

Private Litigation in the Criminal Justice Process

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Abstract: Sometimes in the commission of a crime may also undermine the private rights of a person or persons in addition to the realm of public law, that the damage and loss compensation's could be material and or spiritual accordingly, the offense will be creating two rights. One is the community right due to the offenders disturbing public order and another victim's right by the crime to claim loss compensation. Private litigation arising from crime is an example of legal claims verifiable in terms of nature as an act of civil liability and requires criminal responsibility for crimes committed and requires Code of Civil Procedure in terms of deal is form (Article 15 q.a.d.k). Moreover, to claim a private litigation on appeal given that is in conflict with the two degrees-of-hearing principle is impossible. However, it is possible in the protestation stage, because in fact protestation is the continuation of the first stage investigation and is not in conflict with the principle of two degrees-of-hearing. Although, the principle is that the the public's rights go to the competent courts and criminal courts and legal jurisdiction court deals with the private litigation, in exceptional cases criminal court has jurisdiction over the private litigation case. The philosophy of this exception source is the reduction of the proceedings.

Key words: Competence, private litigation, criminal court, offense, code of criminal procedure

INTRODUCTION

Loss compensation or damage inflicted on persons is either resulting from contractual liability such as lack of commitment by committed against contractor or resulting from non contractual liability that is divided into two categories liability arising from accidents and natural force and liability arising from the offense. Accordingly, to maintain social order and the rights of others and prevent harm to other requires contractual and non contractual enforcement guaranteed. So that an important principle of legal principles mentioned that "No one shall inflict harm on another and no harm shall remain uncompensated". Therefore, if the crime causes harm to a person, compensation should also be given in addition to addressing crime.

To deal with general aspects of crime is inherent competence of jurisdiction of the criminal courts. But in the law of some countries such as France, Belgium and Italy, courts also address the public trial with civil jurisdiction over the case. But some countries such as the UK and most states in the United States this right is limited to legal courts. Among lawyers advocates of referring civil affairs to the civil criminal court have the majority of the public trial and Iranian law has joined the (Article 12 of the Code of Criminal Procedure Act of 1911) majority and Iranian criminal procedure has licensed this. So that, in the above law Criminal Court has the

jurisdiction over the private litigation case and must sentence if private litigation demand claim. Although, the necessity to compensate for loss compensation is recognized as the fundamental rights and there is no difference between real and legal persons (including legal entities of public law and private law) for some reason this question is raised "Why Criminal Court is competent to decide on private litigation arising out of crime? Does it impair the inherent competence of Law Courts with interference with the competence? In response should be stated that the obligation of Criminal Court to issue a civil penalty for the aggrieved victim has the advantage of collecting compensation faster and with less costs. There are a lot of formalities required in Legal Court that are ruled out in the Criminal Court and is useful to society. General aspects belong to community rights are enhanced and facilitated with the intervention of the private plaintiff to be expressed and reasons provided and prevents prosecutors and investigators silence. It is also in the interest of justice system because prevents inconsistent verdicts and the wastage of time and workload. It should be noted that in law states that criminal courts have jurisdiction over civil affairs. This jurisdiction is exclusive of the general courts and exceptional and special courts such as military courts usually do not have civil jurisdiction over the case but some Iranian laws address some private claims within the competence of the exceptional and specialized authorities.

For example, Article 575 of the Criminal Procedure Act and the Armed Forces Act 2014, states: "If as a result of the crime, material loss compensation to the armed forces is inflicted, related units shall submit all evidences to the authority to prosecute and also announce loss compensation petition before the end of the hearing to the court. To claim loss compensation requires addressing the provisions of Civil Procedure but do not requires legal fees". Also according to judicial precedent Act No. 581 enacted on February 20, 1993 the Revolutionary Court is competent to handle claims in regard to the confiscated properties. In this study the researcher is trying to examine the jurisdiction of the criminal court to deal with private litigations in public authorities, including the preliminary stages, protestation, revision and Supreme Court.

