



Civil Claim

Before Criminal Courts in UAE Legislation

الادعاء المدني

أمام القضاء الجزائي في التشريع الإماراتي

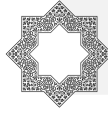
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الادعاء المدني أمام القضاء الجزائي في التشريع الإماراتي

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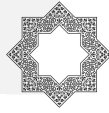
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ملخص البحث:

يوفر النظام القانوني في الإمارات الحق في رفع دعوى مدنية ضد المتهم أمام القضاء الجزائي، حيث يهدف الادعاء المدني إلى تعويض المجني عليه عن الضرر الذي لحق به نتيجة للجريمة المرتكبة، يمكن أن تشمل التعويضات المدنية تغطية الخسائر المالية والجسدية والنفسية التي تكبدها المجني عليه، وعادة ما يتم الادعاء المدني أمام القضاء الجزائي بتقديم طلب رسمي يحتوي على أسباب المطالبة والأدلة المتاحة لدعم هذه المطالبة، ويجب أن يكون المدعي قادراً على إثبات وجود الضرر الذي لحق به وربطه بسلوك الجاني. وجدير بالذكر أن الادعاء المدني يعتبر منفصلاً عن الادعاء الجزائي ويستهدف تعويض المدعي عن الأضرار المادية، فالأصل أن المحاكم المدنية هي المختصة بنظر الدعاوي المدنية، بينما تختص المحاكم الجزائية بنظر الدعاوي الجزائية فقط، إلا أن قانون الإجراءات الجزائية الاتحادي أجاز للمدعي بالحق المدني رفع دعواه المدنية أمام القضاء الجزائي، وهذا مفاده الاختصاص الاستثنائي للمحاكم الجزائية بنظر دعوى التعويض. وعليه قد يرفع المضرور دعوى مدنية تابعة للدعوى الجزائية يطالب فيها بالتعويض فتصبح تلك الدعوى مطروحة أمام المحكمة الجزائية، وبناءً عليه يمكن للمجني عليه في الدعوى الجزائية أن يتقدم برفع الدعوى المدنية المتعلقة بنفس الواقعة المشمولة بالدعوى الجزائية وذلك للحصول على تعويض مالي عن الأضرار التي لحقت به، وفي هذه الحالة يحق للمحكمة الجزائية النظر في الدعوى المدنية واتخاذ قرار بشأنها مع مراعاة الاختلافات في القواعد والإجراءات المتبعة في الدعوى الجزائية، وكذلك الدعوى المدنية في التشريع الإماراتي استناداً إلى ما تقدم فإن هذه الدراسة تهدف إلى إيضاح حقوق المدعى بالحق المدني أمام المحكمة الجزائية ارتباطاً بالدعوى الجنائية، وذلك ببيان الجانبين المدني والجنائي في هذه الخصومة في مراحل الدعوى الجنائية كافة في التشريع الإماراتي .

الكلمات المفتاحية: الادعاء المدني، الدعوى الجزائية، قانون الإجراءات الجزائية،

التعويض عن الأضرار، الاختصاص الاستثنائي



Civil Claim Before Criminal Courts in UAE Legislation

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Abstract:

The legal system in the UAE provides the right to file a civil lawsuit against the defendant in criminal court, with the civil claim aiming to compensate the victim for the harm suffered due to the committed crime. Civil compensation may include coverage for financial, physical, and psychological losses incurred by the victim. Typically, the civil claim in criminal court is initiated by submitting a formal request that contains the grounds for the claim and the available evidence supporting it. The plaintiff must be able to prove the damage suffered and link it to the defendant's actions. It is worth noting that the civil claim is distinct from the criminal claim and aims to compensate the plaintiff for material damages. Generally, civil courts have jurisdiction over civil claims, while criminal courts have jurisdiction over criminal claims. However, the Federal Criminal Procedures Law allows the civil claimant to file their civil claim before the criminal court, indicating an exceptional jurisdiction for criminal courts to hear compensation claims. Thus, the injured party may file a civil claim ancillary to the criminal case, seeking compensation, making such a claim subject to the criminal court's jurisdiction. Consequently, the victim in the criminal case may file a civil claim related to the same incident covered by the criminal case to obtain financial compensation for the damages suffered. In this situation, the criminal court has the authority to consider the civil claim and render a decision on it, taking into account the differences in rules and procedures applicable to both criminal and civil cases under UAE law. Based on the above, this study aims to clarify the rights of the civil claimant before the criminal court in connection with the criminal case, by explaining the civil and criminal aspects of this dispute at all stages of the criminal case under UAE legislation.

Keywords: Civil claim, Criminal case, Criminal procedure law, Compensation for damages, Exceptional jurisdiction.

**Introduction:**

The UAE legislation establishes distinct legal systems for civil and criminal claims, each with its own unique legal nature, parties, subject matter, and cause of action. However, there are instances when a civil claim may be contingent upon a criminal claim, meaning a single act that constitutes a crime may give rise to two claims: the first being society's right to prosecute the perpetrator through a criminal claim, and the second being the victim's right to compensation through a civil claim. The public prosecution pursues the former right, as the parties in a criminal claim are the public prosecution versus the defendant, whereas the parties in a civil claim are the civil plaintiff (the injured party seeking compensation) versus the defendant.

