

A Study on Aspects of Private Case and the Interference by the Insuring Party in Criminal Proceeding (A Comparative Study in Egypt, France & Iran Legal Systems)

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Abstract

Crime, as a social phenomenon, not only violates the rights of individuals but also spoils the rights belonging to society and accordingly in addition to violating the individual rights, spoils the society rights as well and, it can be the source of two types of cases: one case is the public case brought by the public prosecutor order and protecting the society against the crime and the other case is the private case brought by the victim aimed at restoration and compensation of the damaged occurred to him/her. This paper, considering the latter type, elaborates on the recently approved laws and legal systems of Egypt, France and Iran and tries to review and analyze private cases arising from a crime, shows and tries to has shown and tried to, considering the recently approved laws and the legal systems of the countries, review and analyze the private cases arising from a crime. Accordingly, in the first section, the concept and nature of the private cases are reviewed and analyzed then the second section deals with the elements of the private cases and the interference by the insuring party is reviewed and analyzed in the legal systems in Egypt, France & Iran.

Keywords: private case, public case, temporary compensation case, starting to committee a crime, failing in performing task, direct relation of the damage, the insuring party interference.

Introduction

Any crime committed, virtually spoils two types of rights, the right of the society and the right of the individuals, so it can be the origin of two types of cases. The first case is the public case aimed at maintaining the public order (against the crime) as the society's reacts against the disruption in the order and security, by punishment imposed on the offenders. The second case is the private case aimed at restoration and compensation of the damages occurred to the victim. The first case is called criminal, public and main; and the second one is called the civil, sub-civil, private or the sub cases. Today, the private case arising out of a crime is embedded in most countries' criminal procedure and the proper arrangements have been defined to protect the rights of the victim or the person opening the case. Under Iranian law, the Code of Criminal Procedure (2013), constructed some arrangement for this matter. In accordance with the Article 9 of this code, "Crime commitment may be resulted in two cases: A) The public case for observing divine limits (Hudod) or the rights of society and public order; B) The private case for compensating the losses and damages resulting from a crime and for applying criminal punishments under the private law of the victim such as false accusation (Ghasf) and retaliation. Considering the recently approval of the criminal procedural code (2013), considering the private case arising from a crime is important in the current situation of the Iranian legal system. Having in mind this issue, this paper, while investigating the private case arising out of a crime in the Iranian legal system, deals with comparing this issue with other legal systems.

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Accordingly, at the beginning in the first part, in the opening of the first part the concept and nature of private case will be investigated and in the second part, elements of private case arising from a crime and the involvement of a third party will be considered.

1. The concept and nature of private case arising out of a crime

The first issue which should be tried in a private case arising out of crime is the element of understanding "the nature and concept of the private case" and its independency from the public and other civil and administrative cases. Basically the criminal nature of this case is what makes it possible to be opened in criminal courts and it is not merely a matter of formal fact. In this approach, the case for compensation of the damages occurred out of the crime in a criminal court will not have all qualities and effects of a pure civil case³ (Accordingly) therefore, it is necessary to understand the concept and nature of the private case out of a crime, which will be accordingly discussed in this section. (in this part as it will be discussed).

1.1 The concept of private case arising out of a crime

Any Crime committed is an illegal action that results in damages to the individuals and society. The victim is entitled to claim compensation for the damage caused by the crime, and it is possible to be achieved through civil case. It is clear that this case is not related to the crime but adversely it is (also) is related to certain losses resulting from the crime occurred to the other person.⁴ Hence, private case is a way to compensate the damage caused by the crime. This means that whenever a crime occurs and a person is affected, "the right to demand for compensation for the damage caused by the crime" is created for him/her. As a result, the manner by which the victim asks for compensation is called private case.⁵

According to some lawyers, the private case has two meanings: general and specific meaning. Private case in the specific meaning, refers to the action by the plaintiff for the damage, but in general meaning, in addition to compensation, it also refers to the cost for proceeding, restoring the situation and refunding the property obtained as the result of the crime.⁶ As the result, this case in its general meaning, includes retaliation and blood money as well.

Under the Article 14 of the Criminal Procedure (2013) code, "the Plaintiff can claim for compensation of all losses and damages of material and spiritual types as the result of the crime. "The spiritual loss includes trauma or the damaging the dignity of a person, family or social life. The court can issue the sentence, in addition to financial compensation, to eliminate losses by other means, such as an obligation to apology and decide the verdict to be published in the press, etc.⁷ (Note 1 of the Article 14).

