



**The Aspects of commencement of prosecution in criminal matters**

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**ABSTRACT**

One can refer to some of the principles governing over institution of principal prosecution such as legality of prosecution (Article 2 of criminal procedure code approved in 2013), presumption of innocence (Article 4 of aforesaid code), arraignment (op. cit. Article 5), principle of contingency of criminal prosecution (op. cit. Articles 22 and 80), principle of requisite for receiving of security from culprit (Article 217 of aforesaid code), principle of acceleration in prosecution (op. cit., Article 3), principle of summon prior to detainment (Aforementioned code, Articles 168 and 203), and blackmail etc. each of which has devoted to one of the important topics. Observance of all governing principles may be helpful and efficient in facilitation, prosecution, and addressing of rights for citizens and therefore they may create coordination among prosecution institution of Islamic Republic of Iran (IRI) with world standards. The criminal procedure code approved in 2013 has created new order in relations among criminal justice system and their relations between them with limits of powers for their legislations by approval and entry into executive field of courts. The public prosecutor is one of the persons who possess special importance for which some wider range is visible in limits of powers and legislations of this position compared to this code (approved in 1999) with some modern inventions e.g. right of supervision and teachings for public prosecutor in provincial capital and other affiliated public prosecutors and this is assumed as a turning point per se. In addition to chairmanship in public prosecutor's office and his tasks in investigation and prosecution, the public prosecutor has other duties such as order to commencement of execution of primary investigations to interrogator, supervision over administrators, and teaching of them and so forth so we will discuss about them in this survey.

**Keywords:** public prosecutor, Prosecution, Criminal matters, Judicial system



## **INTRODUCTION**

One of the valuable achievements of Iranian judicial system is public prosecutor's office and system that stems from the constitution. With respect to explicit law text, according to Article 3 of Act regarding formation of general and revolutionary courts, this institution headed by public prosecutor is responsible for doing of his legal tasks. Given that the tasks which have been defined for the Judiciary is to discover, prosecute, and punish the criminals in accordance with Article 156 of IRI Constitution; thus, proper realization of above-said principle results in health of society and providing of public security and revival of public rights and administration of justice (1). The institution of public prosecutor's office is the best and most effective institution for providing and security and health for community by enforcement of such policies with focusing on public prosecutor because 150 rights have been mentioned for the people in IRI Constitution and realization of public rights has been implied as one of the tasks for the judicial system in the section related to the Judiciary. The public prosecutors are supporters for these important and comprehensive rights since some actions may be committed by individuals in the community that may distort the public order and security and also in some cases thereby rights of other people may be wasted. Whereas judicial system protects from public interests, the public prosecutor's offices discover the crime and prosecute the accused subjects with gathering of evidences as the agents of community in order to reserve rights of members of community and for achieving of judicial and social order and security. This institution mainly aims to administer justice and regulate logical, human, and fair relations between individuals (2-3). Wherever public rights are breached, prosecutor acts as public attorney to prevent from wasting of public rights. In this regard, it can be mentioned the public prosecutors and their related offices are at the frontline for providing of security and justice administration as a judicial institution and their judicial and administrative personnel. Since public prosecutor's offices act as major agents in the course of accurate judicial litigation and justice administration and realization of right and public health and as the most principal axis for judicial development and reforms thus some of these objectives are realized through recognition of tasks and powers delegated by legislator to them. The New criminal procedure code has restricted powers of public prosecutor in the investigation section and the prosecution authority has granted a generally passed trend to the interrogator in this position and the related tasks and powers



have been drawn at the process of crime discovery, prosecution of criminal, and their detention as well as their powers in new criminal procedure code (4-6).

## **1. DISCUSSION AND ANALYSIS**

***The aspects for commencement of prosecution in criminal procedure code:*** The public prosecutor's office should enforce criminal prosecution in line with doing of the related main task by any means to be informed about occurrence of the given crime so that to ask for issuance of bill of indictment and trial and punishment of criminal through gathering of evidences and consequences of crime and prevention from escape of culprit provided the principle of realization of crime and the given relationship is ascertained to the accused subject (7). The foremost ways of aware of public prosecutor's office of occurrence of crime for which legislator has called them as legal aspects of commencement of prosecution implied in Article 64 of criminal procedure code (approved in 2013).

