

**The right of crime victims to immediate prosecution in Algeria:
A comparative study**

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Abstract:

While the power to initiate public prosecution rests primarily with the Public Prosecution, the Algerian legislature has recognised some exceptions: The first is the victim's right to initiate public prosecution. It has been debated whether this right applies to all types of crimes, felonies and misdemeanours, or whether it is limited to two specific areas, especially violations of public right: Some extend the scope of this right to include the crime of failure to execute a judicial ruling, while others extend it to misdemeanours and felonies. Others extend it to all types of offences

Key words: Victim, public prosecution, legislator.

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1. INTRODUCTION

An act that violates two interests is an offence. The aim of preserving the safety, order and purity of society is its primary concern. This includes society's right to punish the offender to achieve the two objectives of punishment - general deterrence and special deterrence. The victim of a crime has a second interest, their self-interest, and if this interest is violated, the victim can seek compensation to rectify the harm caused by the crime and the harmful behaviour. But this raises the following question: What are the options available to a victim of crime to obtain this compensation?

After comparing Algerian law with other legal systems, it seems that the victim can choose one of the following three ways to obtain compensation for the harm suffered: Firstly, the victim has the right to seek compensation directly from the competent court, in accordance with the legal requirements for filing a civil suit.

Second, the victim can file a direct complaint and make the necessary remedies if it is related to a criminal case before the competent judicial authority to assert civil rights. This is legally known as a civil complaint. Third, the criminal court adjudicates both public and civil cases, and the trial is public.

The significance of the study

It is a fact that every person residing in the country has the right to a trial, which means that a person who has been harmed by a crime and is considered a victim is eligible to receive compensation for the harm caused. To compensate for the damage caused by an offence, the injured person can receive compensation in the form of money. Compensation can be in the form of a criminal penalty for the accused as a penal sanction.

It was necessary to give the injured person the ability to challenge these bodies if they neglected to fulfil their role by giving them the right to file a public prosecution. This study explores the positions assumed by different laws on direct action, including

Egyptian and French laws. This is because the state has the power to impose punishment, and some authorities may not follow the required procedures to impose this punishment without a legal basis.

Problem of the study:

This suspension of investigation arises from some laws that recognise the victim's right to initiate criminal proceedings through direct prosecution, regardless of the crime, as is the case in French law, which is considered among the best laws to protect the victim. In contrast, other laws are limited to minor offences, as is the case in Egyptian and Emirati law, which restricts the victim's right to direct prosecution and gives this right to the public prosecution, as is the case in Algerian law, which did not establish the victim's right to initiate criminal proceedings through direct prosecution until 2018.

This right was introduced for a single offence, with Articles 72 bis and 337 bis in the Code of Criminal Procedure. The importance of direct prosecution in achieving a sense of justice for those affected by the crime, as the perpetrators of the crime are punished and receive the necessary compensation for the financial and emotional damage caused to them, and the civil prosecution serves to control those responsible for the crime who ignore the obligations resulting from it, which confirms the validity of studying this topic by comparing it with the practices of other countries.

Study hypotheses:

To address the study's inquiry, specifically the victim's right to initiate criminal proceedings through direct prosecution, we can employ these hypotheses:

- The legal classification of the offence determines who can prosecute directly.
- The requirements for direct prosecution are determined by the characteristics of the offences.

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Study methodology:

As this is a comparative research, it was necessary to take a comparative approach to balance the different legal systems that address the extent of a crime victim's right to file a criminal complaint through direct prosecution. The aim was to evaluate each of these systems to select the one that best suits the research objective, so it was necessary to adhere to the current scientific method and combine the original 'inductive' approach with the 'analytical' inductive approach.

Part of this study used the general principles of criminal law and private law in relation to direct trials in criminal courts, and part of it involved analysing and explaining the issues associated with this authority, citing the general guidelines governing these details.

Defining a crime victim's right to file a criminal complaint

Most laws allow individuals who have been victimised to immediately file a criminal complaint with the Criminal Court, even if the phrase 'victim of the act' is not is accurate. To determine the extent of this right, it is necessary to clarify how to file a direct criminal complaint to the criminal court, and then, it is important to clarify the structure of a direct prosecution, which gives the victimised party the option to file a criminal complaint.

