of the accused,and can make sure that international crimes won't go without prosecution, trial and punishment.

In national legal system andespeciallyin Islamic justice law (in most cases, not all of them) trials in absentia are granted and accepted.

But in the common law system, except in exceptional cases, trial in absentia is not allowed. From the trials in Nuremberg, Germany to the Court of Rafiq Hariri in Lebanon, once again the close link between international events has been establishedwhich is listed explicitly in the statute of both of those courts.

However, it seems that prescription or prohibition of trial in absentia depends on the conditions.

According to the international documents the right of the defendant to have his presence at the hearing does not prevent the proceedings of trial in absentia.

Judgment in absentiaorthe word "Trial in absentia" is usedinstead ofwords likehearingin absentiaandproceedingsin absentia.

Any trial where the accused isnot present forany reason is a trial in absentia, the reason for this absence of the defendant, although in most cases is the fear of punishment and hard reaction of the international community towards actions and crimes committed by the individual, but in some casesmay be due toreasonssuch asfailure to inform the defendant oncharges filedagainst him.

Of course in different legal systems in the world there are different ways of dealing with giving licenses or banningtrials in absentia. In the common law system, except in exceptional cases, trial in absentia is not allowed, while the audit system deals with the trial in absentia with more flexibility. The two different philosophies in justice system are based on adversarial and inquisitorial procedures.

In national and international financial justice system there are many differences of opinion about trial in absentia. In the Charter of the Nuremberg court, trial in absentia is unrecognized. In the Rome'sstatute also there was considerable debate about the permissibility or impermissibility of trials in absentia. Supporters of trials in absentia argued that, given the practical difficulties associated with having to summon an extraordinary international trial, trials in absentia are necessary.

William Sabbath suggests that in the process of writing the statute,topic of trials in absentia has oftenbeen raisedasfalse and as a fundamental deviation from the common law judicial system which it does not count as punishment, even though inthe common law system trialsin absentiaare exceptionallyaccepted in some cases.Therefore, in this thesis we'll discussall differences between domestic and international justice systemsand we'll also discuss why in civil proceedings, trials in absentia have becomeawidespreadandaccepted methodbutat the same time intheinternationalcriminal justice systemthismatter is stillviewedwithskepticism and it has been rejected in theStatute of some of theInternationalcourts, while in others it hasbeensubjected tomany conditions andconstraints.

Another important issue that was discussed in this thesis is whether the mere physical presence of the defendant at trial is sufficient or presence in court must be accompanied by certain requirements. Because in

international criminal proceedings, often some defendants attend the hearing without attempting to defend their own rights; this kind of presence without basic rights is not sufficientand is not binding in any way. be considered an effective presence. Thisstudy will also seek to analyzethe effects of the presence of defendant and its requirements on trial, and investigate this matter in theprocedures of the international criminal court.

But one of the most important issues in the criminal proceedings is whether the main principle of the criminal proceedings in the International courtsismultiplehandlingof a singleissue or not. Obviously, if the conflict is carried in precisely one session, thenthe purpose of the court which is discoveringthe truth, and consequently the party who is right, will not be easily done. And this proceeding at a single session, which is considered the best way of proceeding won't be enough to resolve disputes.

Unfortunately, looking at the wrong judgments that were issued,it demonstrates that in order to respect the rights of the people and the dignity of the judicial authorities, a review ata higher level is considered necessary.

And, considering that thepreviousssentence isnot conclusive, on anappeal, the court uses more care and attention of course. In this case, the judgmentof the appealcourtwill be more correct thanthe firstcourt.

As a general principle, without hearing statements of the parties resolving the matter in question is contrary to justice and therefore impossible forthe court and on the other hand if the defendant remain silent against lawsuitclaims, the court cannot force the defendant to defend himself.In this respect, usually in most countriesthe presence of defendantand his defenseisofgreat importance, so that, if the defendantis not presentorheremain silent, thelawanticipates that rulingonthe subjectis no longer possible, Unlessafterhearingthe defense of thedefendantor at leastafterthe expiry ofthe period prescribedfor a responsetosubmittedclaims of the lawsuit. Therefore,the aimofthese discussions is to show the importance of defendant's presence at the hearing. And even if these countries accept the trial in absentia, they still try to avoid judicial errors that occur in such trials more than other cases by giving the defendant the right to protest court's decision, which iscalled an appeal.

