

The Changes of Position of Criminal Victim: From the Leader of Criminal Procedure to the Spectator

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Abstract

The status of the victim in the criminal proceedings is not invariable, which is not from the beginning of natural monopoly by the state, under the influence of history, economy, politics, the subject of criminal prosecution went through a process from individual to the country. The position of the victim is gradually changed from the center of criminal prosecution to the spectator, and the victims in different countries are in different positions.

Keywords

Victim, Leader, Spectator.

1. Introduction

Victim is derived from the Latin *victima*, originally has double meaning. At first, It is a religious ceremony to sacrifice the sacrifices of god; The second is the personal, organizational, moral or legal order that is harmed or hindered by the actions of others. [1] Chinese scholars mainly define the meaning of the victim from the perspective of crime victim science and criminal procedure law. For example, according to professor guo jian 'an, a victim refers to an individual or entity that has suffered injury, loss or hardship due to the criminal ACTS of others (generally including ACTS violating criminal laws that do not constitute a crime).[2] Professor xu zhangrun believes, the victim means the person who bears the loss or damage caused by the crime.[3]

The position of victims in criminal proceedings is not unique and fixed. "from the original state of human society to the present, the state apparatus has grown from nothing, and the state has increasingly stronger control over society and individuals. The subject of the right of criminal prosecution has also gone through the process from the individual to the state, and the status of the victim has gradually reduced from the center of the right of criminal prosecution to the bystander of the war between the state and the accused.

2. Back to the Original :As the Ececutor of the Punishmeng

This stage was the beginning of the formation of the clan society to the slave society class and state. In the original state, there were no laws and no state apparatus. When the individual is seriously violated by others, the individual or his clan often carries out private relief. The victim's relief includes early duel, blood revenge, blood revenge, "an eye for an eye, a tooth for a tooth" revenge. After the advent of money, redemption followed. At this stage, the victim is the leader of criminal proceedings, the judge and executor of punishment. With the continuous development of productive forces, the state apparatus has emerged, and social relations are no longer tied by blood ties. However, since the national judicial system is still underdeveloped, the victim is still the judge and executor of penalty. For example, The Code of Hammurabi

Stipulates that under the certain circumstances, the victim may punish the captured thief on the spot according to law.

3. The Initial Intervention of the State: The Victim from the Executor of the Penalty Yield to Become A Criminal Prosecutor

This stage is mainly the later period of slave society. With the development of the society and the emergence of the state, the victim gradually loses the principal position of the executor of the penalty, and is replaced by the state penalty right, but the prosecutor of the crime is still the victim. The victim is in the position of the plaintiff in the lawsuit, has extensive litigation rights, and can carry out a large number of litigation actions. For example, the right to prosecute, the right to force the defendant to appear in court, the right to criminal settlement, and the right to promote and terminate litigation.

A. Right to Sue

The victim has the right to decide whether or not to entrust the offender to the state for processing. When the victim fails to file a complaint to the judicial organ for the criminal act, the judicial organ cannot take the initiative to try the crime. The judges are passive judges, who do not take the initiative to investigate the criminal responsibility of the parties, nor collect evidence or call witnesses for any purpose.

B. The Right to Compel the Defendant to Appear in Court

During the trial, the victim shall be responsible for summoning the defendant to appear in court. If the summoned person refuses to appear in court, the victim or his agent shall have the right to compel him to appear in court.

C. Right to Criminal Reconciliation

After the attack, the victim and his or her relatives may enter into a compensation agreement with the perpetrator. After the ransom is paid by the perpetrator, both parties shall reconcile. The victim may also forgive or pardon the offender. Other organs and individuals have no right to interfere in the compensation agreement between the parties and the decision of forgiveness of the victim, nor have they the right to take any punitive measures against the offender. After the infringement, After the occurrence of the infringement, both the victim and the offender can put forward the intention of reconciliation. Even after trial, the victim may still request a settlement.