Accordingly, the victim in a criminal case can file a civil claim related to the same incident covered by the criminal claim to obtain financial compensation for the damages suffered. In such cases, the criminal court has the jurisdiction to hear the civil claim and make a decision on it, taking into account the differences in the rules and procedures applicable to criminal claims as well as civil claims under UAE legislation.

Importance of the Study:

The significance of this study stems from the strong link between the damage and the crime at the center of the criminal case. This connection has led the legislator to deviate from the norm by allowing criminal courts to handle civil claims as an exception. The civil claim before the criminal court holds great importance for several reasons, primarily due to the protection of the victim's rights and the civil liability of the offender for the damages caused. Consequently, the victim's



rights are better secured, enabling coverage for material, physical, and psychological damages resulting from the crime. Moreover, the civil claim ensures comprehensive justice. In some cases, criminal punishment alone may not suffice to compensate the victim for the harm suffered, thereby providing an opportunity for fair compensation, which reinforces individual rights. This is particularly relevant within the positive role of the criminal judge in seeking the truth under the principle of free evidence that prevails in criminal trials.

Objectives of the study:

Based on the above, this study aims to clarify the rights of the civil claimant before the criminal court in connection with the criminal case, by illustrating the civil and criminal aspects of this dispute at all stages of the criminal case. Within this main objective, several subsidiary objectives can be identified:

- 1- Define the concept of the civil claim contingent upon the criminal case and address the conditions for a civil claim before the criminal court, which may not be required in a civil claim before a civil court.
- 2- Outline the advantages of filing a civil claim before the criminal courts.
- 3- Identify the cases in which the criminal court may refer the civil claim to the competent court without deciding on it.
- 4- Highlight the consequences of the principle that the civil claim is contingent upon the criminal case.
- 5- Address the effects of the termination of the criminal case on the civil claim.

**Research Problem:**

The main problem addressed by this study lies in the differences between the legal systems governing criminal and civil claims in terms of their legal nature and objectives. Additionally, the legal principles governing each type of claim differ: civil claims are based on the principle of compensating the harmed party, while criminal claims are founded on the principles of punishment and achieving criminal justice. The legal procedures for each type of claim also differ. Although there can be interaction between civil and criminal cases at times, each maintains its unique legal and procedural nature.

Study Questions:

The research topic raises several key questions, including:

- 1- What is the definition of a civil claim before criminal courts, and what are the basic steps for presenting a civil claim before a criminal court?
- 2- In what instances can a civil claim be referred to the competent civil court?
- 3- What are the reasons for a civil rights claimant to abandon their claim before the criminal court?
- 4- What are the reasons for suspending a civil claim before the civil court?
- 5- What is the impact of the termination of a criminal case on the civil claim?

Research Methodology:

The analytical method was followed, focusing on the texts of the



UAE Criminal Procedure Law as amended by Federal Decree-Law No. 45 of 2023, as well as the UAE Civil Transactions Law of 2020.

Research Plan Outline:

Chapter One: The Civil Claim Before Criminal Courts.

Section One: The Nature of the Civil Claim Associated with Criminal Jurisdiction.

Subsection One: Elements of the Civil Claim.

Subsection Two: Cause of the Civil Claim.

Subsection Three: Subject of the Civil Claim.

Section Two: Parties in the Civil Claim.

Subsection One: The Plaintiff in the Civil Claim.

Subsection Two: The Defendant in the Civil Claim.

Chapter Two: Proceeding with the Civil Claim.

Section One: The Right to Choose Between Civil and Criminal Paths.

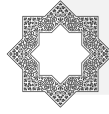
Subsection One: Forfeiture of the Right to Choose the Criminal Path.

Section Two: The Dependence of the Civil Claim on the Criminal Claim.

Subsection One: Effects of Accepting the Civil Claim.

Subsection Two: Consequences of the Dependence of the Civil Claim on the Criminal Claim.

Subsection Three: The validity of the Criminal Judgment in Civil Court.



Chapter One:

The Civil Claim Before Criminal Courts

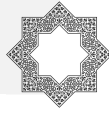
Introduction:

The legal system in the UAE provides the right to file a civil claim against the defendant before the criminal court. The purpose of a civil claim is to compensate the victim for the damage incurred as a result of the crime committed. Civil compensation can cover financial, physical, and psychological losses suffered by the victim.

Typically, a civil claim before the criminal court is made by submitting a formal request containing the grounds for the claim and the available evidence to support it. The plaintiff must be able to prove the existence of the damage suffered and its connection to the conduct of the defendant.

It is worth noting that the civil claim is considered separate from the criminal claim and aims to compensate the plaintiff for material damages. Generally, civil courts have jurisdiction over civil claims, while criminal courts are specialized in handling criminal cases only. However, the Federal Criminal Procedure Law allows the plaintiff with civil rights to file their civil claim before the criminal court, signifying the exceptional jurisdiction of criminal courts to hear compensation claims⁽ⁱ⁾.

Therefore, an injured party may file a civil claim associated with the criminal claim, seeking compensation, thus bringing the claim before the criminal court. This chapter examines such claims by defining their nature and legal characteristics, which will be discussed in the following sections of the study.