The possible benefit is only special to the case where the loss for the possible damage is occurred. "of course, as the law states "the regulations related to the possible interest and payments of moral damages does not include the crimes subjected to the religious punishments (Tazirat) and retaliation" (Note 2 of the Article 14). According to the Article 2 of the French Code of Criminal Procedure, private case includes demanding compensation for losses caused by the crime, misdemeanor or crime against the people who are directly affected, is allowed. The word "directly" causes exclusion of some claims of this definition as well as some minor claims which indirectly derived from a crime - may be tried in criminal courts, such as the Article 7.2 of the this code states that "In the case of criminal prosecution in connection with the crime of arson of forest and green lands. Entities of public law can open a case for collecting the cost for distinguishing the fire against the sentenced person.

"This article has three points: First, indirect damages related to the crime, through private case, is allowed in criminal case; Second, contrary to the principle, after sentencing, the criminal authority is competent to accept and handle the private case; third, those who have any claim against the right to the property detention can make a request for withdrawing them from the Criminal Court (Article 479).

³ . Katozian Naser & Mohsen Izanloo; "Obligations out of Contract (Insurance & Liability)";Tehran, Tehran University Publications, 1st edition, 2008, Vol. 3, P 331.

⁴ . Mohammad Zaki, Abvamr; "Enforcing Criminal Code"; Beirut, Edition, 2010, publication 21, p 86.

⁵ . Faghikh Nakhjiri Hasan," Private litigation in criminal court" Tehran bi ja, 1972, P. 14.

⁶ . Akhondi, Mahmoud; "Criminal Procedure Code"; Tehran, Samt Publications, 2009,vol I, P. 299.

⁷ . Islamic penal code of the Islamic republic of IRAN, article 14, "There are 5 classes of punishments in the Act as follows:1-Hadd(prescribed punishment) (pl. Hodood) 2- Qesass(Retaliation),3-Diyat(Blood money), 4- Tazeer(Discretionary punishment), 5- preventive punishments.

With regard to the mentioned points, the causes for opening private case are the actions which meet two conditions; first, the act committed is a crime according to the law. Secondly, the committed crime is harmful and its effect has been burdened on another person. However, damage may occur during the commission of a crime that its claim is not a claim arising out of the crime. For example, individual funds and valuable property is lost during the conflict or the crime of breach of trust, the contract concluded between the parties or a third party is not enforced. In this case, there is way of action for damages before a criminal court because the losses is not caused by criminal acts, but is caused by the breach of contract and considering the survival of the former legal relationship on contractual basis, the case for the caused damages should be opened at the civil courts.

1.2 The nature of private case arising out of the crime

1. Among the legal terms, "the nature of the case" has been used in several meanings / : (1) a part of the case in which the Court's opinion is the base for resolving the case.⁸ The phrase "nature of the case" has been used in Article 84 of the Iran Civil Procedure Code (2000) in the same meaning. The purpose of the word "directly" in the above definition, is that after issuing the verdict on the nature, (the case directly shall be out of court trial but when the decree is issued, as not directly opinion has been issued on the nature of the case, and the case is opened, in fact, the case shall be indirectly out of the court as the law requires).

2. The part of the description that case which is written as workflow, and etc., such as the affairs that has been a source of the case, such as the phrase "nature of the case" under the Article 392 of Iran civil Procedure code (2000), the validity of this means that the first instant court and the appeal court are called merit courts and the supreme court which is the court for upper appeal is called non-merit or formal court. 3. Sometimes, instead of "nature", the word "essence" that is close to it, is used. Like the term "inherent jurisdiction" is used in the procedural acts. Here, the word "inherent" means the case that the civil or criminal court or administrative courts are competent to handle those cases. For example, the article 8 of Iran Code of Criminal Procedure (2013) allows the crimes on reputation that has been caused by violations of the rights of a specific person or (persons) damages and losses incurred and therefore victims are allowed to claim for damages caused by the criminal offense before a court not of inherent jurisdiction (paragraph A of the Article 8).

On the nature of private case, the essential point is that this case includes damage for restoration which is purely caused by the crime and has no sources other than the crime.⁹ Here this question arises whether private case meets the description of the criminal case at the criminal authorities and in nature it is effective and leads to open the work flow of the crime? In response to this question it can be said that if the personal dignity in a private case is a simple restoration for damage and is fully of civil nature, undoubtedly it may be tried in the civil courts and is fully of civil nature, so, it should be tried in a civil court and any discussion on its criminal nature is useful and can be effective on its judicial nature. In crimes such as murder and false accusation (Qazph), the subject of private reputation - certainly is not compensation, but the victim is whole? the party to the criminal case and it is led to the lawsuit for public case. In these crimes, the private nature of the crime is claiming a right such as blood money or retaliation and Islamic punishment (Hudud) which are the legal crimes and has fully¹⁰ of the private and divine rights. In such cases, the denial of the dignity of the criminal nature of the crime is the problem. It can be said that in such crimes, personal dignity of the crime has fully criminal nature and its judiciary nature is not the same as the nature of other cases and it has several consequences, including whether to allow the plaintiff to opt for civil or criminal crime.