D. The Right to Promote and End Litigation

Litigation is not only initiated by the victim, but also in the process of litigation, the victim is responsible for promoting the proceedings, and may even end the proceedings. Lawsuit, the victim is the plaintiff, the offenders as a defendant, both for the litigants, the plaintiff to criminal facts of collecting evidence, according to the collected evidence to charges, the defendant to prove allegations of criminal facts, the defendant can undertake contradictions and arguments, the judge is responsible for the center of the referee, not the offender's criminal liability shall be pursued actively, nor to gather evidence, can't call witnesses. At the same time, in the process of litigation, the victim can request a settlement with the offender, and if the settlement is successful, the lawsuit can be terminated. At the same time, the accuser shall be punished if his complaint is false to prevent false accusation.

4. The State Exclusive Prosecution Right :The Victim Becomes the Bystander of the Criminal Proceedings

This stage is mainly the period after entering the feudal society. Ruling class at the same time of strengthening centralized system, strengthen the judicial control of society, as the Christian

theory of redemption, the enlightenment of national purpose theory and Bentham's Utilitarianism theory, the influence of the ruling class awareness of crime also changed, crime is no longer just as on the harm of violated people behavior, but is considered for the country's wrongdoing. As long as the officials with the power of punishment find that a crime has been committed, the state may pursue the crime even if the victim or his relatives do not bring charges. Since then, state prosecution has become a principle of criminal procedure. Special organs of the state are responsible for investigating crimes, filing complaints and trying them. Victims cannot reconcile with the perpetrators privately, and may even be held accountable. Although at the beginning of the proceedings, the victim has the right to complain, after the proceedings are started, the victim's status in the proceedings is only equal to that of a witness, and his statement in the court is only regarded as a kind of evidence to pursue the defendant's crime. The victim cannot end the lawsuit, and his statement in court is only used as evidence to pursue the defendant's crime. There are no rights in the implementation process. So far, in the criminal prosecution procedure, the state power gradually replaces the victim's rights, and the victim becomes the bystander of the criminal proceedings. This substitution is the result of the game of multiple interests under the influence of multiple factors.

A. The Need of The Ruling Class to Safeguard the Ruling Interests

After entering the feudal era, the peasant movement arose one after another, which seriously threatened the status and interests of the feudal rulers, who had to take various measures to strengthen the centralization of power to safeguard their fundamental interests. Reflected in the legal system level, is to strengthen the state's strong control over the judicial power, in the criminal proceedings, to weaken the individual rights of citizens, strengthen the power of the state, and eventually by the state to replace the victims, to control the power of criminal proceedings, and lead the whole process of criminal proceedings.

B. Profound Changes Have Taken Place In The Ruling Class's Understanding of The Nature of Crime and The Function of Litigation

In the impeachment-type litigation model, crimes are considered only private disputes. But with the increasingly diverse and common crime, the ruling class understanding of the nature of the crime also profound changes have taken place, think more major crime is the infringement of the order of national and social public interests, and no longer think crime is a violation of the individual, the victims only behavior is considered to the existing order and ruling authority, the destruction of the social and public interests, and contempt. Through the investigation of criminal ACTS, not only to solve the disputes between private people, but also through criminal prosecution to achieve the right to punishment of the state, to strengthen the control of the people. Therefore, whether to investigate the crime, how to deal with the perpetrator, is no longer a personal matter between the victims, but whether the ruling class can effectively control the society and maintain the ruling class regime. After a new understanding of the nature of crime and the function of litigation, the ruling class chose to actively intervene and dominate the criminal procedure.

C. The Development of Social Productivity Makes It Possible For the State to Take the Initiative to Prosecute Crimes

With the development of social productive forces, people have more ways and means to understand things, so the determination of facts can no longer be determined by god alone. When the ruling class has the ability to determine the facts of criminal offences, it is unwilling to give way passively and let the victims and perpetrators deal with it by themselves.