Trial in absentia is one of the fundamental differences between most countries of written

law and the common law system. While some reject this fundamental difference. In general it can be said that under the common law trials in absentia are prohibited. In other words, the common law countries always considered the presence of the defendant an essential requirement to start the trial.. (JannatMakan, Hussein,2010). The adversarial justice system have some reasons to prohibittrial in absentia that include: because the trial is essentially a duel between the two parties (the prosecutor and the defendant), the presence of both parties is essential, otherwise, the trialwill notcontinuein the true sensebecause inthe common lawsystem both parties areresponsible for collectingevidenceandtheprosecutor is responsible for proving the charges andthedefendantwill be responsible todisprove it, in the absence ofthe defendant no one can play his role.(- JannatMakan, Hussein,2010)

Another topic studied in this thesis is that the Inquisitorial justice system, which historically came after the adversarial justice system and had its origin in France, wants the pursuit of criminal proceedings to be transferred to a prosecutor appointed to a judicial authority, whichhas thetask ofgatheringevidence.So therefore, it seems rather different philosophy of traditional criminal justice system (adversarial and inquisitorial) in the acceptance or rejection of the trial in absentia is largely linked with the characteristics of these two systems. Characteristics that make a system completely acceptant of the trial in absentia and the other totally rejects the trial in absentia unless in exceptional cases and only in recent years.

4.1 Necessity and research purposes

Manyshortcomingsin theinvestigationofissues related tointernationalcriminal lawandcriminal lawgenerally being a new fieldand the lack of attention from local authors to the issue of trial in absentia in international trials were the main motivation for the author. Almost no specific research has been done on the subject of the trial in absentia in Internationalcriminal law. It should be noted that in recent years several hearings were held in absentia by international courtinvestigating these matters can have a strong role to play in explaining the theory of the field.

Unfortunately, the Iranian legislator of the foundations of international law does not have any particular clarity about trials in absentia in anyway. So it is essential to offer some proposalstoIranian legislators in

regards to the procedure of the trials in absentia in International courts and other. But there are other reasons that make this research a necessity:

A) –lack of attention from internal investigators and lawyers to the issue of trials in absentia in international courts, despite its importance.

B) - Since there has been few studies to examine various aspects of trials in absentia in the international trials, foundations, conditions and requirements of this way of proceeding is faced with ambiguity.

The goals of this study can be considered as follows:

I) Concept and comprehensive definition of the term trials in absentia and features of the hearing process.

II) Familiaritywith the terms and conditions binding for holding the trial in absentia of the defendant by international courts.

III) Efforts to sensitize the legislators in developing laws and regulations fortrials in absentia in respect of international crimes in domestic law.

IV) Efforts to clarify the different aspects and dimensions of trials in absentia for international crimes.

V) Trying to explain the limitations of the investigations undertaken in absentia and to identify obstacles and offering solutions for the removal of limitations inorder touphold the principles of afairtrial.

1.6 Hypotheses

In response to the questions of this research, thereare thefollowing concepts:

A) The rationale forallowing trialsin absentia is to prevent the defendant from escaping is trial and disrupting the administration of justice.

B) The reason for why different legal systems have different approaches towards trials in absentia lies withthe different foundations andfeatures ofthese legal systems. In inquisitorial system, because of the importanceofthe physical presence of the defendant in court, trialin absentiais not allowed and in adversarial systembecause of the importanceofthe greater good of the society, trialsin absentia are permissible.

C) Informing thedefendantof the chargesagainst him, the deliberate absence of the defendant at the hearing, a defendant's right to appeal the decision, the right to a lawyer and presumption of innocence are the binding guarantees in trials in absentia.

