

Notion of Criminal Offences in Cambodian Criminal Law

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국문초록

본고에서는 형사범죄, 처벌, 형사책임 및 형사소송과 같은 캄보디아 형법에
서의 형사범죄 개념을 고찰하고자 하였다. 그리고 본 연구에서는 교과서와 캄
보디아 형법, 형사소송법을 포함한 2차 자료(보조자료)에 따라 기술적 접근법
을 사용하였다. 따라서 본고는 학생, 연구원, 변호사 및 학자들이 현재 캄보디
아 형법에 대한 더 나은 이해를 깊이 있게 하기 위해 중요한 의미를 가진다.

주제어 : 개념, 형사범죄, 캄보디아, 형법, 형사소송법

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I . Implementation of the Boundary of Penal Code

The penal code specifies the offences and points out the persons who could be responsible for the offences, and it determines the penalties and the modalities of their application as well (Article 1 of the Criminal Code of Cambodia, 2009). The law states that certain acts of natural persons or legal entities which make social disturbance are offences. Offences are classified, according to their severity, as felonies, misdemeanors and petty crimes. In necessary cases, legal instruments issued by executive body may state petty crimes which are penalized by monetary fine only (Article 2 of the Criminal Code of Cambodia, 2009).

Only the act constituting an offence that is provided in the criminal provisions in force gives rise to criminal punishment. Only penalty that is provided in the criminal provisions in force when an offence is committed may be imposed. Each person is responsible for his/her act only. There is no offence if there is no intention to commit. However, in case that a law is provided in advance, an offence may arise from carelessness, inattentiveness, negligence or failure to respect certain obligations (Article 3 and 4 of the Criminal Code of Cambodia, 2009). In a criminal case, the law is strictly interpreted. The judge can neither broaden his/her sphere of application nor proceed doing so by means of an analogy (Article 5 of the Criminal Code of Cambodia, 2009). No sentence can be executed if it has not been pronounced by a court (Article 6 of the Criminal Code of Cambodia 2009).

II. Conditions for Application of Cambodian Laws

Criminal cases, the implementation of Cambodian law in space is determined

by the provisions of this code, except otherwise stated in the international treaties (Article 7 of the Criminal Code of Cambodia, 2009). The provisions of this code may not constitute a condition for denial of justice for the victims of serious offences provided in a separate law in relation to violation of the international humanitarian law, international practices, or international conventions recognized by the Kingdom of Cambodia (Article 8 of the Criminal of Code Cambodia, 2009).

III. Application of Criminal Law in Time

The new provisions which abolish an offence are immediately applicable. The acts committed before their effective date can no longer be prosecuted. The legal proceedings in progress must be terminated. If a final sentence has been imposed, the penalties resulting from this sentencing must not be carried out or cease to be executed (Article 9 of the Criminal Code of Cambodia, 2009).

As far as criminal acts are concerned, the Cambodian Penal Law is applicable to offences committed in the territory of the Kingdom of Cambodia. The territory of the Kingdom of Cambodia includes the airspace and the sea water territory which are bound to the territory of the Kingdom of Cambodia (Article 12 of the Criminal Code of Cambodia, 2009). Defining an offence committed by a legal entity as felony, misdemeanor or petty crime is determined by penalty imposed on natural person (Article 18 of the Criminal Code of Cambodia, 2009).

Each person is responsible for his/her act only (Article 24 of the Criminal Code of Cambodia, 2009). It describes a perpetrator is a person who has committed the incriminated acts. A perpetrator is also a person who has attempted to commit a felony or, in the cases provided for by law, a

misdemeanor (Article 25 of the Criminal Code of Cambodia, 2009). Described as co-perpetrators when several persons have agreed to commit an offence together directly. It also describes as co-perpetrators when several persons have agreed to attempt to commit a felony or, in the cases provided for by law, a misdemeanor directly (Article 25 of Criminal Code of Cambodia, 2009).