Section One:

The Nature of the Civil Claim Related to the Criminal action:

A civil claim can be defined as a lawsuit filed by an individual who has suffered damage from a crime, seeking compensation for that damage. It is essentially the victim's claim , demanding compensation for the harm incurred.⁽ⁱⁱ⁾

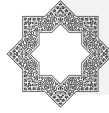
A crime gives rise to two rights: one is the state's right to impose punishment, and the other is the victim's right to compensation. The injured party has the discretion to choose whether to file this claim before a criminal court or a civil court.

Legal Basis

Article 23 of the Federal Criminal Procedure Law states:

1. A person, who sustains direct personal harm from a crime, may file a civil action against the Accused during the evidence gathering process or during the investigation or before the court that hears the criminal action, regardless of the status of the criminal action until the closing of the pleadings phase. However, he is not permitted to file his action before the Court of Appeal.
2. If the damage is inflicted upon a legal person, the court shall, sua sponte, award damages if the same is specified in a law or any regulations issued on the basis of a law.
3. Filing civil actions may only be admitted after the judicial fees are paid.

This unity in origin makes the civil claim contingent upon the criminal case when the injured party files it before the criminal court.



This dependency ensures:

- 1- The speed of adjudicating civil cases arising from the crime.
- 2- The ability to judge the civil lawsuit according to the circumstances of the case.
- 3- Ensuring the interest of the justice system in avoiding contradictory judgments in cases that share the same source of the right being established.
- 4- Moreover, ruling on both the penalty and compensation together is effective in combating criminal behavior.

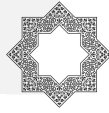
Subsection One: Elements of the Civil Claim:

A civil claim is based on three elements: the cause, the subject matter, and the parties involved. If either the first or the second element is missing, the criminal court lacks jurisdiction to hear the claim. If the third element is missing, the court can rule the civil claim inadmissible⁽ⁱⁱⁱ⁾.

First: Cause of the Civil Claim

The cause of the civil claim is the damage resulting from the crime, not the crime itself. It is conceivable that a crime may occur without causing specific harm, in which case only a criminal case would be filed, such as in crimes involving public safety or possession of weapons and ammunition.

The criminal and associated civil claims share the same cause, which is the crime, i.e., the act defined as a crime under criminal law. Specifically, the act constituting the crime is the cause of the criminal claim, while the cause of the associated civil claim is the damage resulting from the criminal act. If no material or moral damage arises



from the crime, there is no basis for a civil claim^(iv).

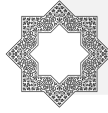
According to Article 23 of the Federal Criminal Procedure Law, the act that permits the injured party to file a civil claim before the criminal court must meet three conditions:

- 1- Occurrence of the crime.
- 2- Occurrence of damage.
- 3- A causal relationship between the crime and the damage.

1. Occurrence of a Crime:

A civil claim related to a criminal case can only arise from an act that constitutes a crime, regardless of its severity, it could be a felony, misdemeanor, or violation. The crime generates the damage for which compensation is sought through the associated civil claim. If the act causes damage but does not constitute a crime, the claim for compensation cannot be pursued in the criminal court and must be filed in a civil court. If filed in a criminal court, it must be dismissed for lack of jurisdiction.

The judgment in the associated civil claim is issued against the defendant in the criminal case, and therefore, the person who committed the criminal act must be the same. If the defendant is acquitted because they did not commit the crime, the court must dismiss the civil claim. However, if the acquittal is due to a lack of criminal responsibility, the act remains unlawful, and the court may deny compensation due to lack of damage, even if there is a criminal conviction. This highlights the distinction between civil and criminal liability, governed by different legal principles.



2. Occurrence of damage:

Damage is understood as the harm inflicted on a person's personal or financial rights or interests protected by law.

Types of Damage:

A: Material Damage: This involves any reduction in financial status, meaning the loss incurred or the gain missed by the injured party. It is quantified monetarily.

B: Moral Damage: This pertains to harm affecting dignity, feelings, or reputation, such as defamation, insult, or humiliation.

Nature of Damage

Personal damage refers to harm done to the person of the civil plaintiff. Therefore, an individual cannot claim compensation for damage that has affected someone else, regardless of their relationship to that person, unless they have the legal right to represent them, in accordance with the principle "where there is no interest, there is no lawsuit."

Actual damage means that its consequences have actually occurred or are certain to occur in the future and can be assessed and the resulting damage determined. However, the mere possibility of future damage is not sufficient for awarding compensation, and the court must reject the civil lawsuit. In this context, it should be noted that there is no objection to requesting compensation on the basis of a lost opportunity for profit due to the crime, as losing an opportunity is considered actual damage. On the other hand, the consequences of missing an opportunity are potential damages that cannot be compensated, such as missing the chance for a promotion, failing an



exam, or losing the opportunity to appeal a judgment.

3. Causal Relationship Between the Crime and the Damage:

The basis for the criminal court's jurisdiction to consider a civil lawsuit is that the compensation sought must arise directly from the damage caused by the crimes for which the criminal case is filed. If the damage is only a result of circumstances indirectly related to the crime, compensation cannot be claimed for it. The defense of the absence of a direct causal link is related to public order because it pertains to the jurisdiction of the criminal courts. Therefore, this defense can be raised at any stage of the lawsuit, even for the first time before the Court of Cassation (Supreme Court), provided it does not require substantive investigation, as this falls outside the jurisdiction of the Court of Cassation.