If you adopt the civil procedure, the crime private aspect character? of dignity requires that the conflicts between criminal and civil sentence to be avoided and the judge of the civil court suspends the trial and issuance of verdict until the proper criminal decision is made and the judge shall comply with decisions of the criminal sentence.¹⁰

⁸ . Jafari Langeroodi, Mohammad; "Terminology of Law"; Tehran, Ganje Danesh Publications, 6th 1993, p 604 & 605.

⁹ . Faghah Nakhjiri Hasan, Ibid, P. 49.

¹⁰ . Vidal Zhurzh; "Analysis of the Judicial Nature of the Crime Analysis in French law"; Translated by Ali Ardalani, Journal of the Bar, No. 105, Summer 1967, p 21.

1. 3. To start for committing a crime and the private case

The private case resulting from a crime, in addition to the crime occurrence completely, when the start of a crime is realized, may be raised. Here, this question is raised as to whether – in starting a crime and in case of aborted crime due to an external barrier and is ineffective or suspended unwillingly and in principle, no material damages is occurred due to them – spiritual claim is allowed.

1.3.1 Opponents of opening case for claiming damages

Some lawyers believe in rejection of the private case in the start point of the crime, and believe that: certain condition for the possibility of prosecution, is existence of damage. Obviously, as long as the damage is not occurred, the party can not claim for damages; for example, in respect of starting a crime to kill, if the criminal shot toward somebody but it does not hit the person, it is regarded as disturbing the social order but the party to the action can not claim for compensation because sorrow and anxiety which he achieved as a result of the shot is not commonly regarded as damage and in this case private case will not be allowed.¹¹ Some French lawyers do not believe in private case at the start point of the crime. Fosnin Hily, while criticizing the decision of the Criminal Court "Sen" for at the beginning of the murder crime, writes that: "The creation of a private case involves the creation of damage and should be based on the damage be it material or moral. It is clear that the start point of a crime shall not constitute private case as no crime is occurred unless the damage is occurred. He added that at the start point of the murder, the material and spiritual losses is not important, and the plaintiff fears of repetition of the action therefore it is determined to punish him, but the punishment has been set to protect the public interests, not the private interests and the interests of the individual is not important. As Merlin said, the court has not been created for your children and no-important fear. To make a private case requires that the plaintiff suffered damage, and that it is not the legal requirement in start point of the crime and how the resulted fear of crime repetition in the future can be measured".¹² One of the French writers, on the payment of compensation to crime and crime as well? said that: "When the perpetrator can not begin to perform an action, in this case he is only responsible for public order threatened but no one was hurt and no private damage is occurred."¹³

1.3.2 Proponents of opening case for claim damages

In contrast, the proponents compensation claim plan say: "what is the criteria for accepting private case in the criminal authorities, is a realization of causation between the damage and the crime to be prosecuted, be it complete, aborted or began to commit a crime".¹⁴ Iranian judicial procedures, like France, agreed to accept losses in the above case, arguing that "a start point of a crime may cause spiritual and even material losses to the victim. The fear of the start point of the crime may have damage for the health of a person and create havoc and disorder in the nerves, so, ignoring hearing in such case from the person claiming so is not illogical".¹⁵ The writer believes that it seems that accepting the damage claim in many cases is compatible with justice because the impact of a crime on individuals, based on their specific situation, such as gender and age; is different, and perhaps at the start point of the crime.

Some people may attend who were not the targets of the person committing the crime but they were affected by the crime at the same level or more or less; thus it should be possible for them to open the case for damages in criminal court.

¹¹ . Misbah Zadeh Reza et al.; "Principles of Criminal Procedure Code & Extradition"; (Private Case), Journal of Law, 1938, No. 31, p 13.

¹² . Heli, Faustin (1799- 1884); "Traité de l'instruction Criminelle"; ou Théorie du Code d'instruction Criminelle. Organisation, Competence Procedure et des Tribunaux de police et des Tribunaux Correctionnels . De Laction Publique Laction Civile et Paris 1867, tom 2, N. 116, p 342.

