

THE IMPACT OF THE PENAL COURT VERDICT IN THE COURT OF LAW

O IMPACTO DO VEREDICTO DO TRIBUNAL PENAL NO TRIBUNAL DE JUSTIÇA

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Abstract

"Declarations, endorsements the decisions of the penal judge in the civil litigation and affairs, have credibility of the dismissed affair and absolute sovereignty, in relation to all issues." The principle slogan that we are to state it is this point, an affair which is reflected in the literature of all legal systems and official sources, and its doctrine and jurisprudence on the basis has been clarified relatively.

Keywords: penal court, Private Law, sovereignty, civil issues, judge

Resumo

"Declarações, endossos das decisões do juiz penal no contencioso civil e afins têm credibilidade do assunto demitido e soberania absoluta, em relação a todas as questões." O slogan principal que devemos declarar é este ponto, um assunto que se reflete na literatura de todos os sistemas legais e fontes oficiais, e sua doutrina e jurisprudência na base foram esclarecidas relativamente.

Palavras-chave: tribunal penal, Direito Privado, soberania, questões civis, juiz.

INTRODUCTION

In a legal system, the principle of unity of decision-making and refusal of opposition of votes requires that two or more different references with an expressive language of this system together, have legal life peacefully and respect each other's opinions to maintain legal unity.

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Essential part of the result of this unity, is imposing the credibility of criminal dismissed affair in civil litigations and issues in order to the civil judge does not dismiss criminal remedies.

The regular penal court trial is along with substantial and legal analysis of a number of legal issues. Many of these issues can be used in civil proceedings and in fact is the legal aspects of civil action or event and, achievement and proof of these issues in penal litigations, in some cases, is inevitable and essence of penal issues requires entering them. Therefore, the entrance of penal judge in civil issues is necessary and before the return to independence or excellence and precedence of penal law, it is related to the Legal authenticity of it. The Penal Court has the right and duty to deal with civil issues but not as they are civil but also in terms of the originality of penal law with a focus on the methodology and basic concepts. What can be enlightening us to the concept of the requisite rule are the follow-up results of penal decision which impacts civil rights territory like the waves of violent sea after throwing a rock toward it. The effect is in a way that when the accomplishment conditions of the principle are provided and there would not be obstacles, the civil court should obey the penal analysis blindfolded and accepts it as completed.

Such impression is vital and ends of the price of "freedom" of the court and Civil judge. The result forces us to have more careful on foundations of the rule and not subdued in reputation or practice that is contrary to the freedom of civil court proceedings.³

The substantive principle or probative evidence

The results that are obtained from different parts of the legal system are applicable in other sectors in two different ways which in our discussion that is the results in the imposition of penal decisions in civil issues can be seen; one of the ways is the realization and the other one is probative; realization way means the requisite outcome acts as substantive principle and has the same effects. Although the result of one of the sections is an independent principle and is equal to other rules of law and its reliability have not any relations with primary arrangements. Such as whatever is discussed over the principle of validity of the dismissed affair and the nature of the dismissed has adjudged with the substantive rules of law not legal affairs

³ In one of the French legal texts, consolidation of this rule of the 19th century has been mentioned that the doctrine and jurisprudence, made his position clear toward this rule: *Repertoire de Droit Penal et de procedure Penale*, op. cit, n. 68.

or non-shippable presumptions.⁴ After the adjudication of the verdict, does not take the prerequisites of its validity and is independently validated therefore the claims of ruling out the reasons for the issuance or proof are against the introduction of its subject matter, and has no impact on its validity because it acts as substantive principle and its relationship with appearances and arrangements of subject is interrupted.

In our discussion also the certain issue is that the verdict of the Penal Court can always be a cited reason. This option at the French law is depended on that through the governing presumptions and evidences on civil principles also we can affirm the verdict or in other words the civil principles, per se, allow the reception of probative evidence from the penal method.⁵

It may at penal litigation a vote be issued that has not the dismissed validity, meaning substantive and independent principle, at civil litigation in order to limit the freedom of civil judge but it would not prevent affirmative aspects of it. A Vote which warrants a sentence of intentionally causing damage, involvement in drug trafficking, and so on can be the reason for the divorce or marriage annulment. The affirmations of penal judge in these cases is not in terms of ruling of penal dismissed at civil affairs but also due to its affirmative dignity is subordinate to the effects and side effects of civil proving grounds therefore the confession or the testimony of others in the penal court and its reflection in the verdict, cannot be considered a preferred mode of proof and cause ignoring its principles and rules in civil matters.

In all cases where a penal vote is for the reason of using, mentioning the validity principle of penal dismissed in civil affair is not proper because the resulted impacts of penal verdict in fact, "are civil results that come as a result of the decision of conviction rather than being relevant to the content of certifications and declarations of Penal Court. They are accepted only as affirmative effects. "⁶

If the credit of penal court verdict be accepted as the dismissed affair at civil litigation, it will prevent the freedom of Civil Procedure.