Special Exception for Compensating the Accused:

If it is proven that the plaintiff's intent was to harm and vex their opponent, such conduct is deemed wrongful, warranting compensation for the damage caused by the misuse of this right. Therefore, Article 26 of the Criminal Procedure Law states: "The Accused may file with the court a claim for compensation on the ground of the damage incurred by him / her as a result of a false accusation brought against him / her by the reporting person or the victim. In addition, the criminal court may award compensation in favor of the Accused against the person found guilty in respect of the crime of perjury and making a false report, based on the accused's request."

The rationale behind this exception is that the criminal court, which has adjudicated the civil claim against the accused, is better positioned than a civil court to rule on it, in addition to restoring the



accused's reputation, especially in cases of malicious accusations.

Subsection Two: Subject Matter of the Civil Claim

The subject matter of the civil claim is to redress the damage caused by the crime, consisting of two elements: compensation and restitution.

First: Compensation

Compensation involves obtaining a sum of money for the damage caused by the crime. The subject matter of the civil claim in criminal proceedings is limited to seeking compensation, unlike the criminal case, which aims to impose a penalty on the offender for the crime committed.

Article 22 of the Criminal Procedure Law states: "Anyone who has suffered direct personal harm from the crime may claim civil rights against the accused...". Compensation is required for harm to the person, including material, physical, and moral damage. Article 292 of the Civil Transactions Law stipulates: "Compensation is assessed in all cases to the extent of the damage suffered by the injured party and the loss of potential gains, provided that it is a natural result of the harmful act."

Second: Restitution:

Restitution aims to restore the situation to what it was before the crime, meaning returning the item to its original state. Article 295 of the Civil Transactions Law states: "Compensation is assessed in cash, but the judge may, depending on the circumstances and at the injured party's request, order the restoration of the situation to its original state or command specific performance related to the harmful



act as a form of compensation.^(v)"

Various forms of restitution include returning the item seized through the crime to its owner or possessor, as in theft, fraud, and breach of trust cases, or ending the abnormal situation caused by the crime, such as demolishing a building erected on another's property, restoring property forcibly taken from its owner, or nullifying a forged document.

Items seized during the investigation can be returned before judgment unless necessary for the proceedings or subject to confiscation.

Legal Basis in Federal Criminal Procedure Law:

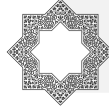
Article 80 of the Criminal Procedure Law: "Items seized during the investigation may be returned before judgment unless they are necessary for the proceedings or subject to confiscation."

The general rule for restitution is to return items to the person who had possession at the time of seizure or lost possession due to the crime.

Article 81 of the Criminal Procedure Law: "Seized items are returned to the person who had possession at the time of seizure. However, if the items are those on which the crime was committed or resulted from it, they are returned to the person who lost possession due to the crime, unless the person with whom they were seized has a legal right to retain them."

The order for restitution is issued by the public prosecutor, and the court may order restitution during the criminal case.

Article 82 of the Criminal Procedure Law: "The order for



restitution is issued by the public prosecutor, and the court may order restitution during the criminal case."

The restitution order does not prevent interested parties from claiming their rights before the civil court, except for the accused or the civil rights plaintiff if the restitution order was issued by the criminal court at the request of either against the other.

Article 82 of the Criminal Procedure Law: "The restitution order does not prevent interested parties from claiming their rights before the civil court, but the accused or the civil rights plaintiff cannot do so if the restitution order was issued by the criminal court at the request of either against the other."

Return the Contested Item:

According to article 84 of the Criminal Procedures Law, it is permissible to order a return even without a request.

The Public Prosecution is not allowed to order a return to a contested item or to an item where there is doubt about the rightful recipient.

Determine the fate of seized items upon disposal of the case:

Article 85 of the Criminal Procedures Law: When an order for preservation is issued or a decision is made that there is no basis for the lawsuit, the public prosecutor must decide on the fate of the seized items.

The criminal court must decide on the fate of the seized items when a claim for return is made before it. It may order the referral of the adversaries to the civil court if it deems it necessary. In this case, it



is permissible to place the seized items under custody and take other measures to preserve them^(vi).

Request for Seized Items:

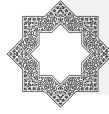
According to Article 87 of the Criminal Procedures Law:

"Seized items that are not claimed by their rightful owners within five years from the date of final judgment or the issuance of a decision that there is no basis for the partial lawsuit, or in one of the cases mentioned in Article 21 of this law, become property of the public treasury without the need for a judgment to that effect."

Determine the fate of Seized Items Subject to Damage or Loss:

Article 86 of the Criminal Procedures Law:

"If the seized item is subject to damage or loss over time, or requires expenses that exceed its value, it is permissible to sell it by public auction if the investigation requirements allow. In this case, the rightful owner may claim the price for which it was sold at the time specified in this law."



Second Demand:

Adversaries in Civil Lawsuit:

The adversaries in a civil lawsuit are the plaintiff asserting civil rights on one hand, and the accused or the one responsible for civil rights on the other hand.