## **2. PLAINTIFF AND HIS/ HER QUALIFICATIONS**

\* **Complaint of plaintiff or private claimant:** According to Article 68 of criminal procedure code (approved in 2013): 'Plaintiff or private claimant may complain personally or by attorney.' In addition, regarding crimes of public indecency, if the victim is incapacitated, his/ her legal guardian or sponsor is entitled to take action by plea. However, concerning the underage victim, his/ her legal guardian or sponsor has also right for proposing of plea. (Provision 3, Article 102) It is noteworthy that the cost for proposing of criminal complaint to judicial references is so far fifty thousand Rials. The complaint action is accepted both in written and orally in IRI litigation system. The judiciary has been required of course to prepare uniform papers including the above-said items and to put them at disposal of referents to use them for drawing up a plea (8). Non-use of aforesaid papers will not hinder hearing of complaint.

Although Article 68 of criminal procedure code (approved in 2013) does not mention this case explicitly, in the locations which lack public prosecutor's office, the public prosecutor in location of occurrence of crime or head of judicial district is the audience of plea. If the plea is initially proposed before the judicial administrators (officers of police station in the location of occurrence of crime), they also inform the case to public prosecutor or head of judicial district. The public prosecutor shall accept written and oral plea all the times. The oral plea is mentioned in the proceeding and signed or fingerprinted



by the plaintiff (9-11). If plaintiff is illiterate, the cases will be mentioned in the proceeding and compliance of plea is attested with contents of the proceeding.

\* **Concept of plaintiff or private claimant:** In criminal litigation, criminal victim is called under three legal titles. Article 10 of criminal procedure code (approved in 2013) expresses these titles and cases of their uses as follows: The victim is someone who incurs loss from occurrence of crime and s/he is called plaintiff if s/he requests for prosecution of perpetrator, whenever s/he asks a compensation for the incurred loss, s/he is called as private claimant. With respect to above-said article, it is characterized the victim is someone, including natural person or legal entity, who has incurred with crime physically or intellectually but s/he has not complained. The private claimant is the same as victim who has asked for prosecution of public action and criminal conviction by plea (12). The private claimant is the same as victim or private complainant who has requested for prosecution of private action caused by crime and compensation for loss and civil (or legal) conviction of culprit by lawsuit for loss from criminal court. As a result, the field of application of above-said titles is revealed but nevertheless legislator has not taken care adequately in employing of these titles and for example he has also implied private claimant in addition to plaintiff (Article 68 of criminal procedure code (approved in 2013)).

\* **The criterion for recognition of plaintiff or private claimant:** With respect to Article 10 of criminal procedure code (approved in 2013), the private complainant is a person who has suffered from occurrence of crime by loss and took action for plea. Therefore, the criterion for recognition of private complainant is that s/he has been exerted loss or damage from crime while request or non-request for their compensation has no effect in ascertainment of this title. Of course, loss is deemed as creating agent for position of plaintiff including physical or intellectual and it should directly and immediately originate from the crime. Basically the plaintiff may not achieve compensation only by submittal of plea for his/ her claimed loss; although, s/he may look for such an expectation (13-15). Any crime which has not been accompanied to loss to a person or persons if damages public order may lack plaintiff or private claimant so taking of private action is cancelled in terms of subject for such crimes. It should be noticed of course that if someone was only qualified as private complainant, he may not have power for prosecution automatically and regardless of the essence of committed crime thereby his/ her will to



be effective in prosecution or otherwise. Exceptionally, right for prosecution or non-prosecution is created only in forgivable crime for private complainant while regarding unforgivable crimes, if someone is recognized as a plaintiff, this does not mean the prosecution or non-prosecution depends on plaintiff's will. Although in such crimes it is emphasized that the plaintiff may mitigate punishment and unforgivable nature of crime does not annul right of complaining for private plaintiff and his/ her litigation rights. At the same time, according to Article 10 of criminal procedure code (approved in 2013), proposing of plea by the victim is necessary for assuming of plaintiff's will as the losing person.

\* **Legal effect and importance of plaintiff or private claimant-** As a person is identified as victim for a crime, the right of complaint is created for him/ her and s/he is deemed as claimant party by proposing of plea and thereby possesses rights for litigations. The importance and usefulness for recognition of private complainant in forgivable crimes is for this point that the prosecution starts only with his/ her complaint and stops with returning of it by him/ her and also whereas regarding unforgivable crimes the plaintiff may provide for mitigation of punishment by taking back the plea therefore recognition of him/ her may not be unimportant (16). One of the important points for recognition of private complainant in unforgivable crimes may be visible in prosecution of public indecency crimes and quality of proving of them. According to Article 102 of criminal procedure code (approved in 2013): It is prohibited any prosecution and investigation regarding public indecency crimes and asking of any question is not allowed from any person unless in some cases the crime has occurred visibly and publically and or if it has a plaintiff or against decency or is organized. Thus on the one hand, complaining by plaintiff is assumed as one of the causes for prosecution of crimes against public decency; and on the other hand, it may be recommended to non-confession if there is no plaintiff. Of course, role of plaintiff in prosecution or proving of these crimes should not be led us to consider such crimes as forgivable.