PRIVATE LITIGATION

The concept of private litigation: Code of Criminal Procedure classifies claims into two categories: public and private. In fact, in case every crime a public or a private litigation can be raised. Article 8 q.a.d.k. Provides: "Conviction to the punishment is the outcome of a crime, and crime is a divine aspect, that can be of two status: public status to exceed the limits and God regulations or violation of community rights and disrupting public order, the private status of violation of the specific person or persons rights". According to Article 9 of the law, a crime that has two status will make two claims: General status gives rise to a public trial and private status gives rise to a private litigation to claim for personal loss compensation. It is important to note that in Article 8 the word "can" used by the legislatur illustrate that all crimes are not necessarily have private aspect.

In other words, the crime would have some general aspects and for this reason, there is no crime lacking this, but not all crimes have private aspects, namely necessarily do not inflict harms on a person or persons (Ashuri, 2006). Public trial is said to claim that Prosecutor makes as a community representative or attorney against the offender in court. In fact, a public trial proceecution is a right belongs to the community and society and enforced through its representatives. But the claim is made by the victim of the criminal act against the offender for compensation for loss compensation and damage and restitution to the competent authorities is the private litigation (Jamshidi, 2000). In other words, private litigation is the claim by injured for compensation of crime (Zerrat, 2014). Private litigation is a kind of claim to restore the right of privacy or compensate loss compensation arises from criminal offense.

The purpose of a private claim is to compensate the moral or material damages caused by the crime to a specific person or persons whether real or legal. Private claim is wholly owned by the victim of the crime, the aforesaid or his legal heir and deputy can ignore it from the beginning and in case of private litigation claim refunded claim at any stage of prosecution and investigation and compromise.

How to handle private litigation as a result of a criminal case: Some believe that if private litigation be heard in criminal court, criminal procedure with it is main aim to address public trial and punishment of crime or acts of providing and training or information about the Diya, Hodod and Qisas will be more accurate. Because by accepting private litigation in the criminal court, some of the principles and rules relating to civil proceedings should also be respected (Akhondi) and granted the right to establish private claims to the criminal court to hear a lawsuit claiming loss compensation as a result of the crime is fair and appropriate mechanism. Because both claims, on a reference, speeds up the proceeding, makes files less dense, avoids infringement of the public interest and facilitates the processes of due process (Tahmasebi, 2015).

Article 15 of the Code of Criminal Procedure Act of 2013 states that: "After the accused was prosecuted, the suffered from crime can submit a certified copy of image of all the evidence to the case to the prosecuting authority and submit their petition for loss compensation to the court prior to the announcement of the termination of the proceedings. Claim loss compensation and dealing with it requires the due process of civil procedures". Although, Article 16 of this law states that the original loss compensation claim to legal court, it will not be possible to submit loss compensation petition to the criminal court but this is not a principle and the possibility of extradition proceedings and refereeing to the criminal court is anticipated. Article 17 explicitly refers to the competence jurisdiction of criminal courts i into the private litigation "the court is obliged while issuing criminal verdict issue verdicts in regard to the private litigant's loss compensation, according to the evidence available unless the hearing loss compensation requires further investigation.

In this case, the court issues criminal verdict and then deals with loss compensation". And if public trial is terminated and private litigation is involved in the Criminal Court, Criminal Court is required to issue verdict to deal with public litigation termination because it does not lead to private litigation termination (Article 20 q.a.d.k).

THE REFERENCE FOR PRIVATE LITIGATION RESULTING FROM CRIME

Private litigation is the consequent of public trial and it is certain that will not be raised until the public trial is made. The victim can use one of two ways for the claim for loss compensation resulting from crime:

- Claim in a civil court
- In line with criminal prosecution of accused claim for loss compensation on the criminal court dealing with as the nature of the crime

In other words, the victim has the choice, i.e., that could be to select between the civil court and criminal court. The former generally has jurisdiction over civil claims and the latter exceptionally deals with loss compensation caused by the crime (Akhondi, 2006). Therefore, the reference of the action must be examined with reference to the claim plan.

Penal criminal court jurisdiction in the preliminary stages: According to Article 11 of the Criminal Procedure Act of 1999, private litigation is possible to be claimed with the discovery and prosecution of public trial but the court do not do anything to address the private litigation and some of the lawyers believe that private litigation is better to be submitted to court after the issuance of the indictment (Zeraat, 2014).