1-7- Research Background

despite the importance of the trial in absentia in international trials, scientific research in this regard has been less than expected and the phenomenon of trial in absentia has been

rarely studied in the legal literature and Internationalpunishment of our country. What has been witnessed in the newspapers and magazines is just a look from the perspective ofa storyorincidentand is worthless in terms of scientific value. This should be looked at as lack of attention to the field of international criminal law and in general the youthfulness of this field. But in recent years by increasing the entry of researchers into the field of international criminal law, some studies has conducted in this area:

JannatMakan, Hussein. Trial in absentia in criminal matters. Journal of Legal Studies of Shiraz University, School of Law. The first issue of the first period.

- Mohammad Javad Hosseini, the International Criminal Court and the prosecution of the Sudanese president on the crisis in Darfur, Journal ofAfrican Studies, spring and summer of 87.
- MuazzinZadegan, HasanAli, 1383, the right to defenseincriminal procedureand its comparative study, criminal law and criminology doctoral dissertation, University of education and study.

We see that the number of research dedicated to the subject of the trials in absentia in international courts have been very low, and doing a dedicated research on this issue is very necessary to do which is what this theses is trying to do.

- Investigating the matter in Roman Germanic legal system

In most statutory legal systems, trial in absentia is accepted, which means the trial could be held in the absence of the defendant. Countries such as France, Belgium, Greece, the Netherlands and Latin American countries and China have accepted the trial in absentia. The Inquisitorial justice system, which historically came after the adversarial justice system and had its origin in France, wants the pursuit of criminal proceedings to be transferred to a prosecutor appointed to a judicial authority, whichhas thetask ofgatheringevidence. In this system, the judge also plays an active role in reviewing theevidence. Thisphilosophy in written law system, which states that trials in absentia necessarily been accepted (contrary to common law countries), because the judge not only investigating evidence for the prosecution, but also forthe defendant. Thus, when the trial began, the court also holds documents ofjustification in favor of the defendant, and therefore, the court is in a position to be able to assess the evidence for and against the defendant. .(Jannat Makan, Hussein,2010)

Two different philosophy of traditional criminal justice system (adversarial and inquisitorial) in the acceptance or rejection of the trial in absentia is largely linked with the characteristics of these two systems, because in adversarial system, the trial is generally of oral proceedings. At investigation level, a file is not presented to the court. Butin the inquisitorial system, at the trial, the basis is onwrittenexamination. This means that the evidence gathered by the investigating judge is presented to the courtto be reviewed by the parties to the dispute andthe court judges. In the adversarial system proving the truth is left to both parties as a challenge, and itsupport them more through the use of a series of serious procedural safeguards. The inquisitorial system, there is a heavy emphasis on the public interest to prosecute and punish those who flout social values and criminal rules. In other words, in theinquisitorial system, the defendant will be less important than the greater good of the society. Of course, this feature cannot be generalized, and as of now, a pure system of criminal justice does not exist.

Some authors believe that the acceptance of trial in absentia has little to do with the inquisitorial system in the countries that are governed by written law, because for example, countries such as Italy, despite the adoption of adversarial system in their laws of Criminal Procedure, trial in absentia is also considered permissible. In contrast, countries such as Spain and Germany, who have chosen the inquisitorial system, do not allow trials in absentia.

Antonio Casses attributes this to two things: First, that these countries has taken the defendant's right to attend the trial as a fundamental human right. Second, these countries argue that trials that do not aim to achievethe ultimate goal, which is administration of justice, are useless. Some writers, such as Ruskin,a German lawyer, have filed other reasons, including that the judge should personally see the suspect himself, to have a clear idea of his personality. Ruskin’s point of view should not be easily neglected, because the nature of thecriminalproceedingsand civilproceedingsis different. Defendant’s presence is necessary at criminal proceedings. Because his presence and his behavior in court, Can be used toestablishhis innocence, and in particular,it’s important for determining thepunishmentor determine the enforcement of mitigating and aggravating punishment imposed.