The necessity for presence of plea given by plaintiff has been typically reflected for prosecution of public action to forgivable crime in Article 99 of criminal procedure code (approved in 2013) and the related provision. By virtue of this article, 'If the interrogator discover another crime during investigation that I may not be related the first crime and that crime may be also prosecutable without plea of plaintiff, he will take necessary



measures to conserve the consequences and signs of occurrence of crime and by prevention from escape or hiding of culprit according to the law and at the same time give information to the public prosecutor and continue the investigations if it is referred by the public prosecutor.’

\* **Formative conditions for drawing up a plea-** According to Article 68 of the aforesaid law, the contents listed in the plea are as follows:

a) Full name, name of father, age, occupation, education degree, marital status, nationality, religion, ID Card No, National ID Code, accurate address and email address (if possible), the fix phone and cellular numbers, and postal code for the plaintiff;

b) *Subject of plea, date and place of crime occurrence:*

It should be implied that the legislator has properly mentioned the subject of plea and not title of complaint or crime because it is unlikely that the plaintiff does not know the title of crime or may be confused in identifying of it (18).

c) *The exerted loss and damage to the claimant and object of his/ her claim:* Implication of the exerted loss and damage to plaintiff is necessary in plea because it can help the interrogator or assistant prosecutor to issue proportional criminal security relief for the plaintiff. Article 219 of criminal procedure code (approved in 2013) also emphasizes in this case the amount of recognizance, fixed courtship bond, and bail shall not be less than the exerted loss to the victim in any case.

Article 15 of criminal procedure code (approved in 2013) has held in this sense: ‘After prosecution of the culprit, the criminal victim may submit the image or attested copy of all of his/ her evidences and documents for enclosure into the file to the prosecution reference and submit the lawsuit of his/ her loss to the court before declaration of end of litigation. The request for loss and damage and related addressing requires for observance of civil procedure formality.’ (19)

d) *The particulars of the defendant or suspect if possible:* In this clause, the legislator has firstly allowed the plaintiff to propose plea against certain person or persons as suspect(s) and secondly if particulars of defendant or suspect are not available, it is not compulsory to imply them. Article 104 of criminal procedure code (approved in 2013) has stipulated in this regard that the interrogator may not qui investigation because the culprit is not definite, may be hidden, and it is difficult to access to him/ her. Regarding discretionary crimes (degrees: 4, 5, 6, 7 and 8), if after conducting of necessary investigations the crime



perpetrator is not revealed and two full years have passed after occurrence of crime, and through agreement of public prosecutor, the relief is issued to stop investigations and the file is temporarily archived and the results are notified to the plaintiff under some circumstances when the case has plaintiff. The plaintiff may protest to this relief within the stipulated deadline for protest against reliefs. If plaintiff announces the identity of perpetrator to the public prosecutor or perpetrator is identified otherwise, s/he will be again prosecuted based on order of public prosecutor. In some cases, when the case is proposed directly to the court as per law, the court individually takes measure according to the regulations in this article. As a result and based on this article, concerning the crimes deserving for Islamic limit (*Hadd*), retaliation (*Qisas*), blood money (*Dyat*), and deliberative discretionary crimes (1-3 degrees), indefinite identity of culprit or hiding or difficult access to him/ her will not be absolutely assumed as a permission to suspend investigations and the interrogator shall continue his/ her investigations.

e) *Evidence for occurrence of crime, particulars and addresses of witnesses and informants if possible*: It is mentioned if upon compliant, plaintiff fails to introduce evidence for occurrence of crime and addresses of witnesses and informant as possible, there is no barrier against acceptance of plea. In any case, it is later asked from plaintiff during investigations to introduce his/ her witnesses with related evidences. If the plea lacks one of the listed cases and items in aforesaid article, it is assumed as defective it seems defect of plea seems not to be considered as permission for non-acceptance and the public prosecutor shall accept the plea.