The attempt to commit a felony or, in the cases provided for by law, a misdemeanor is punishable when the following conditions are fulfilled:

1. The perpetrator has started the initial steps in the commission of the offence which means that the perpetrator has carried out his/her intention directly to commit the offence:

2. the perpetrator has not stopped his/her act voluntarily but it was disrupted or interrupted by the effect of the circumstances outside his/her will. Act of preparation without own intention to commit an offence does not constitute the initial steps. The attempt in petty crime carries no punishment (Article 27 of the Criminal Code of Cambodia, 2009). Described as an instigator is the person who:

1. encourages the commission of a felony or a misdemeanor by giving an instruction or order;

2. instigates to commit a felony or a misdemeanor by means of a gift, a promise or a threat, incitement, lures or by abuse of his/her authority or his/her power.

The instigator is punishable only if the felony or the misdemeanor is carried out or was attempted. The instigator of a felony or a misdemeanor receives the same punishments as the perpetrator (Article 28 of Criminal Code of Cambodia, 2009). Described as an accomplice is the person who intentionally facilitates the attempt or the realization of a felony or a misdemeanor by providing his/her help or assistance. The accomplice shall be punished unless the crime or demeanor offend get success or attempted.

The accomplice of a felony or a misdemeanor receives the same punishments as the perpetrator (Article 29 of the Criminal Code of Cambodia, 2009).

IV. Offences Committed Aboard Foreign Ships

As far as criminal acts are concerned, the Cambodian Law is applicable to offences committed aboard a foreign ship on which the Cambodian authorities are allowed to inspect or arrest by means of an international agreement (Article 15 of Criminal Code of Cambodia, 2009). As far as criminal acts are concerned, the Cambodian Law is applicable to offences committed aboard an aircraft registered in the Kingdom of Cambodia no matter where they are located (Article 16 of the Criminal Code of Cambodia, 2009). As far as criminal acts are concerned, the Cambodian Law is applicable to every person who is an instigator or an accomplice in the Cambodian territory of a felony or a misdemeanor committed abroad, if the following two conditions are fulfilled:

1. The offence is punished by the Cambodian law and by the foreign law;
2. The existence of offence has been verified by a final decision of the foreign Court (Article 17 of Criminal Code of Cambodia, 2009).

V. Felony or Misdemeanor Committed by a Cambodian Citizen

In criminal case, the Cambodian Law is applicable to any felony committed by a Cambodian citizen outside the territory of the Kingdom of Cambodia. The Cambodian Law is applicable to misdemeanors committed

by the Cambodian citizens in a foreign country if the acts are shared to be punishable by the law of such foreign country. These provisions are also applicable even though the accused has obtained Cambodian nationality subsequently to the acts which had been charged (Article 19 of the Criminal Code of Cambodia, 2009).

In criminal case, the Cambodian Law is applicable to any offence committed outside the territory of the Kingdom of Cambodia and if it is qualified as:

1. Infringement against the safety of the Kingdom of Cambodia;
2. Counterfeiting the seal of the Kingdom of Cambodia;
3. Counterfeiting national bank notes having legal tender in the Kingdom of Cambodia;
4. Offence against diplomatic or consular agents of the Kingdom of Cambodia
5. Offence against diplomatic or consular premises of the Kingdom of Cambodia (Article 22 of Criminal Code of Cambodia, 2009).

VI. Causes of Criminal Irresponsibility or Lessening Responsibility

When a person commits an offence right at the time when s/he is suffered from mental disorder which suppresses his/her discernment, s/he is not criminally responsible. When a person commits an offence right at the time where s/he is suffered from mental disorder which reduces his/her discernment, s/he still remains criminally responsible. However, the court must take into account that circumstance when it determines the penalty. When a person commits an offence right at the time where he/she suffered from mental disorder dues as a result of using alcohols, addicted drugs or

substances prohibited by laws cannot be exempted from criminal responsibility (Article 31 of Criminal Code of Cambodia, 2009).

A person who performed an act prescribed or authorized by the law, he/she does not commit an offence. A person who performed an act compelled by legitimate authority, he/she does not commit an offence, except for the fact that this act is obviously illegal. However, the perpetrator, the instigator or the accomplice of genocide, of a crime against humanity or war crime cannot be exempted from his/her criminal responsibility even with reasons as mentioned below:

1. S/he has performed an act prescribed, authorized or prohibited by the law in force;
2. S/he has so acted under the order of the legitimate authority (Article 32 of the Criminal Code of Cambodia, 2009).