It is then necessary to determine who is eligible to file a direct prosecution. It is then necessary to define who is eligible to file a direct action because, in our view, someone who fulfils this condition can file a criminal complaint through a direct action.

2. The scope of the direct prosecution right

A legal and legislative review has been conducted on whether a person injured by a crime has the right to initiate criminal proceedings through direct prosecution, as this right is recognised in several legislations. As part of this analysis, we examine whether this right is recognised, the scope of its use and whether its use is subject to any limitations. We then summarise the position of the law on this

issue as follows:

2.1 Jurisprudence on the Direct Summons to Appear

Jurists differ on the right of a victim to file a criminal case by summons to appear. Some case law tends to favour the victim's right to file a complaint by summons to appear, while other jurisprudence tends to favour the victim's right to file a complaint by summons to appear. According to the advocacy group, the criminal court is superior in efficiency and speed compared to the civil court because the criminal court, like the public prosecution, can obtain evidence of the offence, and the public prosecution uses judicial police, experts and other personnel¹.

Furthermore, the affirmative team believes that cooperative measures are required to combat crime because the damage to society and the individual arises from the same cause as the crime and, therefore, it is logical that it is the judiciary that determines whether it is appropriate to implement compensation in the form of a public or private payment to the victim of the crime.

Lawyers also emphasised the need for the victim to appear in person before the criminal court to speak about the specific offence, as the victim has a significant role in uncovering the specific offences. This view suggests that since the criminal trial takes place before the criminal court and the judgement is issued before the criminal court starts the case, there will be a discrepancy between the

¹ - Joseph Granier 'La partie civile au processpenal 'R.S.C.1958 ' P. 7 et s ; Pierre Borzat et Jean Pinatel 'Traite de droit penal et de criminologie1963'P. 758 et s; Mendelsohe 'quelques reflexions sur l'action civile'J.C.P. 1957 'P. 1386 et s.

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judgements issued in the two courts due to the unity of the judiciary in hearing criminal and civil cases. Criminal and civil courts are separate. The party opposing the right of a victim of crime to take direct action argued that many civil cases arising from crime are handled by the criminal justice system. They based their reasoning on the fact that many civil cases arising from crime are handled by the criminal justice system, and therefore action should be taken to change the current legislation to abolish these penalties.

Regarding the right of the injured party to pursue direct action for damages arising from the offence, we generally support this concept as it provides the victim with control over the prosecution's discretion.

2.2 The Statutory Opinion Regarding Direct Prosecution

Three trends characterise the attitude of legislation towards direct claims: 1- The expansive trend: When the legislator grants the right to file a criminal case, unrestricted or conditional, to both the victim and non-victim, as is the case in English law, which grants this right to anyone who is found guilty of a crime, regardless of whether or not he is injured, the legislator in some cases limits this right to some representatives of the state, such as the Attorney General, Directors of Public Prosecutions and some bodies. An example of this is the Tunisian Code of Criminal Procedure, Article 10 of Law No. 23 of 1968 dated 24 July 1968 on the reorganisation of the Code of Criminal Procedure: The Code of Criminal Procedure, which grants the police the authority to file a lawsuit with the victim, his agent or his heirs in all matters relating to the violation of rights. Every member of society has the right to file a lawsuit on the basis of the obligation to enjoin good and forbid evil in all matters relating to an individual right, the right of God Almighty or the right of society.

1.2-The prohibitionist trend:

This facet prevents individuals from bringing lawsuits against the state, regardless of their ability to do so, as they belong to the state

as a whole. In some cases, the injured party is only allowed to file a criminal complaint for certain offences, and the public prosecutor is prevented from initiating public proceedings. The injured party claims compensation for damages caused by the offence by filing a civil action before the civil court or by filing a civil action in addition to the public action. Examples of this type of legislation in Algeria from 1990 onwards include.²

From that time onwards, however, under Article 337 bis (Law No. 90-24 of 18 August 1990) and Article 72 (Law No. 06-22 of 20 December 2006), as well as the laws of the United Arab Emirates until 1992 and specific European laws, including Dutch law, this right is only granted to the victim of the crime of failure to execute a court judgement.