In addition to this fact the plaintiff or private claimant may propose plea personally or by attorney; in some cases when criminal prosecution is subject to proposing of plea by plaintiff and the victim is incapable and without certain guardian or administrator or they are unavailable while appointment of guardian is led to procrastination or exertion of loss to the incapable subject for presence and intervention of guardian or custodian or appointment of guardian and also if the guardian or custodian has personally committed crime or intervene in that process, the public prosecutor appoints someone as guardian or he personally prosecutes criminal matter and makes the necessary efforts to conserve and collect crime evidences and to prevent from escape of culprit. This order is also applicable under some circumstances if victim or his/ her guardian or administrator may not propose plea because of some reasons e.g. anesthesia. Of course, regarding insane person,



observance of aforesaid order is required only in criminal actions with financial aspects and in other non-financial circumstances the insane person may personally propose the plea.

Moreover, in some cases as criminal prosecution is subject to plea given by plaintiff, if the victim is child or mad despite expediency for the person under guardianship but his/her natural guardian or legal custodian does not complain, the public prosecutor will follow the matter.

Similarly, regarding the victims who are not capable to take action due to physical or mental disability or old age the public prosecutor follows the case by their agreement thus prosecution or enforcement of award will be also subject to agreement of public prosecutor concerning the incapable persons (20).

**\* Plea and the related legal conditions:** The submitted plea should be legally qualified in Article 68 of criminal procedure code (approved in 2013) that has been replaced with Article 69 of criminal procedure code (approved in 1999) as mentioned. Commencement of litigation for criminal matter will follow notification of crime or proposing of plea. In those cases if the crime includes only private aspect, the commencement of prosecution will follow proposing of plea by the crime losing party. Article 68 holds: ‘Article 68- The plaintiff or private claimant may propose plea personally or by attorney. The following items shall be mentioned in plea: a) Full name, name of father, age, occupation, education degree, marital status, nationality, religion, ID Card No, accurate address and email address if any, fixed phone number and cellular No, and postal code of plaintiff; b) Subject of plea, date and place of crime occurrence; c) The exerted loss and damage to claimant and the object of his/ her claim; d) The evidence for crime occurrence, names, particulars and addresses of witnesses and informants if possible; e) Particulars and address of defendant or suspect if possible.’

**Provision-** The Judiciary shall prepare the uniform papers including the above-said items and put them at disposal of referents to use them in drawing up plea. Non-use of the given papers does not prevent from hearing of plea.

Sometimes these conditions are not complete and plaintiff is present in the given branch of court. Under this condition, the plaintiff is arraigned to imply specifications and date and place of occurrence of crime in plea suit. If plaintiff is not available, the judicial precedent is that this important task is delegated to justice officer by notifying the cases





to him/ her in order to take measure on behalf of judicial authority while doing of these activities is instinctively assumed as tasks of judge. Although, doing of some of them can be delegated to justice officer (21).

The important point is that no one can order the justice officer to refer the case along with culprit to public prosecutor's office after execution of the designated investigations because according to Article 168 of criminal procedure code (approved in 2013), which has been replaced with incarceration in Article 124 of procedure code of general and revolutionary courts in criminal matters, it is not legally justified to summon the subjects without adequate evidences and there is no adequate evidences in such a case yet. For this reason, we have asked justice officer to gather evidences by taking of remarks of witnesses. Alternately, instead of justice officer, the judge is responsible for ascertainment of adequate evidences regarding attribution of crime to the culprit.

\* **Method of investigation of plaintiff:** According to Article 10 of criminal procedure code (approved in 2013), 'the victim is someone who incurs loss and damage due to occurrence of crime and if s/he requests for prosecution of perpetrator is called plaintiff, and if s/he asks for compensation of exerted loss or damage is called private claimant.' Question: Assuming this problem concerning unforgivable crimes as prosecution starts but there is no private plaintiff, what should be done upon final commenting? Answer: At present, the judicial precedent, which is prevalent in most of public prosecutor's office, is that they issue order of non-suit for private aspect of crime and they issue criminality relief regarding general aspect of the given crime but this procedure may seem improper for some reasons:

Firstly, issuance of two final reliefs is not legally justified for the same action. Secondly, this case is not included in the cases for issuance of order of non-suit. Thirdly, as an order of non-suit is issued for private aspect, some right is created for the culprit according to this order and based on order of non-suit, the accused subject can claim for credibility of the terminated matter against plea given by owner of the stolen automobile and this order may waste right of owner. Therefore with respect to task of public prosecutor to follow this trend, regarding some crimes such as theft with two aspects, detainment order is issued by litigation and lawsuit and the court acts for returning of the property according to regulations. In this regard, criminal procedure code (approved in 2013) has determined



a task for public prosecutor based on which he will identify right- owner and ask him/ her about any plea and complaint.