The wording of Article 11 of the law was in such a way that complainant could make his petition for loss compensation after the accused was prosecuted and provide prosecutors with copies of documents. In the event that the prohibition or cessation of prosecution on the criminal aspects, prosecutors were bewildered on petitions submitted and did not know where to send documents submitted to Legal Court or Criminal Court. Until the adoption of Article 15 of the Code of Criminal Procedure Act, 2013 which provides: "after the defendant was prosecuted, injured from crime can submit image or certified copies of all evidence for attachment to the case to the authority to prosecute to claim loss compensation prior to the announcement of the termination of the proceedings". This problem was solved, so the plaintiff can no longer submit his petition to the court.

In cases where public trial comes in criminal court directly and without indictment (such as crimes Grade 7 and 8) private litigation can be made to coincide with public trial but if the criminal court issues cessation of prosecution in general aspects in addressing crime, it is required to deal with the private aspect of the crime. The question that arises here is that

If the court issues cessation of prosecution in regard to public trial and the plaintiff protested against it, and the case were sent to the criminal court to address the objections could the plaintiff submit petition for loss compensation to a criminal court?

In response to the question can be said given the legislative authority in Article 15 of the Act of 2013 a.d.k given to the complainant, since injunctive relief or cessation of prosecution is not yet clear verdict on the accused and the case is under investigation in criminal court, it seems that the plaintiff can submit petition for loss compensation. If approved, court investigated in private aspects of the issue and comments and in case of breach of order and the issuance of an arrest warrant the due process and separation of criminal case is done and the accused is called to the court. Although, it is better that plaintiff submit petition after accepting the objection and issued an arrest warrant.

Penal jurisdiction in protestation: If criminal court issues an absentee verdict in general aspects of crime in proceedings, whether the litigant or plaintiff can make private litigation in protestation? In response, first we refer to two theories provided by the General Administration of the judiciary legal.

The theory No. 1965/7 enacted on June 19, 2004 read: "Although, the protestation is the continuation of the preliminary stage, given that in accordance with Article 11 of General and Revolutionary Courts Procedure Code (in Criminal cases) enacted in 1999 (Article 15 of the new law) litigant can submit petition for loss compensation prior to the announcement of the termination of the proceedings and because the absent verdict is present in term of plaintiff, so the plaintiff is obliged to submit his petition before the court prior to the announcement of the termination of the proceedings and therefore, in the protestation that is immediately after the end of the preliminary stage of the proceedings petitions for loss compensation can not be acceptable". And theory No. 1313/7 enacted on May 26, 2004 also reads that loss compensation petition is not possible in protestation stage: "In the implementation of Article 11 of General and Revolutionary Courts Procedure Code (in criminal cases) enacted in 1999 (Article 15 of the new law) if someone wants to take advantage of private lawsuits in addition to criminal cases should submit loss compensation petition prior to announcement of the termination of the proceedings before the courts and this is related to the preliminary stage and in the protestation and appeal can not submit loss compensation petitions".

So with the interpretation of above theories, it can be said that proponents of the impossibility of private

litigation in the protestation stage argue that first, the phrase “after the accused was indicted” indicates lack of ability to claim loss compensation in protestation because using the word “accused” is specific to the courts and prior to the announcement of the end of the preliminary hearing and sentencing and in protestation, the person who issued the warrant against is not called “accused” but “convicted”. Second, Article 15 know the due to the making lawsuit “prior to announcement of the termination of the proceedings” and that is termination of proceedings is at the preliminary stages of processing and even in protestation there is also the termination of the proceedings but this means the end of the preliminary hearing. Third, protestation is a privilege that is given to the absentee by lawmakers who could not attend the court and defend arguments presented at the hearing and the verdict issued at the stage of protestation should not be more than that of at of the preliminary hearing because a protestation is a kindof appeal and a new claim can not be handled at this stage, although follpwwed by another case, and in criminal cases, the increased conviction against accused can not be possible. Fourth, the possibility of protestation is a privilege that is given to the absentee and prohibited private litigation at the protestation is with no harm to the litigant because the way to claim is open to him and he can pursue his claim in the criminal courts. On the other hand, claim for loss compensation during criminal lawsuit is an exception of the principle of jurisdiction over private lawsuits in civil court and must be interpreted in a narrow scope and a broad interpretation must be avoided. Fifth: despite the protestation is to review the perilimnary stage but is another part of the proceedings and in addition to the impossibility of increasing demands by the complainant (Article 98 q.a.d.m) it must be said convicted with protestation follows to be acquitted or decrease punishment and not to the verdict exacerbated rather than reduced punishment. In contrast to this interpretation, some people believe that protestation is the continuance of prilimnary stage and announced the termination of proceedings with protestation hearing will be ineffective and it is possibil to make private litigation at this point (Zeraat, 2014).