¹³ . Mazeaud (Henri et Leon); "Traite et Pratique de la Responsabilite Theorique Civile"; Delictuelle et Contractuelle,Paris 1934th Sirey,Tom.3 ed ition 11, N. 208, p 231.

¹⁴ . Faghah Nakhjiri Hasan, Ibid, P. 52.

¹⁵ . See the Verdict No. 839-12/03/1967 by 9th division of the Supreme Court at upper appeal case No. 5950-17 for approving the verdict No. 44/9/16-402 of the criminal court of 5th province for damage to private claimant at the start of Murder.

1.4. Private case for temporary compensation

One of the issues raised today in connection with the private case arising out of crime is the claim for temporary compensation scheme; considering this institution in the legal system of Egypt, France and Iran, it will be discussed further below.

1.4.1. Case for compensation in the Egyptian legal system

In Egyptian law, the interim action plan is anticipated and the private claimant is allowed to file the temporary case to the criminal court and the court issues the temporarily compensation verdict till the final verdict is issued. Accordingly, he can open the case for full civil compensation after the elements of the damage compensation are realized.¹⁶ The conditions for interim case in Egyptian law include: A) The case should be originated from the action by the accused under investigation by the judge; B) the civil court has the full power in determining the final damage but can not ignore the claimant final damage compensation claims unless it recognizes that it is inconsistent with the rule of criminal matter over the civil case.¹⁷

So, in case of interim damage claim, the court can not go beyond the subject of the claim and issue the final verdict unless the private claimant wishes to increase or change his claim subject. Egypt's Supreme Court has stated in one of his opinion: according to the attached medical reports it is proved that the private plaintiff (appellant) upper right femur fracture and his left hand have broken and forearm injuries is seen as well and is still under the treatment for traumatic neck has been progressed to the condition to the level of permanent physical disability and what is stated in the meeting is the repeat of the previous statements. Also, the appellant claimed for a fee of £ 51 as temporary compensation from the criminal court and until after the sustainability and improve the situation he may claim full compensation, but the criminal court has ruled as final verdict of 50 pounds compensation, so because the elements of determination of full damage of loss has not been fully established, the appeals court has made a mistake and while correcting the sentence, sentenced the defendants to pay the amount of 51 pounds as interim compensation.¹⁸ In contrast, the Egyptian Supreme Court commented that if the court ruled on the right for full compensation of damage, the plaintiff does not have the right to claim for damages from the civil court unless he establishes that a new damage, after the sentence, occurred against him.¹⁹ Also, if the criminal court reject the claim for interim losses due to the lack of responsibility of the accused guilty, this prevents any claim for compensation in civil courts. Moreover, it is presumed that the verdict for on-time compensation of civil aspect is issued but the judge can issue verdict for installment payments in form of salary and wages.

In this case, the judge requires the deposit guarantee from the owned party and in case of escalation of the situation of the injured, the court, according to the conditions and circumstances and request of the claimant, and the income of the respondent make the proper decision to increase the payment installment.²⁰

¹⁶ . Tofiq, Mohammad al-Shawi; "Enforcing Criminal Verdict"; 1st publication, Cairo, Daralktab al-Arabi Mesr, 2nd Edition, 1954, p 430.

¹⁷ . Tofiq, Louis Tofiq; "The Nature of Civil Case Out of Crime"; Cairo, 1st Edition, 2004, p 430.

- In this regards, a verdict has bee issued that: when the private claimant file the petition for damage compensation partially, he can reserve all the damage and claim partial payment by the court. The court will issue the same verdict. There is no contradiction here as the victim may claim more compensation if not covered at the previous stage, so the subject of the case at civil court is not the 1st case but it is completing it.

¹⁸ . Abdul Qadir Jar Allah al-Alousy; "Collection of Legal Rules for Appeal & Supreme Court"; Cairo, 2014, p 1093.

¹⁹ . Abdul Qadir Jar Allah al-Alousy, Ibid, civil violation 22.2.1989, p. 570 and civil violations of 11.17.1955, p. 172.

²⁰ . Paragraph 1 of the article 171 of the Egyptian civil code states: The judge shall prescribe the manner of the damage compensation based on the condition and the atmosphere and he may issued the order for full payment or for installments, in both cases the obliged party should be obliged for having guarantee.