First Branch: Plaintiff in Civil Lawsuit:

The Federal Criminal Procedures Law allows those directly harmed by a crime to assert civil rights before the accused. This implies that the crime doesn't necessarily have to be committed directly against them; it suffices that they suffer its consequences. For instance, in cases of physical assault resulting in permanent disability hindering work, the affected individuals have the right to file a civil lawsuit for compensation, independent of the lawsuit filed by the direct victim. Similarly, in cases of slander or defamation, the spouse and children of the victim have the right to file a civil lawsuit for compensation if they have suffered personal harm, in addition to the victim's right to do so^(vii).

The affected party in most cases is a natural person, while in other cases, it could be a legal entity such as commercial companies or associations. In such cases, the legal entity can assert civil claims if it meets the requirements, namely, suffering harm due to the crime and having the legal capacity to sue. If the entity lacks legal personality recognized by law, its members cannot individually claim civil rights, as the entity is not separate from its members. However, claims can be accepted from members who have suffered personal harm due to the crime, each individually.

The Federal Criminal Procedures Law stipulates that "if harm is



inflicted on a legal entity, the court must award compensation if it is specified by law or regulations issued pursuant to the law."

Capacity of the Civil Plaintiff:

A civil lawsuit is only accepted from those who have the legal capacity to act according to civil law. If the affected party lacks or has incomplete legal capacity due to the crime, the lawsuit is only accepted from their guardian, executor, or trustee.

Article 23 of the Criminal Procedures Law states: "If someone is harmed by a crime but is not legally competent to litigate and has no legal representative, the court may, upon request of the public prosecution, appoint a representative to assert civil rights on their behalf, without imposing legal costs on them."

Second Branch: Defendant in Civil Lawsuit:

The norm is that a civil lawsuit related to a criminal case is filed against the accused, i.e., the person accused of committing or participating in the crime. If the accused is not competent to litigate and has no legal representation, the court may appoint one for them upon the request of the public prosecution. If multiple defendants are sued jointly, and they are collectively liable for compensation due to their agreement on committing the crime, the plaintiff can demand compensation from them jointly once their collective involvement in the crime is proven. If the accused dies during the lawsuit, the civil plaintiff can involve their heirs to replace the deceased in the lawsuit, enabling them to obtain compensation in their stead^(viii).

The person responsible for civil rights is the individual legally responsible for the actions of the accused according to the law, similar



to the liability of a principal for the acts of their agents or the liability of a parent for the acts of their minor children.

Civil liability extends beyond criminal liability. While a criminal lawsuit can only be filed against the perpetrator of the crime, a civil lawsuit can be filed against someone other than the accused, such as the person responsible for civil rights.

Civil liability is based on the presumption of negligence in supervising individuals subject to the control of the responsible party by agreement or law due to their incapacity or mental or physical condition. This presumption can be refuted if it's proven that the guardian or trustee, for example, did not have the minor under their care and control, and thus could not prevent the harmful act.

Article 312 of the Civil Transactions Law:

While no one can be questioned about the actions of others, the judge, upon the request of the affected party, may, if deemed justified, compel any of the following individuals under certain circumstances to indemnify the damage caused:

Someone who, by law or agreement, is responsible for supervising a person in need of supervision due to their incapacity or mental or physical condition, unless it's proven that they fulfilled their duty of supervision or that the harm was unavoidable, even if they exercised due care.

Someone who had effective authority to supervise and direct the person causing harm, even if they were not free in their choice. This applies if the harmful act was committed by a subordinate while performing their duties or as a result of them.



The Responsible Party for Civil Rights in the Criminal Procedures Law:

Article 25 states: "Anyone responsible for civil rights and insured has the right to intervene in the lawsuit on their own behalf in any case."

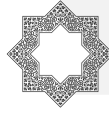
The Legal Entity (Insured Party):

"A civil lawsuit can be filed before criminal courts by the insured party to seek compensation for damage resulting from the crime."

Capacity of the Defendant in Civil Lawsuit:

According to Article 23 of the Criminal Procedures Law, if the accused in a civil lawsuit is not competent to litigate and has no legal representation, the court may appoint a representative for them upon the request of the public prosecution^(ix).

Therefore, a civil lawsuit cannot be accepted before the accused, heir, or the person responsible for civil rights, unless they are of legal age. If they lack legal capacity or have incomplete capacity, the lawsuit should be filed against their legal guardian, trustee, or caretaker, as applicable. It's noteworthy that raising the issue of accepting a civil lawsuit before the accused due to their non-adulthood involves legal defenses intertwined with reality and cannot be raised for the first time before the Court of Cassation.



Second Topic:

Direct Civil Action

The default in civil cases is for them to be heard before the civil judiciary. However, the law permits them to be brought before criminal courts when they are related to criminal claims. This exceptional permission is limited and must be strictly adhered to. Therefore, the law imposes specific restrictions on the civil plaintiff's right to resort to the criminal route, in line with the nature of this exception, ensuring its containment within reasonable limits. Otherwise, allowing the civil plaintiff the freedom to choose the criminal route would burden criminal courts excessively and impede their functioning due to the procedural complexities it entails^(x).

The UAE Sharia Law has specified three conditions for a civil case to be heard by criminal courts. Therefore, this topic will be divided into three demands, the first of which concerns the right to choose between the civil and criminal routes. The second is related to initiating the lawsuit before the criminal court, and the third is about initiating the lawsuit before the civil court as follows.



First Demand:

The Right to Choose Between Civil and Criminal Routes:

The Principle:

It is permissible for the victim of a crime to file a civil lawsuit before the competent criminal court.