In the justification for accepting petitions for losses compensation in the protestation can be said: first, protestation means undermining the previous proceedings, so when the court enters the proceedings, all traces of the previous investigation will be eliminated including the termination of previous proceedings. Second, a comparison between the protestation stage and appeal is not correct because according to the principle of two-stage claims handlings in the appealstage claims that

are not being addressed in the preliminary stage can not pursued. However, such limits are absent in the protestation for the investigation at this stage, is considered preliminary investigation. Third, the reason for the possibility of raising private litigation in the first stage are appropriate to make public trial in the protestation stages and granted the right to planitiff is no prejudice to the right of protestation (accused) because making claim is to compensate losses not to make the accused punishment more sever. Fourth: in the protestation stage, after hearing the statements of the complainant and defense, the litigant decides on private litigation. One of the reasons that the legislator has allowed the complainant to submit petition prior to the termination of criminal case proceedings is that to investigate the accused pleadings and reasons. If the accused pleadings and reasons were strong then makes private litigation and follows procedure and complex formalities and assumes legal fees. Fifth: protestation is a part of the preliminary stage and early termination of the proceedings declared void with protestation demand and the court is obliged, under Article 407 Code of Criminal Procedure Act 92, to allocate a time for investigation and summon the parties to protestation. Sixth: given that the existence of this right in the preliminary stages we are certainly in doubt in the case of obtaining protestation, so it will be accepted. Seventh: the adoption of this opinion does not conflict with the principle of two-degrees-of-hearing, in countries such as France there is the possibility of making claims at this stage. So accepting the possibility of raising private litigation at the stage of protestation is consistent with legal logic and the rights of the injured party to expedite the processing of crime.

Competency of the court of appeal to deal with private litigations arising from crime: If private litigation not rose in the initial stage, it is not possible under appeal. Firstly, if the complainant was willing to claim loss compensation, it must be used in the preliminary stages and failure to exercise his rights in criminal court that is an exceptional case is as waiving the exceptional right; second, making private litigation under appeal is against the principle of two-degrees-of-hearing thirdly, although, judicial appeal is to review the preliminary case, it is another stage of the proceedings. In addition to the impossibility of increasing demands by the complainant (Article 98 q.a.d.m) it must be said that the demand for appeal is for acquittal or reduced penalties rather than exacerbated sentence.

Some believe that if the Court of Appeal considered the preliminary court’s verdict as sentence and refer it for protestation, it is more appropriate that we prefer the

theory of the impossibility of the action (Zeraat, 2014). However, with regard that the appeal court has considered the verdict as sentence and recognized not entering into nature by the first court and the case was sent to preliminary court for investigation, it seems that the termination of the previous proceedings of the court is eroded and all rights including private litigation rights of injured for loss compensation is revived until the termination of criminal proceedings.

Competency of the supreme court to deal with private litigations arising from crime: Civil litigation arising from crime whether issued by the same sentence or in separate judgments, follows its appeal according to the rules of civil procedure whether or not the sentence is subject to appeal. In cases where the sentence is irreversible and definitive to the civil verdict, the Supreme Court might handles the doomed fee and the origin of liability that is the same sentence is not handled because of certainty but if the civil verdict is final and binding and criminal verdict is allowed the appeal the problem is when the accused is exonerated from the violation. In such case the only way to abolition of civil sentences seems to be the broad interpretation of Article 426 q.a.d.m and is appealing to a judicial review.

Once the criminal court order is violated, the case is referred to another branch of the General Court of Criminal or Penal Court, whether the violation is related to criminal or civil aspects or on both sides and regardless of whether the violation of civil order is due to an appeal by a private plaintiff or defendant or both. Therefore, it seems if the violation of civil order is the consequence of a criminal sentence or the accused appeal and if the violation of civil order is the consequence of the private claims appeal the court will review as the common law.

