

A Comparative Study of Superior Orders Defense in the Iranian Legal System and International Criminal Law

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Abstract Crime is a social-human phenomenon which directly target social order and security and inflicts numerous harm to the individual and the community. In every country legislator sets appropriate penalties for crimes in line with the economic, political, cultural and social conditions of that society. But sometimes even the legislator permits acts which are determined to be crime and sets no penalties. These factors are called “justified causes of crime”. Therefore, justified causes of crime, are the factors which removes the criminal description the act which is normally a crime and set no penalties. Paragraph (c) of Article 159 of The Islamic Penal Code, is addressed o the issue of legal affair and prescribed if the agent, executes the issued order legislator thinking that it is legal, it will be exempted penalty. Also, in International Criminal Law, before the adoption of the Statute of the International Criminal Court, the order of legislator had not been accepted as an independent defense and only under certain conditions it could be considered as discriminatory factors of punishment. With the approval of Article 33 of statute of the International Criminal Court, the defense of legislator’s order can be occurring by ensuring conditions including not being illegal, no knowledge of illegality, commitment to obedience and so on. It seems that the defense of legislator’s order in Iranian Criminal Law and International Criminal Law is among causes of eliminating responsibility and frees officer punishment. The present research aims to investigate comparative study, investigation and recognition of weaknesses and strengths of the defense of legislator’s order in Iranian Criminal Law and International Criminal Law.

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