Moreover, in most codified legal systems, it is assumed that when issuing a verdictincriminal offenses, the public interest

is more important than the right ofdefendant to be present incourt. Especiallyifhehasrefusedto appear incourt on his free will. In other words,in theinquisitorial system, public interest is more important than therights of the defendant. Of course, in order of statutory laws, trials in absentia are only allowed if a set oflegalguarantees ofthedefendantarerespected.

The European Court of Human Rights in cases of Putimol against France and also kronbach against France has stated:

defendant's presence at the hearing is essential for several reasons, both because he has the right to participate in hearings and also the need to properly identify and compare their statements with the statements of the victim who needs support and with the interests of the witness statements (paragraph thirty-five).

However, the European Court of Human Rights reluctantly accepted trial in absentia along with a series of conditions that include:

1) Thedefendant must be informed officially of the charges against him.

2) There should be evidence showing that he deliberately refused to participate in the trial.

3) The defendant has the right to demand that the trial start all over again, even if he have already been sentenced; In other words, he has the right to ask the court to consider his case for adopting a new decision on the substantive issues.

4) The defendant is entitledtobe represented by an attorney at every stage of the case to defend himself against the charges.

If the trial interfere with the administration of justice, In these systems, the defendant has the right to participate in the investigation stage, but if heflee from Justice in the pre-trial stage, he has expressly objected his right to participate in the trials if the judge avoid trials because the defendanthas fled, this means that the defendant finally can stop the criminal procedure. The European Court of Human Rights in the colozza case against Italy stated: The impossibility of holding atrial in absentia could disrupt the criminal proceedings, because for example in this case it is possible, due to the loss of evidence, time or improper implementation of justice (see paragraph 29).

3-3-3- position of the Iranian justice system and legal procedures

3-3-3-1- position of Islamic justice system

The Islamic justice system, some of Shia scholars have consensus claims on the decision of judgmentin absentia. According

to the researchers, Mohaghegh Damad and Ayatollah Khoi in Saaliheen Minhaj, vol. I).

Doctor Abdullah Shams documentary jurists permits sentencing in absentia against the defendant based on the following hadith which says: If a charge is filed against a person who is absent, judge sees action against him (and in favor of the plaintiff) but only after the person who is absent appears in court.

Ayatollah Khoi in Minhaj Saaliheen and Sheikh Hassan Najafi in javaher al-Kalam, both agree on the terms for trials in absentia. However, SheikhHassanNajafibelieves trials in absentia against the defendant are contrary to his principles. In contrast, some questioned the legitimacy of the trial in absentia and have based their comments on traditions.

Scholars opposed, in explaining the lack of licenses to sentencing in absentia refer to a hadith from Imam Baqir (s) that reads: If two people came to you to judge between them, don't judge one of them before hearing what the other person has to say to defend himself.

Someschol arsalsohave based their decision onseveraltraditionsthatpermittrials in absentia, asa matter ofurgencyin order toprevent theviolation ofcivil rights. But the most popular theory about trial in absentia is that the trialin absentiain mattersthat are anaspectof people's rights, is permitted, but in matters that are anaspectof god's rights,is not allowed.Even though there's a difference of opinion aboutmanifestations ofGod's rightand therights of the people. Here it is believed that the trials in absentia in rights of people are permitted and forbidden in God's right. Unaware of the fact that distinction between these two aspects of the deal is not easy. The main reasons for the scholars, including Sheikh Mohammad Hossein Najafi author of Javaher al-Kalam and Sheikh Yousef Sanei one of the contemporary scholarsincludes: that limits of God are need-based. Sheikh Tusi in Almabsuthave made it clear that the judgment against a person who is absent is permitted in cases where it is a matter of caution.The claim of consensus along with adherence to the rejected ruleisalso one of thereasons. Sunni scholars as well as Shiite clerics have issued a fatwa on the permissibility of trials in absentia. Shafi'i, Hanbali and Maliki allow trials in absentia.However, Hanafi has opposed trials in absentia (Jamady, Haman) Although legal writers believe it is contrary to the principle of caution and emergency and in some cases even violates the principle of judicial punishments. And they also believe that Impermissibility of trialsin absentia is a side effect of abuseof the

opportunists,because they may find those opportunities toabuseother people's rights and by escaping the related jurisdiction, prevent the trial and restoring the rights of the citizens.