D. To Some Extent, It is Also Conducive to Safeguarding the Interests of The Victims

In the impeaching-type litigation mode, the victim bears the function of charging, promoting and ending the litigation, and may bear the criminal responsibility because the complaint is improper. Victims in the process of litigation to bear a great burden and litigation risk. And its

means and ability to pursue prosecution is limited, often can not effectively investigate the crime, protect its rights and interests. With the intervention of the state, more means and methods of prosecution may be used, providing more guarantees for the effective investigation of crimes. Therefore, the active intervention of the state also plays a positive role in satisfying the needs of the victims to punish crimes.

5. Overview of the Status of Victims in Criminal Proceedings in Major Modern Countries under the Rule of Law

After the victory of the bourgeois revolution, the despotism, cruelty and darkness of the feudal inquiry-type litigation were severely criticized and gradually replaced by the modern criminal litigation system that embodied and promoted human rights, freedom and democracy. In terms of the subjects and methods of pursuing crimes, there are two main modes in the major modern countries under the rule of law. The two modes are that the state shares the right of recourse with the victim. The combination of state prosecution and private prosecution, two ways coexist, different subjects to different cases of litigation. That is, public prosecution and private prosecution are used together, including Germany, Britain, Russia, Norway, Sweden, China and other countries, the majority of countries use this way. In the cases where the procuratorial organ initiates the public prosecution on behalf of the state, the victims in different countries are in different positions.

A. Germany: As a Party in Criminal Proceedings

In Germany, the victim participates in public prosecution cases as a plaintiff in incidental proceedings. This procedure is called an incidental proceeding or a subsidiary action. The purpose is to compensate the victims, monitor the procuratorial organs, and maintain the right to participate in the proceedings permitted by other rights. In the German code of criminal procedure, there is a special procedure for the victim's participation, which makes detailed provisions on private prosecution, incidental litigation, compensation for the victim and other rights of the victim. At the same time, in a specific case, the victim can participate in the public prosecution as a plaintiff in the collateral proceedings. Articles 395 to 406 h of the German code of criminal procedure provide detailed provisions on the scope, subject, stage, method, rights, litigation costs, legal consequences, relief procedures and withdrawal of incidental proceedings, as well as the compensation procedures for victims, who have extensive litigation rights.

1. Determine the scope and subject of bringing incidental litigation. Article 395 of the German Criminal Code stipulates that the persons who can participate in the initiation of the public prosecution as the plaintiff in the incidental proceedings are the injured persons, the parents, children, brothers, sisters and spouses of the persons killed by the illegal act, and the relevant persons who are injured in accordance with other legal provisions.

2. Determine the procedures for the plaintiff to participate in the criminal proceedings. First, the plaintiff in the incidental action is allowed to participate in the proceedings at any stage, even after the judgment has been made; Second, when participating in the proceedings as a plaintiff in incidental proceedings, a written declaration of participation shall be submitted, and the statement of participation shall become effective when the public prosecution is instituted; Third, the court decides whether to allow to participate in public prosecution, to hear the opinions of the prosecutor's office. In certain circumstances, the court shall hear the opinions of the defendant before making a ruling; When the court suspends the proceedings in accordance with the provisions of the relevant laws, it shall first make a decision on whether to allow the participation; Fifth, when the plaintiff in the incidental litigation participates in the public prosecution, the process of the litigation procedure does not stop accordingly.

3. The litigation rights of the plaintiff in incidental litigation are stipulated. After participating in the public prosecution, the victim has the right to be present at the trial when he needs to be

questioned as a witness. During the trial, they shall have the right to apply for and verify the order of the presiding judge, the right to protest, the right to ask questions and the right to reply. Where the scope of recourse is limited by section 154a, the right to participate in an indictment as a plaintiff in an incidental action is not thereby affected. Where a lawyer is needed, an application for relief of expenses may be filed prior to the declaration of participation in the public prosecution.