**\*Necessity for plea of private plaintiff in forgivable crimes:** Generally, in Iranian criminal law, firstly it is principally emphasized in deliberation of crimes. Secondly, any crime, albeit crimes regarding public rights, includes a divine (public) aspect as well and in the case of non-assertion by legislator, public nature of crimes prevails over their private essence and thirdly with respect to principle of legality or requirement of prosecution, the public prosecutor's office will prosecute the culprit as it is informed about occurrence of crime and it is not regularly necessary for the public prosecutor to wait for submittal of plea by plaintiff. Nonetheless, by anticipation a dynamic role for victim in some of legal systems including Iran, it is assumed as possible to commence criminal prosecution for crimes based on his/ her request. According to this paradigm, regarding that class of crimes in which their private aspect prevails over their public aspect, the criminal action depends on victim's will and request and as long as victim does not propose his/ her plea, the public prosecutor may not take any step in the course of prosecution of perpetrator (22).

The same approach has been also taken in the criminal action. Article 11 of this law has held: '(... taking the action and request for prosecution of culprit is the task of plaintiff or private claimant in terms of private prestige)'. Following to it, Article 12 of the given code acknowledges: 'regarding forgivable crimes, prosecution of culprit is commenced only with plea given by plaintiff.

Now, if the victim does not propose for plea in such crimes, this matter may operate as a barrier against the principle of prosecution and prosecution is not commenced as well as the plea has not been proposed and following to submission of plea, this barrier is alleviated and action is in progress.

The Iranian legislator has followed this method in Article 727 of IR civil code approved in 1991. In IR civil code approved in 2013, legislator has employed both methods of determination of criterion (provision 1 of article 100) and inclusion of Article 104. In addition, it has also referred to crimes against religious public rights without giving any definition or example of this type of crimes. As a result, it seems other crimes are assumed as unforgivable crimes except discretionary crimes listed in book of *Dyat* (blood moneys) and chapter of limit of imputation of unchasteness, and the listed discretionary crimes in



Article 104 of given code as well as some of forgivable crimes in special and miscellaneous rules e.g. crime for drawing non-payable cheque unless they are included in public rights and forgivable religiously (23).

In article 106 of Islamic Punishment Act approved in 2013, legislator has also noticed procrastination of plea and has held in forgivable discretionary crimes if crime-losing party does not complain for one year since date of informing about occurrence of crime, the right of criminal plea is waived for him/ her unless s/he has been under dominance of the culprit or is not able to propose plea for the reason beyond of control. In this case, the aforesaid deadline is again calculated since date of removal of the given barrier. If victim of crime dies before the given expiry date and there is no reason for his/ her renunciation from proposing of plea, each of his/ her heirs will be entitled to propose plea for six months since date of death.

Complaint by private plaintiff is the only legal cause for prosecution of public action of forgivable crime and the public action of forgivable crime is not prosecuted without aforesaid plea. As it is required for commencement of prosecution of given action to propose complaint action by the private plaintiff, continuance of prosecution also needs to survival of plaintiff with his/ her plea. Therefore if private plaintiff initially complains but later takes back the plea, the prosecution is stopped. Article 12 of criminal procedure code (approved in 2013) acknowledges in this sense: ‘in forgivable crimes, prosecution of culprit starts only with plea by plaintiff and stops if s/he leaves it.’ The reason for dependency of prosecution of public action to forgivable crime should be looked for by the request and will of private plaintiff in rate of loss and damage exerted to his/ her interests and this loss may be greater than one exerted to public order. Of course, necessity for presence of plea from private plaintiff in prosecution of such crimes (public essence) overshadows penal law and it makes determination of status of the distorted order due to crime as subject to plaintiff’s will and multiplicity of forgivable crimes may not reduce the importance of this defect. It should be also mentioned in forgivable crimes similar to unforgivable crimes, public prosecutor and his office are responsible or incumbent for prosecution of public action in any case and private plaintiff has never any responsibility for public action to these crimes and s/he is not able to determine quality of prosecution or result. However the plaintiff can at the same time prevent the public prosecutor and his office from prosecution of public action for crime by taking back the plea.