1.3-Mixed approach:

This part of the law strikes a balance between the two trends to ensure that a victim is able to file a lawsuit that does not deviate from its intended use and is not misused by the injured party, and this right is guaranteed, but there are conditions that must be met before it can be invoked, including that it is available in the first place. This is the prevailing trend (and Egyptian law, which we support) due to the advantages of merging criminal and civil trials before a single judge.

The use of unlawful methods to achieve justice or gather evidence of an offence provides advantages for both the identification of the perpetrator and the collection of evidence. Because it prevents perpetrators from evading punishment and maintains a sense of justice for the community and the victim, the criminal law has the power to

² - Droit ‘Gaston Stefani et Georges Levasseur P. 216 et s. ‘T. II. NO 220 ‘1975‘penal general et procedure penale

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prosecute those who violate the law if the prosecution is not reluctant to do so.

However, before determining who is entitled to file a direct action, we must clarify the legal nature of this right, because determining who is entitled to file a direct action depends on clarifying the legal nature of this right. Therefore, in the next requirement, we will address the status of case law and legal precedents related to ascertaining the right of a person who has suffered damage from an offence to bring a direct action to repair the damage caused by the offence.

Wechsler will present the legal status of the direct action before returning to the final requirement that determines who is eligible to bring a direct action, which constitutes the prerequisite for the action.

First up is the antiquated theory:

the theory's contents:

Advocates of this theory believe that the right holder should be given the ability to claim compensation for the damage caused by the offence, as they link the direct claim to the right to claim compensation in the first place. The victim cannot use the direct claim as a basis for a lawsuit if he or she is entitled to compensation, and the administrative courts are authorised to consider the claim for compensation, and the criminal courts do not intervene in this case.

As we will see later, jurisdiction over the offences that caused the damage for which compensation is sought is a prerequisite for direct action before a criminal court. However, individuals who have been harmed by an offence, even if they are not victims of the offence, are entitled to compensation.

One example of this type of individual is the heirs of the victim of a murder.

Even if they are not the direct victims of the offence, anyone affected by it can be eligible for compensation, and according to this

concept, a direct claim can be made if two conditions are met: The offence must have caused the damage, and the victims of the offence must be entitled to compensation.

II: The rationale of this theory is based on the principle that, regardless of the underlying principle, an aggrieved party in a case can file a civil action to benefit from the judge's judgement in a civil case, and one of the benefits of this is that there is a contrast between a criminal judgement in a criminal matter and a civil judgement in a civil case. For example, there is a difference between a criminal judgement in a criminal matter and a civil judgement in a civil case.

The ability to initiate criminal proceedings is a direct consequence of the criminal judiciary's authority to determine compensation for damages caused by civil acts, and is not an end in itself. Thus, the ability to bring a public action is not an end in itself, but a consequence of the criminal court's jurisdiction to consider damages through civil litigation. This is because the right to bring a public action exists independently of the right to compensation, and vice versa.³

The contents of the theory are as follows: The premise of this theory is that, because direct action serves two purposes - punishment and compensation - it is essentially of a mixed nature, both civil and criminal. This theory is based on the idea that the victim of a crime does not desire only civil compensation; in cases of honour crimes, for example, monetary compensation is insufficient to satisfy the victim's

³ - Article 1 of the Code of Criminal Procedure states that "the public prosecution for the enforcement of sentences is initiated and exercised by the magistrates or civil servants to whom it has been entrusted by law. This action may also be brought by the injured party, under the conditions defined by the present code.

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sense of justice; instead, the victim desires the required punishment for the accused because it fulfils her desire for legal and legitimate retribution against the perpetrator.

Because direct prosecution is mixed, both the victim and the individual affected by the offence have the right to file a direct claim after fulfilling the requirements of the law.