⁴ - Doctor Nasser Katouzian, reliability of judgment in a civil litigation, pp. 30 to 33.

⁵ Civ. 28 juill, 1936, Gaz. Pal. 1936, 2. 684

⁶ Hébraud, L'autorité de la chose jugée au criminal sur le civil, Thèse, Toulouse, 1929, p.261

The Base and status of the Rule

In French law, no legal text in a manner that is unquestionable⁷, had not dealt with it and that has led authors to an attempt to justify it in two methods. In the first justification, many legal texts had been used sporadically in the Civil Code; Including Article 198. With the expression 'as the result of criminal proceedings, having marriage ceremony has been proved, registration of the verdict in the office of civil status, for the marriage, from the same day, it brings up all civil effects, both to the spouses and to the children'. On this text it is expressed that the validity of penal verdict by assuming acceptance, does not implies whether it is a public reasoning and an example of a maxim or an exceptional reasoning and against Article that needed to be clarified. In Article 727 is stated that condemnation of the heir to the murder of testator or charging is warranted to the death penalty that the vote to defamation of it has been issued, so results in the disinheritance. In Article 231, which is commonly referred to also it is stated that "If each of the spouses is convicted to corporal and reputational punishment, for others, a cause of divorce arises." This article has been terminated by the law of May 26, 2004.⁸

About these regulations it is correctly stated that they are relevant to "Civil results that come as a result of the decision of condemnation, not as be relevant to content of the penal declarations and affirmations. They are as the probative evidences." Therefore are among the reasons of affirmation, not validity of penal verdicts in the civil litigations. In contrast to these specific texts, the French civil law of 1351it is cited and documented. In this article the validity of dismissed at the civil litigation is mentioned and unity of cause, the litigation parties and the subject is discussed. In the 19th century there was disagreement between the legal authors of this text. Merlin according to Article 1351 has defended the validity of penal verdict toward a civil litigation and, in turn, believed in produce ⁹the lack of the mentioned credit and the freedom of assessment of the civil judge from the penal verdict.¹⁰The authors reported that there is not cause and subject of unity between the civil and penal and their litigation subsequently and therefore applying Article 1351 which is related to the civil proceedings will not be accepted toward criminal lawsuit.¹¹

⁷ Pierre Bouzat et Jean pinatel, op. cit, p. 1484. Valticos, L'autoorité de la chose jugée au criminel sur le civil, Thèse, Paris, 1948, p.83.

⁸ Code Civil, 106 édition, 2007, Dalloz,p.316

⁹ Toullier

¹⁰ Répertoire de droit pénal et de procédure pénale, op. cit, n.73.

¹¹ Colin et Capitant, Traité de droit civil fran Cais, par julliot de La Morandiere, T .2, 1948, n.796.

Criticism of basics

It is stated over the validity of penal verdict at civil, there is no discussion about conflict, so we cannot by the excuse of avoiding it, vote in favor of the penal verdict. Civil and penal decisions are two distinct dignities; on the one hand, there is the violation of the criminal law and punishment and on the other hand there is a violation of individual right and compensation. Therefore there is a conflict between them. The legal status of Anglo-Saxon in general that have forgotten such a rule, German law which is on the return of this rule, Netherlands and Portugal that have put aside the characteristic of such principle and allow the proof of the its contrary, it is implies the weakness of principles therefore should not afraid of criticism. Many mistakes that can be observed in penal votes also are represented a doubt with respect to the above principle. The claim of benefit superiority in criminal matters is not peremptory and without defects because sometimes in civil litigations, there are very important benefits that can be seen especially in family or general welfare.¹² Finally, the "the conflict between civil and criminal verdict that according to public order is prohibited, is not actually possible and practical, and in some cases does not seem tolerable? Whether in some cases that a civil litigation has been broached and adjudged before the criminal case or appealed from the court verdict to condemnation of the civil sector, or when someone in the court of criminal has been acquitted and sentenced to pay compensation in a civil lawsuit at the same time there is not the possibility of tolerance."¹³

The fundamental problem of this principle is that denies the freedom of assessment of the civil judge and causes the penal verdict, prohibits defending and providing solutions against the individuals who were not present in litigation. Nevertheless the validity of the rule of law is consistent at Roman-Germanic systems and also Iranian law and made moderation doesn't notice the general principle but mostly notices its impacts.

features of the principle

The essence of penal dismissed validity in a civil litigation regarding the validity of its principles is clear. The implementation of this principle is due to necessity of penal judge's role and importance of the influences of his decisions, so this rule, has a penal nature and has two

¹² Répertoire de droit pénal et de procédure pénale ,Op. cit, n. 76.

¹³ Ibid.

basic features:¹⁴ the "absolute" principle and based on "public order", though in some juridical systems, only the first feature absolute principle is important that is reflected in the judicial procedure.