A person who committed an offence under a legitimate defense is not criminally responsible.

Legitimate defense must fulfil the following conditions:

1. The offence is justified by the necessity to engage in defense against an unjustified aggression;
2. The offence and the aggression must happen at the same time;
3. There is no disproportion between the means of defense used and the severity of the aggression (Article 31-33 of Criminal Code of Cambodia, 2009).

VII. Criminal Responsibility of a Legal Entity

In case it is precisely provided for by a law and legal instruments, the legal entities, to the exclusion of the State, may be declared as being criminally responsible for the offences committed, for their interests, by their

organs or their representatives. The criminal responsibility of the legal entity does not exclude the criminal responsibility of the natural person for the same acts (Article 42 of the Criminal Code of Cambodia, 2009).

VIII. Validity of Criminal Procedure

Criminal and civil actions are two separate kinds of legal actions. The purpose of a criminal action is to examine the existence of a criminal offense, to prove the guilt of an offender, and to punish this person according to the law. The purpose of a civil action is to seek compensation for injuries to victims of an offense and with this purpose to allow victims to receive reparation corresponding with the injuries they suffered (Article 02 of Code of Criminal Procedure, 2007). Crimes against humanity, genocide and war crimes have no statute of limitations. Except as provided for in Article 9 (Crimes without Statute of Limitations) of this Code, the time limitation for bringing a criminal action is as follows:

- Fifteen years for a felony;
- Five years for a misdemeanor; and
- One year for a petty offense (Article 9 and 10 of the Code of Criminal Procedure, 2007).

Criminal actions are brought by Prosecutors for the general interests of the society. Prosecutors initiate criminal proceedings and request the application of the law by investigating and trial judges (Article 4 of the Code of Criminal Procedure, 2007). Victims of a felony or misdemeanor can file a complaint as plaintiffs of a civil action before the investigating judge. The complaint of plaintiffs in a civil action has the power to seize an investigating judge with a criminal action under conditions stipulated in Article 139 (Delivery of Request to Prosecutor) and 140 (Payment of

Deposits) of this Code. Criminal jurisdictions can also receive complaints from government officials or other public agents who are authorized under separate laws (Article 5 of the Code of Criminal Procedure, 2007).

The reasons for extinguishing a charge in a criminal action are as follows:

1. The death of the offender;
2. The expiration of the statute of limitations;
3. A grant of general amnesty;
4. Abrogation of the criminal law;
5. The *res judicata*.

When a criminal action is extinguished a criminal charge can no longer be pursued or shall be terminated (Article 7 of the Code of Criminal Procedure, 2007). The statute of limitations for a civil action shall expire in accordance with the rules provided for in the Civil Code. However, a civil action cannot be brought before a criminal court after the statute of limitations of the criminal action has expired (Article 26 of the Code of Criminal Procedure, 2007).

IX. Cause of Crimes

Public parks, stadium and amusement-park, statute, crowded area can be cause of crime (Larry & John (2015). Internal principle and external source are heavily considered as main-reason of Criminal acts. Internal origins of crime are personal-attitude, genetic, attain mental-problem, alcoholic, and addicted person. Beside these, external-origin of crime refers to any social-effect on criminals like family culture, school, friends, career, and spare time activities (Cesare, 1867 and 1909 cited in Yab Meta, 2008).

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[Abstract]

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This paper examines the notion of criminal offences in the Cambodian criminal code such as criminal offences and punishment, criminal responsibility, and criminal procedure. This study uses a descriptive approach based on secondary sources including textbooks, Cambodian Criminal Code, and Criminal Procedural Code. Therefore, this paper would be significant for students, researchers, lawyers, and academicians to deepen their better understanding of current Cambodian criminal law.

Key words : Notion, Criminal Offences, Cambodia, Criminal Code, Criminal Procedural Code