3. Rationale for the theory

To justify the departure from two well-established principles - that claims for damages fall within the jurisdiction of the civil courts and that the public prosecutor is authorised to initiate criminal proceedings - the law allows the right holder to file a direct lawsuit, allowing him to seek compensation for the damage caused by the crime. The government should have recognised the right of the victim of the crime to file a lawsuit, as the victim's primary goal is to punish the accused and obtain justice through a sense of justice that has been tainted by the crime.

It is necessary to determine who has the right to direct prosecution in the legislative reality after defining the legal basis for the right and reaching the conclusion that the victim of the crime must have the ability to file a criminal case through direct prosecution. It is better to recognise this as a presumed condition for direct prosecution, because the right to direct prosecution cannot exist without it.

The third is the presumed requirement for direct prosecution.

The Algerian legislator stipulates the right to file a public prosecution through direct action in the phrase 'any individual who is the victim of an assault may file a direct action before the criminal court'. The same applies to Egyptian law.

The Egyptian legislator has used a specific terminology here to indicate that a criminal case is filed before the Court of Misdemeanours and Offences by summoning the accused directly to appear before the prosecution. The Egyptian legislator continues to characterise a civil claimant as any person who claims to have been

harmed by another person. The French legislator used the word 'victim' to refer to the victim of an offence.

The word 'victim' is still used in the Saudi Code of Criminal Procedure to clarify that in any case involving a private right, the victim, his representative or his heirs are authorised to file and initiate criminal proceedings. It is clear that the Algerian legislator used a broader and more inclusive definition.⁴

From the above, it can be concluded that anyone who has been harmed by an offence, regardless of whether they are the victim, is entitled to initiate criminal proceedings by way of direct accusation, and in fact, it is sometimes possible that the victim is the person who has suffered harm as a result of the offence. In other scenarios, such as murder, the victim may not be the person who has suffered harm from the offence, and ultimately, many people can be affected by the harm caused by the offence.

Both parties can file a lawsuit immediately, as in multiple cases, provided they have suffered harm as a result of the offence. 'Bakr', Crime and Tort Litigation.

The above shows that the Algerian legislature has employed a more comprehensive and broader definition.

However, parties other than the injured party - such as the victim's heirs - can claim compensation, including the policyholder and the insurance provider. The law can, in some cases, allow a creditor to utilise the debtor's rights instead of the debtor; the victim can allocate their claim for compensation to another party. The insurer, to which the policyholder is entitled, can file a direct lawsuit

⁴ - Andre Vitu 'procédure pénale', 1957, p.150 et s.

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in the criminal court of the policyholder to recover damages and receive compensation.⁵

Finally, if a statutory body is harmed by the offence, may it bring a direct claim? The facts of each case will be addressed below.

In relation to the victim's heirs, there are three possibilities:

The first scenario is that the victim has died as a result of the offence, such as theft or breach of trust, with the belief that the offence is not the cause of death, and in the event of the victim's death, the heirs of the deceased person who make a direct claim to the relevant criminal court before their death will be eligible to receive any compensation due. As this compensation is a sum of money that passes from the deceased to his/her heirs after his/her death, the heirs are allowed to continue to bring this claim before the court.

Concerning the direct action: Can a creditor bring a direct action to claim the debtor's receivables - excluding the debtor's dues - due to the infringement imposed on the debtor? In addressing this query, French case law usually distinguishes between cases where the infringement affects the debtor's financial rights, such as breach of trust or a bad cheque, where the creditor can bring a direct action if the debtor is negligent. Conversely, the creditor cannot or will not bring a direct action if the damage has affected the debtor's material rights, such as in the case of murder or indecent assault, as these are personal rights that the creditor cannot take from the debtor.⁶

⁵ - Philippe Bonfils 'l'action pénale de la victime 'op. Cite 'p. 5 et s.

⁶ - E. Schaeffer. La faute de la victim et la réparation 'Qule-ques aspects de l'autonomie du droit pénal,1956 'P. 378.