Absoluteness

The purpose of the Absoluteness of principle that applies to all entities that are involved in civil proceedings, though not present in the previous criminal proceedings. "What is mentioning in penal votes, is the decision between the offender and the community and is affective in respect for all people and all things. Validity of penal dismissed in civil thus, is absolute and applies to parties, subject and litigation. "¹⁵Whatever is the nature of civil proceedings, has not any difference in issuing of validity of penal dismissed. If the injured, requests compensation other than what is verdict can invoke on the principle. In no hypothesis the penal judge cannot claim the falsehood of penal verdict even if the civil lawsuit, not be as a type of civil responsibility and compensation.

Unlike the validity of penal dismissed which is relative and only is applied against both parties and the same cause, the validity of penal dismissed, contains the absent persons of criminal proceedings and the fundamental flaw of it lies in this feature. Why should a vote to which has been issued among other people and prosecuting attorney, knows the necessity of consideration of failure of penal principle against a certain person, can also be applied to other persons? Is it not possible that the vote is based on elements which involve evaluating other people's rights?

The mentioned response and its flaws each of them has a flavor of scientific rationality, but an important part of the drawbacks can be resolved by the independency of the penal law, and with proper analysis of this discussion, it can be achieved appropriate response.

¹⁴ Haller, principe de l'autorité de la chose jugée au criminel sur la civil en Alsace-Lorraine, *Études Criminologiques*, Mai-Juin 1928, p.99.

¹⁵ H. et L. Mazeaud et Tunc, *Traité Théorique et pratique de la responsabilité civile, délictuelle et contractuelle*, T .2, 5e édition, 1958, n. 1747; at French legal proceedings also the absolute validity of penal Vote has been affirmed toward the third parties: Civ. 1 re, 3 févr. 1976, D. 1976. 441, note Contamine-Raynaud; Civ. Ire, 29 avr 1985, D. I, n. 131; soc. 27 mars 2001, D. V .n. 105; D. 2002. 1170, note Paigelier.

The feature based on Public order and authoritatively

Is Validity of penal dismissed in civil litigations based on principles that the both parties have, and only by its layout, civil judge is bounded regardless of it, and is imposed violently and mandatory? In French law, the position of doctrine and judicial practice is different. Judicial practice for moderating the absolute property of the principle, doesn't know it due to public order but private benefits of the person.¹⁶ While legal doctrine, criticizes this approach, and knows it as based on penal order and having the property of the principle. From French judicial perspective, credibility is nothing more than a rebuttable legal jurisdiction and against Validity of penal dismissed in civil litigations that undoubtedly is imperative. The mentioned validity is in hands of beneficiary, therefore, firstly, the parties can deviate from this principle¹⁷ second, if the parties do not cite it, judge or prosecutor cannot proceed directly to it¹⁸ and thirdly, this principle cannot be raised for the first time at the Supreme Court and of ultimate stage.¹⁹

mentioning the point should be useful that the validity of penal dismissed in civil litigation, in terms of juridical procedure, isn't similar to the civil validity in civil or penal in penal because according to the penal dismissed we cannot know the civil litigation as "inaudible" but with the arrival in the nature of a civil litigation, "the verdict of right less" of criminal against the penal vote be issued. In other words, a civil litigation, by citing of penal dismissed, met with no objection but civil judges consider verdict as one of the fundamental principles of his decision and based on that, sentences, pro or against someone.

ORATION OF PRINCIPLE

Is the description of "civil" in principle of penal dismissed validity in "civic" litigations and issues have a specific stand on sealed of criminal proceedings and is used only in civil matters and commercial credit, or in other words "private rights" and other issues such as administrative, constitutional, tax and authorities dependent on them are not subject to principle or the conditions of these issues, are same as civil and private proceedings. The reason

¹⁶ Civ. 17 juill. 1963, Bull. Civ. II, n. 533; Civ. 2e. 15dec. 1980, Bull. Civ. II, n.264.

¹⁷ Rouen, 24 mars 1926, D.H. 1926. 412.

¹⁸ Colmar, 24 mai 1927, Rev. Alsace-lorraine, 1928. 232; Amiens, 2 nov. 1932. Gaz. Pal. 1933. 1. 169.

¹⁹ Req. 19 mars 1894, D.P. 94. 1. 305; 2 févr. 1910.D.P 1910.1.1410; Civ. 6 mai 1912. D.H 1926.301; Req. 4 mai 1936, S. 1936. 1.291. Crim. II févr. 1938. D.H. 1936. 264; Civ. 25oct. 1950, D. 1951, somm 5; Crim. 7 juill. 1954. Bull. Crim, n. 552; Pierre Bouzat et Jean Pinatel, op. cit, n. 1552.