4. It stipulates the plaintiff's right of legal relief in litigation activities. The plaintiff in the incidental action shall not, when requesting the judgment to be annulled or altered, demand the punishment of any other legal action, nor shall he demand a guilty verdict against the defendant for any illegal act not permitted to be included in the indictment. In the case of a decision in articles 206 a and 206 b to stop the proceedings and a decision to refuse to begin the trial proceedings, the plaintiff in the incidental proceeding shall have the right to protest immediately against the part of the action involving the admission to public prosecution. In addition, the plaintiff in the incidental action has no right to object to the declaration of decision to stop the proceedings. The plaintiff in an incidental action may independently institute legal relief proceedings against the procuratorate. When participating in the public prosecution for the purpose of initiating legal relief proceedings after the judgment has been made, the original judgment shall be served immediately on the plaintiff in the incidental action. In the case of a legal relief action brought only by the plaintiff in an incidental action, where the original judgment is withdrawn, the procuratorate shall be responsible for the action again. When the plaintiff in the incidental action dies or the statement of participation in the public prosecution is withdrawn, the statement of participation loses its validity.

5. Detailed provisions are made for the compensation procedures for the victims. Provision is made for the filing of applications, the making of rulings, legal remedies and enforcement. For example, the victim's request is not limited by the value of the object of action.

6. The victim's right to know is stipulated. For example, the victim should be informed of the right to know, the right to consult the case files, the right to entrust agents *AD litem* or the right to assist, and the victim should be informed of the termination of court proceedings involving the victim.

7. The right of the victim to access the files is stipulated. If the reasons can be justified, the lawyer may consult the case files submitted to the court on behalf of the victim, and may also examine the evidence in official custody. However, access to some cases may be denied if it is in conflict with the interests of the accused or other persons in need of protection, or if access is considered to affect the purpose of the investigation and cause serious delays in the proceedings.

8. The victim shall have the right to appoint a lawyer as an assistant or agent. Has the right to participate in the public prosecution as a plaintiff in incidental proceedings, and may, even if he does not declare to participate, appoint a lawyer as an assistant or agent before the initiation of the public prosecution, and may apply for relief of litigation costs in accordance with article 397 of the code of criminal procedure.

B. France: As a Civil Party

The victim has the civil party status in the public prosecution case, the typical representative is France. Article 1, paragraph 1, of the French Criminal Procedure Code stipulates the prosecution for the purpose of applying the penalty shall be initiated and conducted by a magistrate or an officer authorized by law to prosecute. At the same time, it is stipulated in paragraph 2 that public prosecution may also be initiated by the injured party under the conditions provided for in this code. That is, the power to initiate public prosecution is exclusively vested in the procuratorial organs, but the victim can initiate public prosecution by

becoming the civil plaintiff in the criminal proceedings. Even if the civil action is abandoned, the public prosecution shall not be suspended or suspended.

In the case that he thinks he has been hurt by a felony or misdemeanor, the victim may file a complaint with the investigating judge who has jurisdiction over the case and thereby become a civil party. The examining judge made an order and informed the prosecutor of the republic so that the sheriff could present his opinion. During the pre-trial process, he may become a civil party at any time. After the victim becomes a civil party, he enjoys equal legal status with the defendant and the prosecutor in the lawsuit, and enjoys extensive litigation rights in the lawsuit. For example, a series of litigation rights such as the right to ask questions of witnesses through judicial personnel, the right to obtain legal assistance, the right to review papers through lawyers, the right to appeal, and the right to bring incidental civil actions are enjoyed. In criminal proceedings, the prosecutor can not restrict the victim, even if the victim's opinion and the prosecutor's opinion are completely different, the victim can also start the public prosecution. Although the victim is not a party in criminal proceedings, in some cases, the victim's information plays a key role in the fate of criminal cases. For example, the victim told as a necessary condition of the criminal case, once the victim withdrew to tell, the public prosecution is eliminated. The victim has the right to choose a defender, the right to appeal independently and the right to participate in the trial. Lawyers can also review papers for case information.