3-3-3-2- Reviewthe status ofthe trialin absentiainjustice system of criminal lawin Iran

The first time in the Criminal Procedure Code (later the name was changed to the Code of Criminal Procedure) Act 1290 trials in absentia was accepted by the court of misdemeanors. in 1337 with modification of article 273 of code of Criminal Procedure, act 1290, trial in absentia was accepted by the court of misdemeanors. Then in 1339 two separate laws were adopted one about trials in absentia for the criminal offenses and one for administration of the trial in absentia for the criminal matters.

Provisionoflaw on trials in absentia for the matter of offenses, sentencing in absentia for the offense even before summoning the defendant was allowed. Due to the law of prescribinga hearingin absentia in criminal matters, adopted in 1339,If convicted in the criminal courts were to flee and summoning him for appointing a lawyers or the formalities relating to the preparatory meeting was improbable, courts could held a hearing in the absence of the defendant. After the revolution, first in the dispersed laws and eventually in the above law, the legislator within crimes to the right of God and the rights of people, banned trials in absentia on charges on crimes against the right of God, However, in crimes that violate people's rights with, trial in absentia is accepted.

As well as in Advisory Opinion of the judicial system No. 4187/7 dated 08.25.1384 the Legal Department of the judicial system permits trials in absentia, because of the lack violation of god's rights.

The Supreme Court in a procedure unity vote No.641 dated 25.08.1378 allowed trials in absentia in cases of overdrawn cheques. There are many problems in the implementation of these rules to a large extent and scope, so much that the concept of trial in absentia and its territory is faced with ambiguity. Including that, the concept of the god's rights and Rights of people is not clear and there are no precise criteria for separating these two categories of crimes.Second, according to Article 2 of the Act 37 which provides that all offenses have an aspect of God's rights, Second, according to Article 2 of the Act 37 which provides that all offenses have an aspect of God's rights, has faced the implementation of Article 217 and 219 with more difficulty. So if we can

have a measure for separating crimes against God's rights and people's rights, and if according to other provisions of the Code of Criminal Procedure if we can consider some crimes without violation of god's rights, so we can allow trial in absentia for crimes that have an aspect of violation of people's rights. But does the philosophy to justify the prohibition of trials in absentia on charges with an aspect of violating god's rights, already exists in the common law system or not?

The basis of a verdict in absentia on charges with an aspect of violating god's rights is to protect and prevent violations of the right of the plaintiff.

There is only one exception in the case of crimes against God's right which allows for the trial in absentia. Even in that case, the court has to decide that the defendant is innocent. (Article 219 of Code of Criminal Procedure of 1378).

In justifying the ban on voting in absentia in criminal charges with an aspect of violating god's rights, it is said that because god's limits include some alleviations, and legislator is not strict in enforcing them, therefore, if the defendant is not present then the conditions are not proper for proving him guilty. In addition to the substantive reasons for prohibiting or permitting trial in absentia, some practical reasons could assist in the adoption of such trials, like including the passage of time about the crime and the evidence being destroyed.

Even on appeal, if the Court of Appeal decide to overrule the lower court decision, and enter into the nature of the case, it is required that the defendant be invited to attend the trial. In rare cases, it is possible that in the initial stage despite the absence of the defendant and with the lack of his defense, the lower court issues a vote on his innocence. However, if the plaintiff or prosecutor appeal the decision, it is likely that the appeal court violates the lower court's decision and sentences the defendant. In this case, if the defendant is not invited or summoned to participate in sending in a the defense bill, or has not presented a lawyer, according to the text of Article 260 of code of criminal procedure, adopted in 1378, the vote will be counted as a vote in absentia and the defendant can appeal this vote.The same applies to Article 364 of the Codes of General and Revolutionary Courts of Civil Procedure, adopted in 1378. Without summoning the defendant to appear at the hearing, he could not be convicted.The European Court of Human Rights considered the vote of Norway's Supreme Court a violation of the defendant's right. In this

context the European Court of Justice ruled that if the defendant has not been invited to be addressed in court, convicting him does not seem right. Because it was the duty of the Supreme Court to summon the defendant to the Court and directly receive the defendant's reasons, of course, The right to attend the appeal court can be achieved through the introduction of a lawyer and his presence.