1.4.2 Compensation claims in the French legal system

In French law, temporary filing a case has not been stipulated like the regulation in the Egyptian law. In French law, temporary enforcement has been allowed in the following cases:

1) After the verdict is issued: according to the article 8-380 and 464 of the procedural code, the criminal court, if possible, can issue verdict for the case of private case and can also order for temporary payment of all or part of the damages determined. This temporary enforcement may be stopped in case of appeal by order of the head of the first branch.

2) Before sentencing: in accordance with paragraph 3 of this Article, if the court fails to issue opinion on the compensation, it is allowed to accept for one case of prepayment, despite the or appeal of upper appeal.

3) In accordance with paragraph 2 of the article 17 of the mentioned code, when the victim is specified, the public prosecutor of the town, may suggest a period of not exceeding six months for damage compensation of crime to the person committed the crime.

1.4.3. Compensation claims in the Iranian legal system

Iran's civil liability code, in Article 5 of the 1961, predicted that the court shall issue the compensation verdict in accordance with the circumstances of the case to be paid immediately or in installments. This article and other provisions of the Criminal Procedure code inferred that in cases where the case is not directly raised in court and is conditioned on the investigation process in the public prosecutor's office and issuance of the public prosecutor's decree for punishment, the file will be sent to the criminal court for trial and the civil claim will be tried as well. So, - the public Prosecutors office can not send the case for civil compensation to the court and the Criminal Court, in compliance with the principle of subordination, itself is not allowed to take temporary action. On the other hand, in the driving related act approved in 2008 decreed that in traffic accidents resulting in bodily injury other than death, in the article 16, has established the institution for "temporary payment" and state that the insured party is obliged to pay at least 50% of the blood money after receiving the reports or traffic police and if necessary, after the report of the forensic. The note following this article states that the insuring party, in case if the heirs to the dead person agree, may pay the blood money and other bodily damages without referring to the judiciary authority and, as well as in Article 17 of the code the manner of paying the financial damages or the fixing fee occurred to the vehicle by the insuring companies has been stipulated.

In addition, in accordance with the provisions of the note to the Article 17 of the act, it is stipulated that if no agreement has been reached on the way to pay the damages for physical and financial affairs and death, without applying the procedural law, the case will be investigated in a commission composed of the of a judge, an expert for insurance and investigation into the accident. The writer believes that it was better that the legislation, in respect of the other crimes against physical integrity, stipulated the temporary filing suits to compensate for losses suffered by the victim in order that the criminal courts, without observing the rules of subordination of private lawsuits from the criminal cases, to handle the case because lack of this regulation is a cause that sometimes, due to lack of funds, the injured party stop further treatment or be forced to compromise on the same stage with the losses factors. It would be the cause that a real loss is not compensated for the victim. However, removing this problem requires that the judicial procedure make its efforts to take an effective step in this regard.

2. Elements of private case arising from a crime

The private case arising from the crime, in respect of criminal guilt and causation relations and the subject, has some elements.

2.1. In respect of criminal guilt and causation relationship

The source of the criminal case is the guilt element which along with the causation relation paves the ground for private case.

2.1.1. In respect of criminal guilt

In any crime, guilt is one of the causes of damage, which can cause damage inflicted on the person committed the crime. The guilt which the base for liability on the offense, is the criminal guilt along with bad intention or non-discretionary and recklessness, but in non-criminal cases the guilt does not need to be coupled with bad intention; therefore, if the criminal act is intentionally without malice with good faith or to meet emergency²,

It will not be subjected to the criminal liability. For example, if the municipality make a well for civil goals and some body, direct with bad intention, the driver to the direction to the well, this person will be subjected to criminal and civil liability and if he did not have any (had not) bad intention, only the municipality shall be subjected to the civil liability for damage compensation as it did not observe the safety regulation. In another example, when the driver has insured her car but for preventing a human being passing away? he opts to fire the seat of the car, he shall not committed he is not committing a crime and the insuring party will have the responsibility in compensation of the damage.

The Iranian legislator, without defining the criminal guilt, placed it under two titles namely of imprudence and negligence,²¹ and in some cases, suppose the guilt and exempt the claimant from proving the guilt. So the person who has been the cause for the accident should compensate the damage. Like Judgment of the Article 91 of Labour law according to which the regulations health safety should be observed by the employer. So, if due to non-compliance with safety regulations, a damage is occurred to a person, the employer should compensate for material and spiritual losses occurred.