The plea is proposed either orally or in written by the plaintiff or private claimant. The public prosecutor shall accept the plea all the time. If plea is proposed orally the matter will be mentioned in proceeding and signed or fingerprinted by plaintiff. If plaintiff is illiterate, the matter is mentioned in proceeding and compliance of plea with contents of proceeding is verified. (Article 69 of criminal procedure code approved in 2013) In those cases the criminal prosecution of the culprit is subject to complaint by plaintiff; in other words, the crime includes a private aspect while the victim is incapable with no guardian or custodian or there are unavailable and also appointment of guardian may cause procrastination or exertion of loss to the incapable victim to attend and interfere in it (to become partner or abet in occurrence of crime), the public prosecutor will appoint a provisional guardian and or personally follow the criminal matter and take some measures to keep and gather evidences for crime and prevent the culprit from escape. Under the conditions the victim is insane for this case in which criminal actions include financial aspect it is necessary for observance of the aforesaid process in Article 70 of criminal procedure code and in non-financial cases, the insane subject can personally propose the plea (Provision of Article 70 in criminal procedure code approved in 2013).

Under some circumstances, criminal prosecution is subject to plea by plaintiff (crimes with private aspect), if the victim is a child or lunatic while his/ her natural guardian or legal custodian does not propose a plea with expediency of the plaintiff, the public prosecutor will follow the matter. Likewise, if for some reasons e.g. physical or mental disability or old age, the victim is unable to propose the plea, the public prosecutor will follow the matter by their agreement. The agreement of plaintiff taken by public prosecutor is necessary because the crime includes private aspect and it does not create right of prosecution for the community until s/he personally prosecute the culprit.

Stopping of prosecution or execution of order is subject to agreement of public prosecutor in all of above-said cases. The plea of plaintiff, especially within framework of general and revolutionary courts and with respect to the wide range of this concept (*public right*) in Islamic law, may be particularly important. In the former criminal procedure, legislator had distinguished between forgivable and unforgivable crimes and assumed prosecution of forgivable crimes by the public prosecutor as subject to taking plea by plaintiff and this task has been assigned to the judges.



Following to omission of public prosecutor's office from judicial organization and delegation of tasks and powers of public prosecutor to head of judicial district and with respect to Articles 3 and 4 of procedure code of general and revolutionary courts in criminal matters, regarding the crimes which include divine aspects with protection from public rights and Islamic limits, the head of judicial district shall personally prosecute the crime and it does not need to plea by plaintiff: (The public prosecutor's office is responsible for disclosure of crime, prosecution of culprit of crime, taking action out of aspect of divine right and protection from public rights and Islamic limits...headed by public prosecutor...). With respect to Article 4 mentioned above and Article 727 of Islamic Punishment Act in other crimes i.e. ones need to plea taken by plaintiff, other forgivable crimes (subject of special laws) should be distinguished:

- a) In crimes e.g. drawing of NSF cheque, prosecution of culprit is subject to complaint by cheque-owner and if plaintiff forgives it before issuance of final award, the order of non-suit shall be issued (Amended Article 12).
- b) In other crimes before forgiveness as it described about Article 727 of Islamic Punishment Act, plea taken by plaintiff for prosecution of the culprit does not require the public prosecutor's office to issue order of non-suit and the court will be allowed to sentence the perpetrators to punishment with observance of mitigation for them.
- c) Such a notion about forgivable crimes is alienated either in Shia jurisprudence (*albeit quits as quits*: لو ترک ترک) or in Iranian legislative tradition and in many other countries. Also /clause 2 of Article 4 which holds 'the crimes that are prosecuted by plea of plaintiff and prosecuted by forgiveness of him/ her this prosecution will not be stopped with his/ her forgiveness' may not be also considered as a step taken for explanation of the matter because Article 727 has given option to the judge to choose among issuance of order of non-suit and or determination of punishment.

### **3. NOTIFICATION AND ANNOUNCEMENT OF JUSTICE ADMINISTRATION OFFICERS, FORMAL AUTHORITIES OR RELIABLE AND TRUSTFUL PERSONS**

In the case of occurrence of crime in our judicial system, it is not necessary for citizens to declare it and non-observance of this action is not deemed as crime for omission of action. Therefore, no one can be prosecuted for non-declaration of crime despite prior knowledge about the occurrence. Nevertheless, there is an exception i.e. declaration and



reporting of crime has been assumed as a legal task for some persons because of their formal position and job and the law has required them to notify the case to competent authorities if they knew about occurrence of crime. Article 72 of criminal procedure code (approved in 2013) holds in this regard: ‘If official authorities and persons are informed about occurrence of one of the unforgivable crimes within their field of activity they shall immediately inform the public prosecutor.’