of doubt is due to use of principle, as usual, are in civil matters and doctrine and judicial practice are also used to describe it. As the same phrase is used in the Roman-German system²⁰ but is this application and its principles, in fact is limited or there are other reasons to allow applying them to other authorities. With a little attention, you can put an end to this uncertainty, the importance of penal verdict, scientific foundations, strong probative reasons and to prevent conflict in the legal system requires that validity of penal votes be extensive and far-reaching. What is important is validity of the criminal decision and this credit is due to the confidence that the legal system is created to criminal authorities and at the time of realization, therefore do not consider specific reference to its realization be subject to the same reference. Legal principles, knows the penal court responsible for all of its inherent features and firmly, is allowing it to have an impact on all legal aspects. Effects of penal verdict, civil or administrative, fundamental and so on has certainty and validity and because among these topics, issues and civil proceedings have greatest practical possibility, communication and impression with penal vote therefore, its use in civil proceedings, is application of overcoming the affairs not the monopolization of the principle. In other words most cases and possibility of applying this rule is in civil proceedings, not applying the principle reserves in their implementation. Therefore, fiscal and administrative authorities, including the Court of Administrative Justice and other authorities, have the right and obligation to recognize the Validity. All non-judgmental and administrative authorities have the same status and by the pretext of administrative autonomy under cannot oppose the signified of penal verdict even though has no direct requirement imposed on them.²¹

CONDITIONS OF APPLYING THE PRINCIPLE AND DETERMINATION OF ITS BORDERS

The penal dismissed validity in civil litigations and the like is realized when some of the causes and conditions exist. The criminal authorities that create the cause of applying principle and issuing verdict should be determined and among the civic and criminal quarreled issue

²⁰ L'autorité de la chose jugée au pénal sur la "civil". In France law it has been noted that the penal votes in administrative courts and its problems has dismissed validity, although in the vote of October 13, 1954 the State Council has pointed out that the penal vote of disasters has not such validity. Some writes considered this opposition in state council verdict to be delicate and accurate: 13 Oct. 1954, J.C.P. 1955, II.8890, note Durand; Pierre Bouzat et Jean Pinatel, op. cit, n. 1555 bis.

²¹ In this context Doctor sohrovary says, "a conflict that is constrained by the criminal proceedings are civil proceedings in a broad sense, including proceedings in civil, commercial and administrative issues." Ibid, p 165

somehow brings harmony and unity. About the authorities of verdict should also be specified conditions of penal decision and the terms of authorities. In addition, that part of the penal decision that has the essential aspect of the guidance should be separated.

Which decision qualifies for this credibility?

A decision has penal dismissed validity that has been adjudged from the National Court and contains attributes that is in following.

Issuing authority

Territoriality principle of implementation of criminal law does not allow that the criminal decisions, foreign court, be a barrier for audition or limitation of civil decision. The judicial practice²² decisively and French doctrine in general, affirms it because the Foundations of the Validity (avoiding compromising the laws and public order) is not in such a way that causes damages out of foreign penal dismissed validity and not be negligible. In addition, the executive power is the main part of penal vote validity while this feature is limited to the territorial boundaries of a foreign court.

The penal votes should be out of "substantive vote"²³. Substantive vote adjudicating authorities are ahead of investigation authorities²⁴ and in terms of their decision-making process that re in the presence of the prosecutor and the accused and the acting principle of neutrality, is of great importance in realizing of penal dismissed validity.

The issued decisions from the investigation authorities (the ban of prosecution²⁵ and conviction and sending the case to court)²⁶ according to the authors and judicial practice, have not validity per se. On this distinction can be argued that decisions of investigation authorities, are not in a place that causes arising validity, the characteristic of decision of investigation authority (Court) is that it represents the reasons for the charges and the realization of criminal

²² Crim. 26 janv. 1966, Bull. Crim, n.23.

²³ juridiction de jugement.

²⁴ juridiction d'instruction.

²⁵ arrêt de non-lieu

²⁶ arrêt de renvoi

act stronger and strengthens their verdict in court²⁷ but our prospective validity should be obtained from non-infringement and absolute decision not occurs by a not adjudicated decision. The ban of prosecution does not implies the negation of civil works and in cases where the court assesses the elements of a criminal act it deals with evidence aspects rather than the affirmation. Proof of operation and its elements is characteristic of the court and the authorities of investigation this situation cannot be seen.

This analysis can be criticized and rejection and accuracy of the performance of prosecutors indicates that validity of decision of the court cannot be overlooked in some cases.

Terms of verdict

A decision in a civil lawsuit has penal dismissed validity that has some terms or haven't some obstacles that most important of them are as follows:

1. Any decision of the Criminal Court, have not such validity. As was observed in some cases, civil court, adjudicate a verdict that has penal qualities. In contrast, some criminal court decisions have not features which are related to criminal law and therefore are considered invalid. The description of being "Penal" two types of decision can be known irrelevant and thus invalidates the penal dismissed validity: 1. law enforcement decision 2. Civil decision whit in the criminal proceedings.