2.1.2.1. In respect of causal relationship between crime and damage occurred

In the realization of any crime the actus reus of the crime which is the manifestation, is necessary. It is true that evil thoughts penetrate the soul and it is bad but until these thought has been manifested in external form no crime has been occurred. This is a rule and has (not) no exception in the act. Actus reus is the link between the action and the result which is criminal. This means that the realization of the pillar of the actus reus is based on the three elements of "action", "result" and "causal relationship between the two". Causal relationship has a basic role in criminal policy, because it is a useful tool for limiting the scope of the criminal and civil liability of the individuals. However, if only to prove criminal guilt means civil guilt and vice versa? For example, if it is proved that someone has participated in a (quarrelling) quarrel ; it can be a base for civil liability? Although there is no doubt that individual has criminal liability but the doubt is that if he has civil liability, it is essential that causal relationship between criminal activity and that person damage should be proved.

2.1.3. In respect of the subject

Subject of private case, is compensation for the crime and (according) as to the type of crime and how the damage occurred, it can be different. Private case subject can be divided into the following cases:

2.1.3.1- In respect of the subject of private case for type of the damage occurred

In respect of the damage occurred, the private case can be divided into financial and non-financial damages or compensation.

2.1.2.2. Subject of private case for the manner of damage occurred

As to the manner of the damage occurred, the subject of private case is divided into direct and indirect losses and damage occurred to the victim:

A) Direct Damage: the subject of civil case sometimes includes the damage occurred to the victim directly.

B) Indirect Damage: Sometimes the subject of a civil case involves damages occurred indirectly from the crime on the victim. With regard to this kind of division, the subjects of private case may be for the petition subject, main or sub damage. Whenever the subject of a civil case is physical and material damage, it is called "main subject of the petition" and if the damages resulting from the crime is born to the criminal such as payment delay, delay in due, and the excess amount of the compensation payments and the cost of the proceedings, it is called the sub-subject of the case or the crime related subject.²²

²¹ - Note of the Article 145 of the Islamic punishment code (2013) stipulates that any ignorance and recklessness and carelessness and lack of skill and non-observing the state disciplinary rules and the likes, are regarded as the realization of ignorance or recklessness.

²² . Gaston Stefani et al; "Code of Criminal Procedure"; Translated by Hassan Dadban, 1st Vol 1, Tehran, Allameh Tabatabaei University Publications, 1st 1999, p 226.

2.1.3.3. The subject of private case in respect of type of the right claimed

The legislator means damage compensation from the private case whose subject is demand for consequential or incidental damages resulting from the crime which is the main or sub subject of criminal proceedings which can take place.²³ but always the subject of this case is not demanding compensation, but based on the type of crime, it is different. Sometimes it is for claiming a right such as retaliation or religiously prescribed punishment. This claim for right is punishment of legal regulation. By implementation of this punishment, no compensation for the damage is made but psychological effects of the crime on victims and his relatives is reduced; therefore, although the claiming party can have his claim in the civil courts but he can not be able to claim this rights in civil court because the sentencing, is only in the inherent jurisdiction of the criminal courts.

2.1.4. Condition of direct relation of the damage and interference of the insuring company in criminal proceedings

One of the conditions that is always important for the private case is the direct relation between the damage occurred and the crime. This is very important when the insuring company pays the damage compensation to the victim.

2.1.4.1. Guarantee liability case and direct relation with the damage

In principle, the guarantee claims is not resulted from a crime but it is based on a contract and should be investigated in civil courts. The guarantee related cases may be resulted from the dis-function hidden in a subject of sale such as the cases in which the goods soul had been resulted from a crime or breach of trust, fiduciary capture to capture liability and responsibility binding is changed or the contract of guarantee is provided. The question may be raised here is as to whether the claims have a direct relationship between with crime and damage and if the cases can be filed in the criminal courts or not. Today, one of the conditions for damage compensation is its direct connection with the crime but of course, it has exceptions in some cases to be found. For example, one of the exceptions to this principle, is the cases related to criminal proceedings, such as the cost of transportation of the witnesses as well as the damage occurred as the result of the leave of absence for the person. Article 215 of the Criminal procedure Code (2013), allows the interrogator to arrange the payment of the cost of transportation tariffs and damages resulting from the crime as the turnover to the judiciary fund; namely despite the causal relation between the damage and crime, the legislator is allowed to determine them without filling their petition.