Thus, according to the orders of Iran's Criminal Code, for conviction in absentia in criminal matters it is essential that the following conditions apply:

(A) the defendant must be summoned, and despite the validity of the notification of the court's statement, without reasonable excuse, does not attend the hearing session. If the defendant has a reasonable excuse he must declare it to the court, in the case of the defendant having a valid excuse or invalidity of issued summons, it is time to renew proceedings. the justified excuses are as mentioned in article (306) Q.H.d.m.

(B) the defendant does not send in a defense bill. The defense bill is what the defendant raises to defend him, and to prove his innocence. Therefore, any bill cannot be considered a defense and destroy the character of the judgment in absentia.

(C) The defendant does not introduce his lawyer. Presence of a lawyer at the hearing, excludes the verdict of the verdicts in absentia.

(D) The court requires the presence of the defendant for the proceedings. If the presence of the defendant is necessary in the eyes of the court, Instead of issuing a judgment in absentia, the court,renews the hearing of the appeal and issues the summons or arrest of the defendant and in any case until the defendant appear in court, the case is open.

(E) Issue of crime is not violating god's rights, otherwise the court shall proceed as the method provided in paragraph (D). This issue has been mentioned in former laws including Article 30 of the criminal law courts one and two, approved in 1368. In such cases, the courts are not entitled to a trial and proceedings in absentia.

Judgments in absentia within ten days from the date of verdict can be appealed in the court that issued the sentence and until there is not an actual notification about the verdict will not be considered final. These legal provisions, if announced properly and there’s not a request to appeal within the deadline of the notice, will be applied in time. The defendant may, within ten days from the date of notice, demand an appeal from the court.

In this case, the court that issued the sentence issues a temporary ban on implementation of the verdict and prevents the process of

execution of the verdict. In the former Code of Criminal Procedure law under clause (1) of Article (317) The former Code of Criminal Procedure law under clause (1) of Article (317) the seize of sentence is subject to appeal by the defendant. But under the new law, seize of sentence, will be considered court's assignment and it is not subject to the appeal of the defendant.

- DISCUSSION

In this article, trials in absentia, the status of this kind of trials in the manner of contemporary international law, The reasons for the importance of trials in absentia in international criminal law and the requirements for trials in absentia were discussed.

One of the strategies that can fight with the lack of conviction due to lack of access to perpetrators of the heinous crimes, is the subject of the trial in absentia.

A trial where the physical appearance of the defendant is not required, of course in this way the judiciary must do it's utmost to reach the offender and if they failed to access the offender, trials in absentia can be used as a solution to this problem.

In other words, the presence of the defendant at all stages of criminal proceedings is of the principles.

The public hearing also requires the defendant to be present at the trial and be notified from the evidence gathered against him and defend himself according to them. The right of the defendant to be present at trial is one of the requirements of a fair trial. Based on Part IV, Section 3 of Article 14 of the International Covenant on Civil and Political Rights "the defendant has the right to attend the trial and personally or through an appointed lawyer defend himself" However, there are many reasons for why the trials in absentia are appreciated in some cases, particularly in National criminal trials.Because the irrefutable presence of the parties to the dispute in the trial is an absolute necessity and this can lead to violation of many rights.

Although in national and international criminal trials, the principle of choice usually is that the majority of trials are held with the presence of the defendant but trials in absentia are still the principle in exceptional cases and, although it should not be considered as a rule on the procedure, but as a undeniable necessity and worthy of attention.

It should be noted, however, that in the system of international law there are many doubts on prescription or prohibition of trial in absentia.