Article 606 of Islamic Punishment Act (approved in 1996) refers to this title as criminal sanction anticipated in Article 72 in some of definite crimes that hold: Each of chairmen or directors or officials of given organizations and institutions in Article 598 that may be informed about occurrence of blackmailing or embezzlement or illegal possession or fraudulence or the crimes listed in Articles 599 and 603 in their own organizations or institutions under their administration or supervision and they do not inform these cases to judicial or administrative competent references, they will be sentenced to temporary dismissal from services for six months to two years in addition to imprisonment for six months to two years.

The new criminal procedure code has assumed Non-Governmental Organizations (NGOs) not only as notifying agents for crime but as plaintiff parties who can also protest against awards of judicial references. Article 66 of this law holds: ‘Those NGOs in which the articles of association are concerned with supporting from children and adolescents, women, patients and persons with physical or mental disabilities, environment, natural resources, cultural heritage, public health, and supporting from citizenship rights may declare the crimes committed in the above-said fields and attend in all processes of litigation.’

**N. B.1:** If the committee crime includes specific victim, it is necessary to acquire his/her consent according to this article. If the victim is a child, lunatic and or insane in financial crimes, the consent should be acquired from his/ her legal guardian, administrator or custodian. If the legal guardian, administrator or custodian has personally committed the crime, the aforesaid organization will take the needed measures by acquiring of consent from temporary appointed guardian or verification of public prosecutor.

**N. B.2:** The justice administration officers and judicial authorities shall inform the victims listed in this article about the related NGO aid (24).



The NGOs can enjoy the aforesaid right in Article 66 of criminal procedure code (approved on 23/02/2014) if they receive license from the relevant legal competent references and if crime declaration by a NGO is refused finally in competent courts for three consequent times, this NGO will be temporarily deprived from the given rights in Article 66 of the aforesaid code for one year. Declaration is an action by which the person or persons, who are not personally the account party or beneficiary of the given actin, inform the judicial officers or authorities about occurrence of crime. As a result, in a wider concept, declaration includes testimony, confession, and reporting by individuals and officials in accordance with legal conditions.

#### **4. AWARENESS OF PUBLIC PROSECUTOR OF OCCURRENCE OF CRIME BY OTHER LEGAL METHODS**

One of the innovations done by criminal procedure code (approved in 2013) is Awareness of public prosecutor of occurrence of crime by other legal methods in commencement of prosecution. According to this clause, public prosecutor shall commence the prosecution by any method he is aware of occurrence of crime with public aspect.

The commencement of prosecution of culprit is done by public prosecutor and through declaration of crime by him or via proposing of plea by the private plaintiff. These two cases are different in that the crime notifying agent may not be beneficiary in prosecution of culprit or in other words occurrence of crime may not exert any loss or damage to him/her while the private plaintiff is surely someone to whom crime has occurred or s/he has undergone physical or intellectual loss as the consequence of crime perpetration.

Any natural person or legal entity or governmental and non-governmental institutions may notify the crime. Article 65 of criminal procedure code (approved in 2013) has partially and not adequately held that anyone can notify occurrence of crime to the public prosecutor if s/he has personally observed occurrence of crime and also the given crime should be included in forgivable crimes.

Thus, if there are not some evidences and proofs for improper nature of remarks made by one that declared the crime, such declaration of crime is adequate for commencement of prosecution of culprit and public prosecutor should issue prosecution order although the other evidences ad proofs do not exist for prosecution but if crime-notifying agent has not personally seen occurrence of crime the prosecution may not be commenced only based on his/ her declaration unless there is another reason for correctness of claim of notifying



agent of crime or when these crimes are types of crimes against national or foreign security.

With respect to French Criminal Procedure (Clauses 2-1 through 2-21 of primary parts), legislator has determined those NGOs in which articles of associations are concerned with supporting from children and adolescents, women, patients and persons with physical or mental disabilities, environment, natural resources, cultural heritage, public health, and supporting from citizenship rights may declare the crimes committed in the above-said fields and attend in all processes of litigation. (Amended Article 66, Criminal Procedure Code 2015) As it observed, those powers the plaintiff possesses in taking of criminal plea and prosecution of culprit have been delegated to NGOs in this article for which they have right for complaint in all litigations processes. However, they lack powers of justice administration lawyer. By virtue of amended Provision 4 approved on 14/06/2015 in judicial and legal commission of IRI Parliament, Article 66 is enforced with observance of Article 165 of IRI Constitution and regarding crimes against public decency, NGOs listed in this article may declare crime only by observance of Article 102 of this law and the related provisions and propose their evidences to judicial reference but they are not entitled to attend in these sessions. The names of NGOs which can enforce the aforesaid article will be prepared by Minister of Justice in cooperation with Minister of Interiors at the first semester of any year and approved by head of the Judiciary.