Exceptions:

The right to choose is not established for the civil plaintiff in three cases:

If the criminal lawsuit falls under the jurisdiction of special courts that do not have jurisdiction according to the law or by their nature to adjudicate civil claims, such as juvenile courts or military courts. These courts have limited exceptional jurisdiction over specific types of crimes or specific categories of individuals, as determined by their establishing laws. Thus, it is not permissible to expand this jurisdiction unless the law explicitly states that it includes civil claims related to the pending criminal case before it^(xi).

If the criminal lawsuit is not filed or raised for any legal reason, such as the presence of a legal impediment to filing it, like a complaint or permission, or if there is an obstacle hindering its procedures, such as the accused enjoying certain immunity.

If the criminal lawsuit has lapsed for any reason, such as death, pardon, prescription, or if a decision has been issued that the case should not be pursued by the public prosecution.

If the victim has filed their civil lawsuit before the civil judiciary, they thereby waive their right to the exception granted by the law and



follow the natural course to claim their rights. Therefore, they cannot retract from this path and resort to the exceptional route by filing their lawsuit before criminal courts.

According to Article 27 of the Criminal Procedures Law:

"The claimant of civil rights may abandon their claim at any stage of the lawsuit. If the claimant of civil rights abandons their claim filed before the criminal court, they may file it before the civil court."

Branch One: Loss of the Right to Choose the Criminal Route:

Depriving the civil plaintiff of resorting to the criminal route due to their prior choice of the civil route requires three conditions:

The civil plaintiff must have already filed their lawsuit before the civil court.

The criminal lawsuit must have been filed before the criminal court before the civil lawsuit was filed before the civil court, so that the conduct of the civil plaintiff can be interpreted as waiving their right to pursue the criminal route.

The civil lawsuit filed before the civil court must be the same claim for compensation that the plaintiff intends to file as a derivative of the criminal lawsuit, meaning that both the criminal and civil lawsuits must define parties, reasons, and subjects.

Nature of Losing the Right to Choose:

Losing the right of the civil plaintiff to choose the criminal route is not part of the general legal system as it relates to civil lawsuits that protect specific interests. It ceases to exist once the lawsuit has been initiated before discussing the subject matter. It is not permissible to invoke it for the first time before the Court of Cassation; it must be



raised initially before the court of first instance.

It is worth mentioning that the conditions for accepting the criminal lawsuit are different in essence and nature from the civil lawsuit, although considering that raising the prior resolution in the civil lawsuit is a matter of the general system and not of the adversaries' interests.

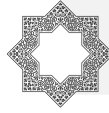
Second Demand: Subordination of Civil Lawsuit to Criminal Lawsuit:

The Criminal Procedures Law allows the victim of a crime to claim their civil rights before the criminal court at any stage of the criminal lawsuit, whether during the gathering of evidence, the initial investigation, or before the court hearing the criminal case, until the conclusion of the proceedings, but such a claim is not admissible before the appellate court. Therefore, a person who directly suffers personal harm from a crime can demand their civil rights before the accused, during the evidence gathering stage, the initial investigation, or before the court handling the criminal case, regardless of the status of the lawsuit, until the closing of the pleading stage, but this is not admissible before the appellate court^(xii).

Additionally, the law allows the civil plaintiff to abandon their claim at any stage, and if the civil plaintiff abandons their claim filed before the criminal court, they may file it before the civil court. If a civil lawsuit related to the criminal case is filed before the criminal court, both cases will be decided in a single judgment.

First Branch: Effects of Accepting the Civil Claim:

Accepting the civil claim makes the civil plaintiff a party to the



civil lawsuit presented to the criminal court, granting them the right to make requests, hear witnesses, cross-examine them, request new witnesses, seek expert opinions, and present their defense before the court. If a judgment is issued, they have the right to appeal or challenge it regarding the civil claim only.

It is worth noting that if the civil plaintiff intervenes before the public prosecution and the prosecution decides that there is no cause for the criminal lawsuit, the civil plaintiff must announce it. If deceased, this announcement should be made to their heirs collectively, without mentioning their names, at their last known residence, according to Article 4/118 of the Criminal Procedures Law.

Abandonment of Civil Lawsuit:

Abandonment is an action taken by the civil plaintiff indicating their explicit waiver of adversarial proceedings. Article 27 of the Criminal Procedures Law states: "The claimant of civil rights may abandon their claim at any stage of the lawsuit, and if the claimant of civil rights abandons their claim filed before the criminal court, they may file it before the civil court."

Article 1/113 of the Civil Procedures Law outlines the procedures for abandonment, stating that the abandonment must be declared to the adversary or explicitly stated in a memorandum signed by the plaintiff or their legal representative, with the adversary's knowledge, or orally expressed during the session and recorded in the minutes.

Furthermore, Article 114 of the Civil Procedures Law stipulates that abandonment entails all the consequences of dismissal, and the abandoner is obliged to bear the expenses of the lawsuit.



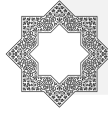
The civil plaintiff can abandon their claim at any stage of the lawsuit as long as a final judgment has not been issued. They can abandon it during the evidence gathering stage, the initial investigation, or even during the trial. There is nothing preventing the civil plaintiff from abandoning their claim even after an initial judgment and after an appeal.