Another important exception to the general principle of "direct damage" is the private claimant civil liability. The legislators in many countries set the basic condition to accept a civil lawsuit before the criminal courts when there is relation between the crime and the damage occurred. But contrary to this principle, Article 267 of the Code of Criminal procedure code in Egypt has allowed the accused to open case for the damaged occurred and due to the same resources he can open the cases at the criminal court. This issue is the exception that the losses incurred to the defendant, is not based on the harm caused by crime directly, but is due to an act of private claims in criminal proceedings before a court, therefore, the legislature, as the case of the civil liability is originated from the public claim, exceptionally has placed the competency on the criminal court.²⁴

In this regard, the legal system of Iran has allowed to third party involvement in criminal procedure.²⁵ It is like the case that assumption that the defendant committed a fault and his possible heirs are obliged to pay the blood money, the court is obliged to invite the parties to defend themselves in the meeting. The base for this liability is on the shoulder of the possible heirs.²⁶ Also, it seems that accordance to the Article 15 of the Criminal Procedure Code (2013) the civil code relies (over) on the criminal case, contrary to the Egyptian law, although, limited involvement of third parties in criminal proceedings help (to) the hearing process, however, to allow the guarantee crime related to criminal court, is in favor of third parties, as well as the justice system because the file entry numbers to the justice system and the cost of the end result is reduced on third parties.

²³ . Akhondi, Ibid, p 170.

²⁴ . Tofiqh Mohammed al-Shawi, Ibid, p 137.

²⁵ . Ashoori, Mohammad; "Criminal Procedure Code"; Vol. 1, Tehran, Samt Publications, 2005, p. 240.

²⁶ . Katozian and Izanloo, Ibid, p. 340.

3. Insuring party interference in the criminal proceedings

The interference by the insuring party in criminal proceeding is a form of interference by third parties in the private case resulting from crime. Some foreign lawyers believe that since the guarantee liability, is not direct causality link between damage and the crime, it is not permissible that the case to be opened at the defendant's criminal courts.²⁷ Paragraph 3 of Article 253 of the Code of Criminal Procedure of Egypt states that "it is not permissible for guarantee claims to be brought before the criminal courts. "With consideration of cases related to crime, we can refer to (the to) the "insurance contract" that the physical harm suffered (to) by the victim and the heirs as well as the insurance contract that "civil responsibility of the person who is responsible for the accident" and this covers that point. on the issue of insurance, the point is that whether the insuring party who pays damage compensation incurred by the victim or his heirs to be paid, can it be argued that that the damage have been offset directly against the crime, for the protection of his interests in criminal proceedings? Can insuring party on a criminal case brought against him, summon the insuring party who is responsible for the incident?

3.1. The reasons for the opponents

The opponents, due to several reasons, reject the third parties interference in the criminal cases:

1- They believe that in principle the jurisdiction of the courts to handle civil case is the competency of the civil case but the cases for the damaged to the victim are exceptional.

2- One of the limitations of the restriction to private claims in the territory of the Parties at the criminal courts is the punishment burden to the parties of the case. Only the victim as the main claimants and the accused as the defendant, are included in the case and the presence by third parties at the criminal hearing is not allowed. In addition, they believe that: "the victim can open the criminal case against the accused when the accused is being prosecuted legally". The successors and third parties having civil liability are not persecuted and for this no public case can be opened along with the civil case".²⁸

In Egyptian law, to open a guarantee case in criminal courts has one problem. Because the guarantee liability is not resulted from the crime but has a contract based and the contract is made between the insured and insuring party and the accused or the victim, it should be tried based on the civil procedural act. The article 253 and 254 of the Egypt criminal law means to reject any civil case by the criminal court which has not any relation to the public case and there is no unity between them. As the criminal courts competency in civil case is an exception to the rule, its scope should be limited. If these cases are tried at the criminal courts, the numbers of the cases at the criminal court will be increased and it is not in consistence with the fast trial. So, according to the article 253 of the Egypt criminal procedural law, the damaged insured party can not open his civil case in criminal courts.²⁹ Most of the Egyptian lawyers believe that to open civil case is a personal right and belongs to the person damaged. It is not allowed that this right to be extended to any other person.

If other person representing him such as insuring company open a criminal case, the court should accept the case and issue the related certificate because the damage incurred to this persons directly did not resulted from the crime but resulted from the contract between the insuring and insured party which should be investigated at civil courts.³⁰ The Egypt Supreme court believe in accepting the civil case opened by insuring company such as the accused (Insured party) at criminal courts reasoning that what paid by insuring company to the beneficiary has contractual base and there is no relation to crime as contractual bas?. (Because) since prescribing this right to the drawee is within personal agreements and its usage by drawee at criminal courts is not allowed by public order and considering the fact that article 235 of criminal procedural law has band opening case at criminal court and as the insuring company is regarded as private claimant the verdict issued by criminal court is nullified due to its opposition to public order.³¹

²⁷ . Tofigh, Lewis, Tofigh, Ibid, p. 424.