If crime is declared as a report or letter and identity of reporter or author is unknown it cannot be assumed as a permission for commence of prosecution unless it denotes occurrence of an important crime that causes disruption in public order and security or if it is followed by some evidences which are deemed as adequate by public prosecutor to commence the prosecution (Article 67 of criminal procedure code approved in 2013). If the formal authorities and individuals (public organizations) are aware of one of the unforgivable crimes within the field of their activity they shall notify the matter immediately to the public prosecutor namely by declaration of crime.

#### **5. OCCURRENCE OF TANGIBLE CRIME AGAINST PUBLIC PROSECUTOR OR INTERROGATOR**

The tangible crimes have been listed in Article 45 of criminal procedure code approved in 2013. The legislator denotes occurrence of crime against public prosecutor and interrogator listed in Clause C of Article 64 as a type of crime which is committed visibly





before public prosecutor and interrogator and these authorities personally observe perpetration of crime. It is a matter of fact that public prosecutor and interrogator are here those officials who are qualified for addressing the matter while the public prosecutor and interrogator may not prosecute or investigate out of judicial district of their workplace (25).

***Aspects of commencement of prosecution in tangible crimes***

To define tangible and intangible crime, it should be mentioned that law-breaking behaviors, which occur before the eyes of disciplinary officers in public places, are called tangible crimes.

1- Some people may display the behaviors or do activities in breach of law in the streets or public places e.g. parks and shopping centers which are assumed as crimes. In some cases, these behaviors take place against eyes of police officers.

2- Sometimes, a crime may take place of which police officers are immediately aware and on the site of accident or these officers may observe the signs left from the crime after a short period of time of occurrence.

3- This story does not come to an end here and some other cases can be included in group of tangible crimes and they are related to the time upon occurrence or immediately after it the victim or other persons declare someone with certain features had committed law-breaking behavior. More simply, there should be a witness for the given accident and s/he should report the given accident.

4- The other case is after arresting of a culprit if the means or evidences of crime are along with the culprit; as a result, there will be a tangible crime.

5- Occasionally, the culprit may be probably arrested immediately after perpetration of crime by the officers similar to most of TV shows and serials in which the criminal is entrapped after committing of crime and within prosecution and escape. This case is also called tangible crime.

6- It is interesting to know this if crime is perpetrated in a house and generally in residence of given person the victim can ask for help from disciplinary workforces at the same time or afterwards and to attend in the aforesaid site. This case is also one of examples of tangible crimes.

7- One of the other examples of tangible crime is when the culprit becomes uneasy of his/ her own consciousness that sends the accused person for confession to police



station. Therefore, after perpetration of law-breaking action, culprit introduces oneself to the officers and given them information about his/ her effort.

8- If the culprit is vagabond and well-known for perpetration of law-breaking in the region accident took place, his/ her crime will be tangible.

The police officers try to keep intact tools for crime perpetration and consequences and evidences for occurrence of crime by making several efforts and thereby to prevent the culprit from escaping or hiding or conspiracy with other subject. Similarly, they execute the necessary investigations and inform about results of their measures immediately to the public prosecutor.

## **6. CONCLUSION**

As the main authority for prosecution, public prosecutor has some tasks of which one can refer to one of his foremost tasks as regulatory duty versus interrogator and or assistant prosecutor and or as an authority for commencement of prosecution of law-breakers on the bed of community and by existing of such a position, the culprits and even ones who think about a criminal action will be inhibited. One of the paramount tasks and powers for public prosecutor and his agents is the prosecution of perpetrators of crimes for which the leadership and comprehensive supervision task of public prosecutor are assigned to the general and special justice officers in order to facilitate prosecution. It seems that given the public prosecutor may not be neutral in exposure and coping with culprit and in fact the public prosecutor is deemed as the opposite side of culprit and his/ her claimant from perspective of philosophy of their existence and asks for their trial, conviction and punishment thus referral of files by public prosecutor to interrogators makes the way open to possible abuse for them and perhaps he delegates certain case to his favorite interrogator. Likewise, if public prosecutor is entitled to train interrogator this may tarnish independence of interrogator against prosecution system. The legislator has breached principle of independence of judicial authority in several cases and put the interrogator as justice officer for public prosecutor on some other occasions. The principle of judicial independence provides two major objectives i.e. order and justice which are helpful for protection from rights of community, providing of justice rights, and guarantee for individual rights.

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