The verdict that is adjudicated at Law enforcement issues has not public domain and it addresses a limited number of professionals and not about the entire community. Connection of these kind of verdicts with public opinion is not conclusive and some administrative considerations are respected because The Law enforcement court decision in a civil compensation proceeding, has not penal dismissed validity and civil court despite the state of law court for the realization of fault, can refrain the judgment of citing compensation by referring to lack of fault.²⁸

2. The Penal court decision that contains civic parts such as compensation is subject to the terms of penal dismissed affair.²⁹ In French law, even despite the absence of someone in criminal proceedings, the court in the decision-making stage, determines the civic responsible,

²⁷ - In Iranian law, Doctor Nasser Katouzian also has the popular opinion and definite doctrine and considers the adjunction of the verdict of the Criminal Court as the assurance condition on achieving penal dismissed validity of civil matters. See Hemo, Validity of judgment in a civil lawsuit, Page 295.

²⁸ pau, 31 déc. 1963, J.C.P. 1963. IV. 43.

²⁹ Civ. 18 avr. 1921, S. 1923. 1.161. note Morel; 7 Juin 1921, Gaz. Pal. 1921. 2.147.

for example, considers insurer or employer as liable for compensation. In these cases, verdict validity is subject to impacts of civil penal dismissed and has no absolute penal validity.³⁰ . Determining the amount of damages by the court and declaring someone responsible, prevents posing civil lawsuit proceedings against this person and his defense is not about the compensation litigation.³¹ . Determining joint and several responsibilities for two or more persons in criminal votes doesn't prevent applying a different principle in a civil lawsuit because of joint liability, is not punishment but a way of receiving compensation or fine in cash.³² Uncertainty is when the decision of the penal court is for determining civil responsibility, at the request of the prosecution and for conviction of someone for paying the expenses. Some believes that the prosecutor acts in the name of Society and has the absolute verdict, because paying the expenses is in accordance with the goals of criminal law. French Court from 1898 has acted against the idea and civil property of such a decision has recognized valid.³³ Because the involvement of prosecutors has not criminal purposes and only is protection of the government's financial rights.

3. The verdict must be inviolable and passed stages of research or appeal. There are doubts about sentences in absentia that whether on the basis of penal sentence in absentia can we build a civil construction and lean against on it although due to the possibility of deviating from the votes and by protestation and representing reasons, a vote can be changed, this option is unthinkable. The French Court does not accept such validity because as soon as the presence of the accused or his imprisonment, convictions ends, and its reliability is excluded.³⁴

It seems that other solutions that ensure the dismissed credibility at the Iranian law is more accurate because the problem is that civil litigation is the ability to run in absentia which is also and violations of it will also be possible; is it possible to ignore a certain vote fundamentals

³⁰ Civ.2 dec. 1928, D.H. 1929, 51,S, 1931.1.201, note Hagueeney ; 12 mars 1947.D. 1947. 296.S. 1947.1.195.

³¹ Com. 22 juill. 1952, D. 1952. 746. according to Article of July 11, 1956 civil branch of the French Court if the result of an accident between two vehicles, criminal justice, determines a "driver," as "criminal charge" and "owner" of the vehicle as a "civil responsibility" and the injured who is not present in the criminal proceedings subsequently seek redress in the civil courts and the driver to be determined as a responsible by the civil judge, which may be non-owner, we cannot express the opposition in the vote because the first vote has not the penal dismissed validity: J.C.P. 1956. II. 9584, nite P. Esmein. " Esmein " about the votes says that in these cases, judicial practice has the legal and practical possibility for accepting opposite decisions because the decision is not a matter of validity.

³² Civ 9 nov. 1881, S.1884, 1.217; P.Garraud, L'influence au civil d'une décision pénale déclarant connexes diverses infractions, J.C.P , 1943, II.2483.

³³ Civ. 14 nov. 1898, D.P.99.99.1.65, note sarrut.

³⁴ Civ. 24 juin 1898, 5 janv. 1898, S. 99.1.129, note Lacoste.

and decide against them. In fact, what makes hesitation in accepting the dismissed validity, is the possibility of violation of the provisions of votes after the protestation, while on the other commandments there is also the possibility of retrial and they only differ in the intensity and weakness of this possibility but fundamentals of accepting the validity is remaining strongly and it seems there are not reasons to deviate from absentia penal vote at civil litigation.

Which part of the decision is eligible for this validity?

General principle- the technique

In common law legal system for the detection of necessary parts of court decision at leading and non-binding sections, the segregation of provisions and verdict appliances is used. That part of the court decision that is essential and original document of verdict has the power to create a record and requirement and the other section which is considered sub-sector and has been stated without taking into account a certain event, is not required.³⁵ This method is very accurate and elegant, and being inattentive to it, causes changing in the legal Rule. In discussing penal dismissed validity in civil matters such separation is necessary and should distinguish the part of the vote that has this validity with invalid parts. But what is the basis of this distinction and how can consider a part of penal verdict as invalid?