²⁸ . Hedayati, Mohammadali; "Code of Criminal Procedure"; Tehran, Tehran University Publications, 3rd 1963, p. 35.

²⁹ . Rauf Abid, "The Academic Problems in Enforcing Criminal Verdict"; Cairo, 10th edition, 1980. Vol. 1, 1980, P 682.

³⁰ . Ahmed Fathi, Soror; "A Look at Criminal Procedure"; Cairo, Altbh Alrab, Daralnhzh Arabiya, 1981,p 220.

³¹ . Abdolghader Jarallah Alvasee, Ibid, nullification 1955.2.1, P.160.

In another verdict of this authority it is stipulated that: the ignorance by the liable to the incident has not been the cause for damage to the damaged person but it has been caused by the insurance contract and if insurance contract has not been there the insuring company should not have been obliged to pay compensation. On the other hand, the insuring company does not claim that this damage has been resulted from performing the contract (Crime) but the source of this obligation is insurance contract and performing its obligation as the goals of insurance contract is to cover the possible damage, so the appeal subject is against the law and is nullified. But the main point in Egyptian law facing the possibility of guarantee case or third party interference in criminal court facing problem is rule of criminal procedural law over personal one.

3.2. The reasons by the supporters

Some lawyers believe that the reasons for opening direct case by the insuring company are as following:

1. If the specialty and work division is important, the criminal judge should not be allowed to try the case of civil type in any circumstance but if for some reasons some affairs in civil case are allowed to be opened it seems that all civil procedural law are abided by and otherwise it should not be logical at all. For example, non-interference of third party in this case shall be resulted in spoiling the other rights.³² For example in the case of A vs the accused, no third party right is spoiled and he is allowed to interfere as third party interference after issuance of the verdict, because third party appeal is possible only at the court issuing the main verdict.

2. In other legal systems such as Iran, in which division of competency among the courts is not for the merit and is only for facilitation of the works, limiting the scope of private case is not justified during the criminal processing. Even in France in which the competency of civil and criminal courts is for merit, third party interference had been allowed. For the years before 1983, emergence of social security fund and Physical damage fund in driving accident and workers accident at work of agriculture are as the samples.³³ After 1983 in France, the scope of private business has been extended after 1983 and entrance of accused insuring company (in respect of responsibility insurance) has been possible in criminal proceeding.

3. Some of the writers believe that the drawee, such as insurance company, in public case at criminal courts are allowed and the public prosecutor is responsible for starting the public case. And also the damaged person is allowed to open his case. Whereas these two cases are independent of each other, the judge investigate the criminal public case then investigate the private case, but in Egyptian criminal procedure repeatedly in article 258, the insuring company is allowed to open its case at criminal court.

Some has said, for justification, that it is useful for the insuring company to open public case as he has paid the compensation at the earliest possible time to the insured party. It is understood from the rule of "civil verdicts follow the criminal case at the criminal courts" from the article 266 and from the rule to the effect that "the criminal judge is obliged to issue a unified verdict in civil and criminal cases (Article 309)".³⁴

Conclusion

Crime occurrence is against the public order and it is the reason for public case and because it is the reason for personal damage or the reason for natural or legal entities damage, it can be the source of private case. Private case means claiming for compensation by the victim as private claimant and it is the sub-subject at the criminal proceeding. Private case from a crime which is investigated in criminal court is only the material or intellectual caused by the crime. The damage which is claimable in private case resulted from the crime, as per the article 14 of criminal procedural code, are two types. 1) Material damage resulted from the crime. 2) Possible interest spoiled as the result of crime occurrence. It means that interest destruction is the material damage and the damaged person can claim for his interest conditioned that the damage is clear and legal without any other interference. Today, the private case from a crime, for the respect of criminal ignorance and causal relationship and the subject, has different elements and types stipulated in most countries legal systems, so, it is required that Iranian legislature to take steps (for supporting) to support the victim or private claimant specially in intellectual compensation, (by) using other countries experience in supporting the victims or the private claimant.

³² . Katoozian and Isanloo, Ibid, P. 333.

³³ . Jean Bigot, Daniel Lange, Jean-Louis; "Respond L'Intermediation d'assurance"; Tome 2 , Lgdj , 2009.

³⁴-4. G. Vieny: "Responsabilité civile du fait sur Dautrait Fondateur de l'article" ¹ 384 .

³⁴ . Eid Nayel Abraham; "Interference in Criminal Cases"; Darolnezhat Arabiya, 1996, p. 5.