Moreover, if the Supreme Court also violates the verdict and refers the case for the substantive investigation to a preliminary court or equivalent court, it seems that the suffered from crime can make a private claim for compensation of losses resulting from the alleged crime because violation of the early verdict erodes announced investigations and handlings.

Objection under Article 15 of the Law of Criminal Procedure about the deadline for petition submission prior to the termination of the hearing is first of all that it is unclear to the injured party of the crime that when the criminal court judge wants to declare the proceedings termination to before that, he submit their lawsuits. Second, there are ambiguities and disagreements to submit petitions at the protestation or preliminary stage after violating the terms of verdicts in the Court of Appeal

to consider the verdict a sentence. Therefore, it is suggested that deadline set for the petition submission amended, rather than until the termination of proceedings by the end of the first session of the hearing.

How to make a private claim against the defendant successor: To make a private litigation against the defendant successor can be studied from two angles: "If the private litigation is brought into a civil court, in this case, it is possible defendant be the accused (including the main steward, partner or accomplice) or third party with civil responsibility. In this case, to claim and pursue it is as prescribed in the Civil Procedure Act and to discuss it is outside the scope of the Code of Criminal Procedure".

If a private litigation is brought into a criminal court, is a private litigation can be filed in criminal court against all the civil authorities? In other words, parents and vice president of the accused and the third parties with civil liability are not entitled to criminal liability and could be called to the court for losses compensation of crime and charge them to pay for damages?

According to Article 15 q.a.d.k: "after the accused was prosecuted the injured can provide the prosecuting authority with certified copy or image of evidences to annex all the evidence and submit the case to the court prior to the announcement of the termination of the proceedings and claim loss compensation". The accused successors and the third parties with civil liability are not subject to criminal prosecution to be sued for private litigation (Akhondi, 2006).

THE TERMS OF THE PRIVATE LITIGATION IN CRIMINAL COURT

Losses are resulting from the crime: Criminal Court does not have jurisdiction in any litigation but only jurisdiction to loss compensation caused by crime to comply with special conditions, due to its exceptionality of handling lawsuit by criminal courts. In other words, "the basis of the private litigation must be related to crime, unless the victim can not request compensation from the criminal court" (Akhondi, 2006). Thus, "any legal right viable to be claimed in legal court cannot be sued in criminal reference and only to demand damages caused by the crime can be pursued in this court (Khaleqi, 2015). For example, if an accident caused by carelessness and recklessness resulting in bodily injury and damage to cars of the victim, loss compensation resulting from crime is unintentional injury such as medical expenses that is demandable from Criminal Court but the damage to the car cannot be pursued a criminal reference due to the fact that

origin of criminal damage is not criminal and in our criminal laws unintentional destruction is not a crime but it is a civil claim admissible in redeemable Civil Law Court.

Although, Article 12 q.a.d.k. enacted on 1999 mandated that if the criminal court finds accused guilty, he is obliged to compensate the loss incurred on private litigant but this is removed from the Law on 2013, because Article 20 of the same law states that public trial termination is not effective on Criminal Court pursue of private aspects and the court is competent to pursue. On the other hand, the losses caused by the crime compensation can be claimed in cases where based on actuality, in personal, direct happened and legitimate. (Akhondi, 2006).

Criminal proceedings started: The beginning of Article 15 q.a.d.k. reads: "after the defendant was indicted" private litigant can make a claim for losses compensation caused by the crime to the criminal court.

As a result, claim loss compensation of the Criminal Court is possible when the victim of the crime has already filed a criminal case against the perpetrators of crime and or accused is prosecuted by the prosecutor. "If crimes, including crimes with prosecution subject to private litigant and he did not provide a claim against the accused its prosecution is not possible in criminal reference and this claim can be pursued by legal proceedings" (Khaleqi, 2015).