To answer this question primarily we should consider a guiding principle thus in cases of doubt, at least indicate the outward verdict; since tying up the civil judge and limiting the assessment and analysis of civil matters by penal verdict content and to compliance with its provisions we have to prove the validity and the first principle, is justice liberty in the investigation of litigation cases therefore, in case of doubt of the penal dismissed validity in civil issues, the principle is absence of such a matter. In addition the mentioned validity is a ban of the freedom of civil court and is required a reason for his authority, since the penal vote is of absolute validity and does not consider the person and absent person and is not bound by the prosecutor's office therefore, this is an alternative explanation in contrary to the principle of being and consequently the necessity of proving it.

³⁵ The essential and necessary section is titled *ratio decidendi* and subdivision and unnecessary section is called *obiter dictum*. For consideration of this discussion see: Rene David, Kami Zhoufre Aspynovzy, *ibid.*, P. 219. doctor Abdul Hussein Shiravi, *ibid.*, P 134 later.

Legal writers and judicial practice have suggested criteria for the identification of penal provisions votes that their return is to a principle and different interpretations, does not change this principle. In one of the authors opinions penal dismissed in civil issues is applied only "toward advices that the penal court, should have applied or apply them."³⁶ The famous vote of March 7, 1855 of the French Court has been declared in this case that the mentioned validity is applied at what have been decided in criminal proceedings, "Whether at the existence or lack of action, which is common in civil and criminal litigations or to be announced for involvement or lack of involvement and participation of the accused."³⁷ In another vote also has been declared that "the principle under which the votes find validity at penal court in civil matters has been used in the sense that the civil judge cannot ignore the verdict which the penal judge have voted about the existence and descriptions of a criminal act or criminality of accused."³⁸ French law proceedings, according to declarations of "Esmein" are trying to segregate the content of penal verdict and discover the necessary parts. "Esmein" states "The accused should seek to describe and segregate the penal decision and remove what is not required for validity of verdict, so that we can reduce the material which is not justifiable from vote skeleton."³⁹

The vested statements and certainty

The purpose of this title, is that part of the vote which proving it, in terms of penal judge, is granted and doesn't appear with doubt or the possibility or being preferable. To clarify it the non-penal statements can be sub-divided into two parts. 1. Non- certain statements ⁴⁰2. Non-convicted statements⁴¹

1- Civil Judge by no means in not bound to respect statements and confirmation by a non-certain statement. The penal vote have validity only when is definitely justified. In terms of judicial practice and doctrine, the certain statements are those that in a certain, accurate and explicit manner have been presented and verified.⁴² The general and vague expressions like "it

³⁶ Hugueney , S. 1931 .1.393.

³⁷ Civ., S. 1855.1.439.D.P. 1855.1.81.

³⁸ Civ. 14 août 1940. Gaz. Pal. 1940.2.127. for other considerations that have the same theme on French Court to, see: Pierre Bouzatet Jean Pinatel, op. cit, p. 1485.

³⁹ Esmein, S. 1933. 1 .57.

⁴⁰ Les constatationsincertaines.

⁴¹ Les constatations de l'Incertitude.

⁴² -"Les constatationsdoiventêtreexpriméesd'unemaniereCertain et formelle, expresse, precise ou positive" Répertoire de droit penal et de procedure pénale, op.cit, p. 110; Aix 10 oct 1950, J.C.P. 1951. II. 6024

seems that there is an accident" or these issues "probably" are as they are and don't have certainty and do not seem certain.⁴³ A decision that requires interpretation because of uncertainty also doesn't have such validity and, in general, Civil judge should rely on the principle that the criminal case has been proved decisively and definitely, and the judicial science be proven and backup of it, not suspicion.

2- A principle which is not convinced in the mind of the penal judge is invalid. If the thought of the judge who issued the verdict indicates totality of the vote and reflects certainty toward an issue, it cannot be relied upon. This feature may be another interpretation of being convinced but has a subtle difference because in the case of being convinced, is stressing the presumption of innocence and legal issues of the verdict. In other words, the penal judge after examining the elements of the litigation, based on the presumption of innocence, makes the decision. In this case, exists the possibility of and uncertainty in the vote but does not mentioned in verdict of the penal judge and these doubts can be removed only on the basis of the presumption of innocence. That part of the court verdict which cannot be canceled by the presumption of innocence principle is invalid because it leaves doubt and is not certain, but if the penal judge expressly states that the issue is not convinced therefore will be canceled by the presumption of innocence principle, and is affective in civil decision and will committed the civil judge, because this principle (being unconvinced) is mentioned as one of the stipulated parts of final verdict and it strengthens the presumption of innocence principle, or in other words, what is proven is the lack of principle fulfillment, and it will be valid in civil vote.⁴⁴ Presumption of innocence of doubt, is such as Presumption due to lack of action, and when penal verdict declares an action unacceptable though with the presumption of innocence, the civil judge must comply otherwise it implies a violation of the penal court.