Second Branch: Effects of Subordination of Civil Lawsuit to Criminal Lawsuit:

Subordinating the civil lawsuit to the criminal lawsuit means that the civil lawsuit is affected by any objections to the criminal lawsuit regarding the validity of its filing procedures or reasons for its dismissal or lapse, as follows:

The civil lawsuit cannot be accepted before the criminal court without the criminal lawsuit being admissible. The criminal lawsuit must be admissible for the victim of the crime to directly file a claim before the competent court. The criminal lawsuit is not admissible if there are reasons for its suspension, such as forgiveness of the crime or withdrawal of the complaint, for example.

The civil lawsuit cannot be filed before the criminal court if the criminal lawsuit has lapsed due to the death of the accused, the expiration of the period, general amnesty, or the repeal of the criminal legislation that stipulated the offense causing the damage. In such cases, the jurisdiction of the criminal court over the civil lawsuit ceases, and the civil lawsuit is transferred to the competent civil court, except in cases where the civil lawsuit is ready for judgment. In this case, the court continues to hear the civil lawsuit alone despite the lapse of the criminal lawsuit^(xiii).



It is mandatory to issue a single judgment for both lawsuits. It is not permissible to separate the criminal lawsuit and postpone the decision on the civil lawsuit to a subsequent session because the final judgment becomes invalid with the termination of the court's jurisdiction.

The procedural rules stipulated in the Criminal Procedures Law apply to the civil lawsuit filed as a subsidiary to the criminal lawsuit, whether regarding trial, judgments, or methods of appeal. As for the substantive rules that determine civil liability, the civil lawsuit is subject to the rules of civil law by default.

It is worth mentioning that the criminal court has jurisdiction over the criminal lawsuit regardless of the amount of compensation requested, according to Article 147 of the Criminal Procedures Law. If the criminal court finds that deciding on the compensations requested by the civil claimant requires a special investigation that necessitates postponing the criminal lawsuit, it refers the civil lawsuit to the competent civil court.

The nature of prosecuting a violation of the subsidiarity principle:

In cases other than exceptional circumstances specified in the subsidiarity principle, the civil claim's dependence on the criminal claim is one of the rules related to the general system, as it concerns the jurisdiction of the court in adjudicating the claim. Consequently, the court rules on it autonomously or without the request of the parties, and the right to assert it does not expire at any stage of the claim. It may be asserted for the first time before the appellate court.

**First: Directing the civil claim before the civil court:**

The law has granted the victim of the crime the right to choose between the criminal path or the civil path. However, the original jurisdiction lies with the civil courts. Therefore, the victim may choose the civil path in filing the claim before the civil court. Thus, the civil claim is subject to the rules of civil procedure law. However, because the source of both the criminal and civil claims is one act, the relationship between them persists even if a compensation claim is filed before the civil court. This relationship is evident in the impact of the judgment issued in one claim on the other. Filing the criminal claim or even initiating it suspends the judgment in the civil claim, applying the principle that the criminal case suspends the civil one.

Second: The rule of non-bindingness of the civil judgment before the criminal court:

Article 270 of the Criminal Procedure Code stipulates that "judgments issued in civil matters shall not be binding on criminal courts regarding the occurrence of the crime and its attribution to its perpetrator." This is because the rule is that the criminal court is competent under the Criminal Procedure Code to adjudicate all matters on which the judgment in the case depends unless otherwise provided by law. Therefore, criminal courts, when deciding on the criminal case before them, cannot be bound by any judgment issued by any other authority, not only because such a judgment does not have the force of *res judicata* for the criminal case due to the lack of unity in the parties, cause, or subject matter, but also because of the extensive authority granted by the law to criminal courts to ascertain the truth of the matter.



Third: Exception to the rule:

The legislator excluded matters related to personal status from the rule of non-bindingness of the civil judgment before the criminal court. This exception is included in Article 271 of the Criminal Procedure Code, which states that "judgments issued in personal status matters shall have the force of *res judicata* before the criminal courts regarding the matters on which the judgment in the criminal case depends." The reason for this is that criminal courts do not have jurisdiction to adjudicate personal status matters, unlike civil matters^(xiv).

Third Branch: The validity of the criminal judgment before the civil court:

Article 269 of the Criminal Procedure Code stipulates that "the final criminal judgment issued in the criminal case regarding acquittal or conviction shall be binding on civil courts regarding the occurrence of the crime as a legal act and its attribution to its perpetrator." The text of the article means that if a final judgment is issued in the criminal case and then the civil claim is filed before the civil court, the criminal judgment shall be binding before the civil judiciary regarding what it ruled on in the points of dispute common between the litigants if the following conditions are met:

The criminal judgment must be issued in the subject matter of the criminal claim, whether in conviction or acquittal. Non-final judgments on the subject matter, such as preliminary or preparatory judgments, or judgments issued due to lack of jurisdiction or acceptance, do not qualify. Additionally, the criminal judgment must be issued by a regular and specialized court^(xv).



The criminal judgment must be final, i.e., not subject to appeal through any means of appeal.

The civil claim must still be pending before the civil court. If a final judgment has been issued therein, it has acquired the force of *res judicata*, and there is no place for this validity.

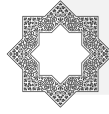
The conditions for the unity of the criminal act must be met.