Necessity to submit petitions: The last part of Article 15 q.a.d.k. reads "Claiming loss compensation and dealing with it requires the due process of civil procedures." The purpose of Code of Civil Procedure in claim for loss compensation caused by the crime is to submit legal lawsuits and pay legal fees related to it. So private litigant should set a petition in accordance with Article 51 q.a.d.m. and pay for legal fees (Zeraat, 2014). Advisory theory No. 9344/7 dated January 5, 2002 that states that to return the same thing stolen if available does not need to submit petitions for loss compensation. But, such demand for price if the same thing stolen is not available require to submit petitions for loss compensation and the theory No. 6499/7 dated October 23, 2002 provides the in each article of the penal code or criminal law that stipulates the criminal is charged in addition to the penalties stipulated in the law (imprisonment, flogging, fines) be sentenced to pay damages to the plaintiff. Loss compensation verdict requires a petition submitted to the court sentencing the accused to the crim. This justifies the necessity of petition submitted to the court.

Exceptions on petitions submissions: It is axiomatic to claim loss compensation resulting from crime in compliance with the formalities of civil procedure to criminal legal authority. In other words "in principle because to demand loss compensation is of the legal nature and is eligible lawsuit, therefore the private litigant must submit private lawsuit" (Goldost, 2010). But in some cases Criminal Court is required without the need to submit petitions to sentence for loss compensation caused by crime. These include: In cases where the legislator in some crimes, has obliged the criminal court dealing with the crime itself to sentence the accused to the criminal conviction, itself give judgment to pay for damages caused by the crime. Such as severe penalties for perpetrators of bribery and embezzlement and fraud Article 1 of the law passed in 1988, Article 667 of Islamic Penal Law and Article 103 of the Social Security Act.

In cases where the same property is detected and is at the discretion of law enforcement or judicial reference. In this case, in accordance with Article 148 q.a.d.k. the court shall issue a ruling on the extradition and this does not require a petition.

This provision concerning extradition is based on a case that the same property exists in law enforcement or judicial reference, otherwise, if the same property is undetected or even wasted after detection, it is not possible to warrant for extradition and private litigant must ask for a refund or equivalent or submit loss compensation petition (Khaleqi, 2015).

CONCLUSION

We can conclude that each of the civil and criminal courts act professionally to deal with cases within their jurisdiction. It is axiomatic that legal courts handle civil claims and criminal courts handle criminal cases; however, in exceptional cases, such as damage caused by the crime, the criminal court is able to handle the lawsuit. In other words, although, in the lawsuits, affected originally is referred to the court of law but this principle is subject to exceptions where Criminal Court accepted to pursue the private litigation arising from crime and victim of the crime is faced with conditions and restrictions to refer to the court thus, Iranian legislator has prescribed hearing loss compensation caused by the crime by criminal court under some conditions.

It was concluded that private litigation under appeal is not possible due to the announcement of termination of preliminary stage of the proceedings and the issue of verdict because handling private claims in criminal court proceedings is an exceptional right, that the failure to submit it by the plaintiff in the preliminary stages constitutes a waiver and waiver of this right and to submit

it in appeal is in conflict with the two-degrees-of-hearing. Although, to submit the petition is possible in protestation stage, given that protestation is the continuation of the preliminary stage and the announcement of termination of former proceedings is eroded and is not in conflict with the two-degrees-of-hearing.

REFERENCES

- Akhondi, M., 2006. Code of Criminal Procedure. 12th Edn., Printing and Publishing Ministry of Culture and Islamic Guidance, Tehran, Iran.
- Ashuri, M., 2006. Code of Criminal Procedure. Vol. 2, 7th Edn., SAMT, Tehran, Iran.
- Goldost, J.R., 2010. General Code of Criminal Procedure. 3rd Edn., Jagal Publication, Tehran, Iran.
- Jamshidi, M., 2000. Private litigation in the general and revolutionary courts of criminal procedure. BA Thesis, Criminal Law and Criminology Graduate, University of Qom, Qom, Iran.
- Khaleqi, A., 2015. Code of Criminal Procedure. 27th Edn., Shahr-e- Danesh, Tehran, Iran.
- Tahmasebi, J., 2015. Code of Criminal Procedure. 1st Edn., Mizan Law Foundation, Tehran, Iran.
- Zeraat, A., 2014. Code of Criminal Procedure. 1st Edn., Mizan Law Foundation, Tehran, Iran.