The results of the present study shows that customary international law and conventional international law has failed in acquiring one fundamental solution, that on one hand respect the rights of the defendant and of the other prevents international crimes from going unpunished.

In national criminal law and procedure, particularly in the legal system of Islamic justice, trials in absentia are granted and accepted. But in other legal systems of the world, the subject is not so easy:

In the Roman Germanic system subject of trials in absentia has been highlighted and emphasized and in most statutory legal systems, trial in absentia is accepted, which means the trial could be held in the absence of the defendant. Countries such as France, Belgium, and Greece, the Netherlands, Latin American countries and China accepted the trial in absentia.

The Inquisitorial justice system, which historically came after the adversarial justice system and had its origin in France, wants the pursuit of criminal proceedings to be transferred to a prosecutor appointed to a judicial authority, whichhas thetask ofgatheringevidence. In this system, the judge also plays an active role in reviewing theevidence. Thisphilosophy in written law system, which states that trials in absentia necessarily been accepted (contrary to common law countries), because the judge not only investigating evidence for the prosecution, but also for the defendant. Thus, when the trial began, the court also holds documents of justification in favor of the defendant, and therefore, the court is in a position to be able to assess the evidence for and against the defendant.

But in the common law system, except in exceptional cases, trial in absentia is not allowed. the criminal justice system of international law is still a nascent system, and so far there has been only a small number of international criminal tribunals held to prosecute international criminals. The International Criminal Court as a nascent institution so far have not created a significant legal precedent, so we can say that the trials in absentia in the international criminal law has not been seriously discussed in detail.

But it’s not the case in the field of international criminal law for such trials in absentia to be prohibited or banned, but from Nuremberg to Lebanon, once again the close link between international events has been established, which is listed explicitly in the statute of both of those courts .However, it seems that prescription or prohibition of trial in absentia depends on the conditions.

According to the international documents the right of the defendant to have his presence at the hearing does not prevent the proceedings of trial in absentia.
But although the trial in absentia is a proper tool, but the hearing should have some requirements because the unconditional acceptance of trials in absentia, violates the defendant's constitutional rights which have been highlighted repeatedly by the Constitution and international documents. These settings can be found in the principles of a fair trial.****

In trials in absentia if the defendant is not present, even if the absence is due to his own choice, this should not be an excuse for the judicial authorities to neglect his presumption of innocence and issue a verdict on him, this is one of his known rights.
Just like a trial in person, the defendant in a trial in absentia should be tried and prosecuted only once for the same crime that they may have committed and prosecuting the defendant for the same crime more than once is prohibited.

This rule has the same power and intensity in both trials in person and trials in absentia. also, even though trials in absentia are the kind of trials where the defendant doesn't have physical presence in court, but it should be noted that even if the defendant appears in court this appearance should have certain requirements like the right to a appoint a lawyer, a translator and the information about the case so the physical appearance without these requirements makes the trial a trial in absentia.

In general we can say that holding the trial in absentia in the International Criminal Courts is not recognized as a matter of principle. The reason for this, in addition to supporting the legitimate rights of the defendant, is to respect the interests of justice which is also relevantthat to the rights of the victims and witnesses throughout the international community. Trials in absentia should be a matter of exception and contrary to the principle. Unlike the Code of Criminal Procedure of Iran, that states that the trials in absentia for all minor offenses should be premitted without restriction with the exception of the crimes that violates the god’s rights. Butinmajor crimes, especially criminal offenses and misdemeanors it should be limited.

Therefore, the provisions of the Criminal Procedure Code on sentencing in absentia requires basic terms as under the Code of Criminal Procedure 1290 for misdemeanor crimes and crimes against several provisions, it was expected and the rule is not the same for all of those crimes.

CONCLUSIONS:

It can be said that international crimes as an undeniable fact are part of the daily and monthly news of global community and each year it is allocated to a large number of innocent people around the world who are killed or injured by international criminals or their other rights gets violated and these measures are in accordance with national practice and international instruments and national laws considered among the most severe penalties. we need to combat these criminals. Criminals that for the sake of having power and wealth are able to easily escape justice and avoid trial.

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