Critical statements⁴⁵

The part of the penal vote which is indispensable for the authenticity of its nature and the so-called "was judged by necessity of it"⁴⁶ is validated in a civil lawsuit. The critical affirmation is that if it is asked from penal judge why he has recounted and proved or disproved them, he would answer I had no choice, and if I haven't mentioned them, an incomplete,

⁴³ Req. 16 juill. 1928, D.P. 1929.1.33, note Savatier; civ. 1 août 1864, D.P. 1864.1.428.

⁴⁴ Trib Grand Instance. Riom, 15 dec. 1965, D. 1966.115.

⁴⁵ Les constatations nécessaires

⁴⁶ Chose nécessairement jugée.

incomprehensible and wrong verdict would be issued. These issues are within the framework of criminal justice task and that is why just these issues are valid. Civil judge is subject only to the affairs of the body of the criminal vote and essential support of them.⁴⁷ Each section of the Criminal vote which can be removed without disturbing its authenticity will not be valid. For example, in a litigation breach of trust, property or document delivery and so on, the committed act in the possession and the same is of appliances of verdict and these things are valid in a civil lawsuit but if the penal judge as investigating the delivery of property, declares that they were for the loan contracts not due to deposit, "borrowed" there is no requirement for any accuracy of vote and can be eliminated from penal vote and that is why is invalid in civil lawsuit. This situation is confirmed by all the writers in any legal systems who believe in penal dismissed validity in civil litigation principle.⁴⁸

For closer examination of this condition, some of the most common problems and issues which is raised in civil and criminal lawsuit and in each case of penal dismissed validity principle is expressed here.

The common approvals of the constituent elements of a crime⁴⁹

1- If the person is convicted; realization of material element, assumptions and whatever criminal judge declares in this case is valid. For example, if the committing crime is by the object or an animal under his control and the penal judge has approved it, this principle is for the application of Article 1384 of the Civil Code on Civil Liability of France is valid. All other types of material actions and quitting actions also has the same situation, but it should be noted that the purpose of the action or omission of an action is material and external act not civil impacts or legal descriptions of action, or penal dismissed in civil litigations. For example, the delivery of the property to another on the specified or non-specified contract or even mere satisfaction may also be permissible or correct or false. What is important is external and material action that is to deliver not civil impacts and testimonials. Penal vote around the same acts is valid, not the civil and legal situation. For this reason, the criminal law may not blame the committing

⁴⁷ "Les motifs qui font corps avec lui, qui ensont le soutien necessaire," Req. 21 janv. 1941, Gaz. Pal. 1941.1.135; Crim. 28 juin 1961, Bull.Crim., n. 311; Paris, 15 janv.1964, Gaz. Pal. 1964.1.293.

⁴⁸ Doctor Nasser Katouzian, earlier, p 297. Alsohvary, doctor Abdul Razak Ahmad, former Page 167. Pierre Bouzat et jean pinatel, op.cit., op.cit.,n.1544.

⁴⁹ Les enonciationsrelativas aux élémentsconstitutifs de l'infraction.

certain action with respect to their own purposes, but blame the same action with respect to civil rights.

2 - Spiritual element is referred to the concept of fault and the ability of recording it. The descriptions of the fault as light, heavy or very heavy does not impact the civil lawsuit because all kinds them are non-intentional and thus as the "common and comprehensive value" are valid unless in both sections of penal and civil such a classifications be critical for determining the penalties and damages. However, in the latter case can be defended that even if for the penal verdict, the degree of culpability, is important again the civil judge by using his principles, can determine assessment of the fault rather than what has stated by criminal judge.

If the criminal judge declares that there is no fault, what will come up? In this case the distinction between civil and criminal culpability will help us, so that if criminal law is to condemn all types of culpabilities, such a declaration has penal dismissed validity because the essential part is reprehensible, but if the culpability is censurable, the civil judge can authenticate the civil culpability, though its criminal type has not been established.⁵⁰ These issues are reflected in the judicial procedure in this way that if criminal judge does not know a driver committed in unintentional injury of no indiscretion the civil judge cannot vote in compensation for body damages of vehicle by the excuse of lighting defects of vehicle and perpetrate the act.⁵¹

On October 10, 1958 the French Court verdict states that Presumption of innocence of the employer or his representatives' injury caused by negligence doesn't leave any permission for Civil judge's to declare the non-forgivable culpability of Article 65 of Law 30 October 1946. Because the mentioned culpability, in not distinct from criminal culpability.⁵² The legal defense also cancels all the blame and a lawsuit of compensation for damage caused by it, is not justified.⁵³

⁵⁰ H. et L. Mazeaud et Tunc, op. cit, n. 1821.

⁵¹ civ 10 avr. 1962, Bull. Civ., II, n. 394; Civ. 10 janv. 1962, Bull. Civ., II, n. 43; 22 juin 1962 Bull. Civil, II, n. 547.