Occasionally, a creditor assigns their rights to a different individual known as the assignee. According to some jurisprudence, the assignee is not entitled to this right because most laws require that a direct claim result in a direct personal injury and that the claim must initiate criminal proceedings. The legislature has assigned specific parties to carry out this procedure, including:

What is the insured person's status? Is the insurance company entitled to recover the compensation it paid in the criminal court within the framework of the civil lawsuit if the criminal case was filed prior to the latter? The insurance contract is a contract that is concluded with the intention of repairing the damage that will be inflicted on the insured, and the insurance company for which the insured is liable is the one that compensates the injured. either by a formal legal action.

The current trend in Egyptian and French case law is to deny the right of direct claim against the covered company, using the insurance contract signed by the insured and the insurer as the cause of insurance rather than the offence itself. It is merely the rationale behind the contract's completion.

Everything that can be said about the victim of the act, assuming that person is a real person, has already been covered. What happens if the victim of the crime is a legitimate person? To shed light on this, let's examine the two categories of legal persons: There is no question that private legal entities, such as corporations, associations, and syndicates, have the right to sue in the criminal court directly or in the civil court to recover damages for any harm they sustained as a result of the offence. If a criminal case is pending before the civil court, the private legal entity may also file a lawsuit, otherwise it may sue in the criminal court.

If the offence impacts the collective interests protected by the private legal entity, particularly in the case of trade unions or professional associations, the circumstances are very different. In this

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case, the member has the right to file a direct action before the criminal court, and the trade union or association has the right to seek redress, whether through legal means or other means.

If the prejudice is caused by the public interest, as in the case of an attack on public order, public security or public morals, the trade union or association does not have the right to file a lawsuit before the criminal court because this interest is accountable to the public ministry and only it has the right to file a lawsuit. The motive is, for example, economic or financial crimes. The protected interest is the protection of those dealing in the field protected by these offences, not the protection of the collective interest of a particular profession.

Regarding the public legal entity, which includes the state, public bodies, the state, or the nation, in the event that it sustains material harm, it is entitled to file a criminal case through direct prosecution. On the other hand, if the harm is moral, it is not eligible to file a criminal case because this kind of harm is combined with the general social harm that affects the community that the public prosecution represents.

Having completed our determination of the right of direct action, we came to the conclusion that the law and the judicial faculty recognise this right in characteristic clauses. We then reviewed the legal forms of the right of action and decided that it was a mixed law, combining criminal law and civil law.

We called on the legislator to recognise this right both for the victim and for the person affected by the fault, and we ended this article with the presumptive conditions for direct action and the reproduction of the persons who have the right to bring a direct action, whether against a natural person or a legal entity. But the test remains: what conditions must the victim of the fault meet in order to be able to bring a direct action?

4. CONCLUSION

We have approached the legal behaviour of the direct route, which allows us to persuade who has the right to sue the victim directly, the victim of the offence or both. Our article has responded to three needs: the fullness of the right of direct prosecution, which was an introductory requirement in which we commented on the legal and jurisprudential situation regarding the right of the victim of the transgression to initiate criminal proceedings through the direct route.

Once we had determined the nature of direct imputation, we then had to set out its legal forms in the second section. These are ordinary civil clauses, which reflect the status, interest and disposition of the person entitled to bring direct proceedings; distinct civil conditions, which capture the characteristics of the offence which forms the subject-matter of direct proceedings and the admissibility of the action; and, finally, penal conditions, which capture the quantitative limits of the offence which forms the subject-matter of direct proceedings and the admissibility of the action.

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-Droit ‘Gaston Stefani et Georges Levasseur P. 216 et s. ‘T. II. NO 220 ‘1975‘penal general et procedure penale

-Article 1 du code procedure penal dispose que“ l'actionpublique pour l'application des peinesestmise en mouvement et exercée

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par les magistrats ou par les fonctionnaires auxquels elle est confiée par la loi. Cette action peut aussi être mise en mouvement par la partie lésée, dans les conditions déterminées par le présent code“.

-Andre Vitu, *procédure pénale*, 1957, p. 150 et s.

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