The criminal judgment must have conclusively and necessarily ruled on the occurrence of the act constituting the common basis between the criminal and civil claims.

First: The nature of the validity of the criminal judgment:

The validity of the judicial judgment against the civil judge is a rule related to public order, which the civil court must adhere to and rule on autonomously. This validity is limited to final judgments conclusively ruling on the subject matter of the criminal claim, without other orders or decisions issued by investigative authorities acquiring such validity before the civil judge. Moreover, the criminal judgments that have this validity are those issued exclusively by the UAE courts. Furthermore, the civil courts must not have issued their final judgment yet.

The validity of the criminal judgment before the civil judiciary is part of public order, as it relates to the distribution of jurisdiction between criminal and civil courts. No one can waive this validity, and the civil court must adhere to its rules autonomously, without a request from the concerned party. This argument can be raised in any situation regarding the civil claim, even if it's for the first time before the appellate court.



Second: Suspension of proceedings in the civil claim due to the filing of the criminal claim:(The criminal suspends the civil).

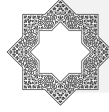
The criminal claim may be filed before or during the consideration of the civil claim before the civil court. In such a case, the civil court must suspend proceedings until a final judgment is issued in the criminal claim. This rule is stipulated in Article 28 of the Criminal Procedure Code, which states: "If a civil claim is filed before the civil court, proceedings in it must be suspended until a final judgment is issued in the criminal claim filed before it or during its proceedings. If proceedings in the criminal claim are suspended due to the insanity of the accused, the civil claim will be decided based on the evidence available, and the suspension of the civil claim before the civil court does not prevent the taking of urgent precautionary measures. The suspension of the civil claim before the civil court ends if the criminal court issues a judgment of conviction in the absence of the accused from the day after the deadline for appeal by the public prosecution or from the day of the decision on this appeal." When the criminal court rules on the occurrence of the act constituting the common basis between the criminal and civil claims, and on its legal description and attribution to its perpetrator, the civil court cannot reconsider these matters, and it must adhere to them when adjudicating the civil rights related to them to avoid contradicting the previous criminal judgment^(xvi).

It should be noted that the civil judge can consider the civil claim despite the issuance of the judicial acquittal if there are other elements in the criminal claim that the criminal judge did not address, thus the criminal judgment has no validity before the civil judge.



Conclusion:

As previously discussed, the civil claim associated with a criminal case is a legal action that is brought simultaneously or sequentially within the framework of a criminal case. Typically, this relates to a crime committed against someone, leading to the filing of a criminal lawsuit against the defendant while concurrently making a civil claim related to that crime. Hence, the civil claim can be brought before the criminal court, but it is considered distinct from the criminal lawsuit itself. Consequently, the civil claim may continue even if the defendant is acquitted in the criminal case based on civil liability rather than criminal responsibility. The study has addressed several topics related to and branching out from the research subject, offering insights into the current study.



Study Results:

- 1- The legal basis for the civil claim associated with a criminal case is harm.
- 2- The civil claim associated with a criminal case is brought by the injured party before the criminal court to obtain compensation for losses incurred due to the crime.
- 3- The criminal lawsuit suspends the civil claim, provided that the criminal lawsuit has been filed and that liability has arisen in each case from the same crime.
- 4- If the civil claim is based on the principle of compensation, while the criminal lawsuit is based on the principle of punishment, where the accused is tried and penalized based on the legal classification of the committed crime.
- 5- The plaintiff in the civil right has the right to waive their claim before the criminal court at any stage, as the law grants them this right if they prefer to resort to the civil court with jurisdiction over the compensation claim.
- 6- If the criminal lawsuit expires for any reason specified by the law after its filing, the court orders the referral of the civil claim to the civil court, unless the civil claim is ready for adjudication.
- 7- The plaintiff in the civil right must adhere to the direct procedure followed by the public prosecution regarding the initiation of the criminal lawsuit, thus they are not allowed to initiate it in crimes where the law requires obtaining a complaint, request, or permission without fulfilling this procedure beforehand.



Recommendations:

- 1- We urge the legislator to regulate the judicial connection between criminal and civil claims in a way that necessitates both claims being heard by a single court, the criminal court, whenever someone affected by the crime wishes to file a civil claim. Thus, the civil claim should not be filed independently before the civil court unless it is impossible to file it before the criminal court.
- 2- We recommend granting the acquittal judgment in criminal cases the power when based solely on the absence of charges, so that the acquittal suffices in cases where the evidence is insufficient. Therefore, we urge the legislator to amend the provisions of Article 269 of the Criminal Procedure Law accordingly.
- 3- We recommend the existence of a complementary legal provision to Article 28 of the Criminal Procedure Law stipulating the suspension of the civil claim as soon as the criminal claim related to compensation claims is initiated.
- 4- We appeal to the UAE legislator to explicitly stipulate, with regard to appealing judgments issued in a civil case, to prohibit increasing the penalty in appeals, except in the criminal aspect, and to provide temporary compensation only.
- 5- We appeal to the UAE legislator to explicitly stipulate that civil prosecution before the criminal court is not permissible at the stage of re-proceeding based on the rule (so that the accused is not harmed by his appeal)
- 6- We recommend that a legal person has the right to file a direct claim for moral injury.



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