⁵² Soc., Gaz. Pal. 1959.1.26

⁵³ Trip. Civ. Strasbourg, 10 mars 1953, J.C.P. 1953. II. 7855. Not Alexandre.

The approval of the damage

- About the substance and extent of damages the main principle is lack of verdict validity because criminal law, doesn't consider the extent of the damage. In cases where, in particular, the damages caused by an offense or the type of crime is effective in penalties and according to the type of injury (physical, financial) or the amount of it, differs, referring the penal vote to it, requires civil judge to comply with its.⁵⁴

The approval of causal relationship

For analysis of this part of the penal vote, we can get help of the rules of the previous section as the principle. This means that if the committing losses are superfluous and is not considered necessary in criminal verdict, causal relationship between the committed act and the damage is superfluous. On the contrary, if essential condition of an offense is the damage the causal relationship will also be an essential part of verdict. Alongside the above principle, it should be noted that the statements of the criminal judge about the causal link should be relevant to the act and committing crime of the accused. For example, it should be declared that the defendant personally or with another person has participated in the offense, and is effective in damages but if it is declared that the external factors such as natural disasters and even culpability or culpability of third party (without participation in the offense) such statements has not the penal dismissed validity.⁵⁵

-What are the external causes and their role in the causal relationship when the sentence is issued? If the judge condemned criminal who has committed a traffic accident and refers beside the vote to the injury impact and realizes him effective in losses and blame him, such an issue in France and Egypt legal system hasn't the penal dismissed validity in civil rights and the civil judge can assess all damages independently vote in favor of injured.⁵⁶ The judge can consider a rather different proportions in terms of the division of responsibility of damages and the severity of culpability attributable to the accused in criminal lawsuit, cannot prevent civil judge to re-evaluate the causal relationship between culpability of injured and damages.⁵⁷

⁵⁴ Valticos, op.cit, n. 293; Civ 5 janv. 1956, D, 1956.236, J.C.P. 1956.II. 9140, note Pageaud.

⁵⁵ H.et L.Mazeaud et Tunc, op.cit., n 1803et 1840; Valticos, op.cit, n. 307.

⁵⁶ Civ. 16 juin 1965, Buii.Civ., II, n. 513; Civ. 10 févr. 1931, S. 1933. 1. 57, note Esmein; Req. 13 déc. 1932, Gaz. Pal. 1933. 1.420; Grenoble, 22 mars 1929, D.P. 1930.2.33, note Holleaux.

⁵⁷ Paris, 15 juill. 1930, Gaz. Pal. 1930.2.641; Civ.22 avr. 1959, D. 1959.somm. 88.

The role of in state of Presumption of innocence is like when the accused is convicted, if the judge has declared about the external cause, civil judge can vote in someone else's responsibility.⁵⁸ If a person was acquitted in criminal lawsuit and criminal justice considers it due to the committing culpability by a third party, the civil judge cannot condemn the third party.⁵⁹ . In all situations in which the criminal court has no impact on verdict and in not of its essential components, a civil judge should not be bound to follow it. The presumption of innocence verdict with respect to the lack of a causal link culpability of accused to damage, has the penal dismissed validity in civil lawsuit, but in the realization of this relationship about another person or factors, there is validity.

CONCLUSIONS

The Necessity of comply the penal court with penal verdict in all cases, as a definite and common principle, which is referred about the mentioned view, is without religious or legal valid justification, and the necessity of adherence pf legal courts to the criminal Law Courts of introduction premise, is in fact, deprivation and violation of the rights of people of their litigation rights in the framework of the provisions of the Civil Procedure Code.

All decisions of the Criminal Court have not such validity. As it was observed in some cases, the civil court, adjuncts a verdict that has penal descriptions. In contrast, some criminal court decisions have not features related to criminal law and therefore are considered invalid. The terms of being "penal" it can refer to two types of decision out of the debate and therefore without the dismissed validity principle: 1. the decision of the Law enforcement 2. Civil decision in the criminal litigation

The verdict which is adjunct at Law enforcement issues has not a public domain and it addresses to a limited number of professionals and not about the entire community. Connection of these votes with public opinions is not conclusive and some administrative considerations shall be respect in them therefore Law enforcement court decision in a civil compensation lawsuit, has not dismissed validity principle and civil court can despite the Law enforcement court stipulation for declaring culpability, to avoid adjunction a verdict of compensation by referring to lack of culpability.

⁵⁸ Civ.14 août 1940,Gaz. Pal. 1940.2.127; 19 mars 1940.J.C.P. 1946.II.3184.

⁵⁹ Civ. 30 janv. 1928, S. 1928.1.177, note H. Mazeaud.

The criminal and civil court decision that contains civil sections such as compensation is subject to the terms of civil dismissed validity principle.

The verdict should be inviolable and has been gone through the research process. There are doubts about the verdicts in absentia that; whether is it possible to make civil construction based on penal sentence in absentia and lean on it. Despite the possibility of deviating from the vote, by protestation and giving reasons, a verdict can be changed.

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