C. United States: As a Witness

In the United States, the state has the sole right to prosecute, and the victim is merely a witness in a criminal case. However, after the 1960s, the crime situation in the United States deteriorated, the number of victims increased sharply, and the protection of victims' rights was paid attention to, and the protection of victims' rights rose. In 1982, the US enacted the Victim and witness Protection Act, which provided important provisions on the rights and remedies of victims of crime. For example, it confirms the right of the victim of crime to participate in litigation to a certain extent and implements the relevant system of state compensation for the victim of crime. The prosecutor shall, in consultation with the victim and his family, answer the prosecutor's sentencing report in the transaction, solicit the victim's opinion, and inform the victim of the opportunity to present his opinion to the judge when sentencing. In 1997 the federal parliament passed the act of the victim rights to explain (Victims' rights clarification act), made clear the victim in the criminal judicial procedure and orally the rights of the victim impact statement.

The crime victims' rights act of 2004, passed by the federal parliament, further expanded the scope of the protection of victims' rights, in particular providing victims with eight important litigation rights. In criminal proceedings, the victim participates as a witness. In the litigation, the victim's litigation rights are strengthened. A number of states have also established systems of administrative commissioners and surveillance, and law enforcement agencies require the sheriff to submit annual reports on efforts to realize the rights of victims.

In a word, since the 1980s, American states have recognized in criminal justice the right of victims of crimes to receive fair treatment, respect for their dignity and privacy, the right to be informed, and the right to compensation for their injuries.

D. Britain: The Victim Has No Fixed Position

In British criminal procedure, the victim has no special fixed position. In minor criminal cases, the court may, with the consent of the victim, issue a compensation order to the offender; If the victim does not agree, the victim shall participate in the proceedings as a civil party. Victims in public prosecution cases usually participate in the proceedings as witnesses, but when prosecutors decide whether to initiate public prosecution, the interests of the victims should be fully considered. This is reflected in the relationship between the victim and the public

interest. But the crown prosecutor must always consider the interests of the victim very carefully, which is an important factor in determining where the public interest lies. In Britain, the victim's legal status in criminal proceedings is not high. First of all, the victim's statement is mainly provided through the police, not directly to the court, which to some extent affects the role of the victim's statement; Secondly, the judge only pays attention to the opinions of the victim, but does not pay attention to the opinions of the victim's family. Finally, we should pay attention to the restriction of state power on the victim's right to appeal and prevent the defendant's right from being violated.

In the 21st century, the judicial reform in Britain is aimed at fully protecting the needs and rights of victims, ensuring that the criminal justice system centers on victims and highlighting the extensive participation of victims in criminal proceedings. In July 2002, the British government issued the justice for all report on judicial reform in the UK the people of this country want a criminal justice system conducive to the realization of justice. They believe that victims of crime should be at the heart of the system. This white paper is intended to recalibrate the criminal justice system in favour of victims, witnesses and the public in order to establish greater trust and credibility for justice for all. In December 2003, the act on domestic violence, crime and victims was published to ensure the interests of victims both within and outside the criminal justice system and to propose specific measures to serve victims.

The victims of crime operations act was enacted in April 2006 to ensure that victims are kept informed of the arrest, charge, bail and sentencing of suspects. At the same time, some more detailed and specific assistance has been provided to victims who are threatened or in danger. The traditional criminal justice concept of the British public is that acquittal of ten guilty people is better than punishment of one innocent person. In order to make up for the defects of criminal justice, criminal reconciliation system is actively explored, and the scope of application is expanded from juvenile crimes and minor crimes to serious crimes committed by adults.

6. Conclusion

An understanding of the history of victims helps us fully understand the modern common law rules and the way criminal justice is administered. [4] In the primitive society of human beings, the punishment rules of an eye for an eye and a tooth for a tooth are followed, and the victim exercises the right to complete the execution of the penalty. With the rise and strength of the state, the state has more and more control over the judicial power. The victim transfers the right of punishment for the crime to the state, but still enjoys the right of prosecution. As the country grows stronger, the victims become bystanders to the crime. In the 1940s and 1950s, the theoretical circle began to study the issues related to the victims, especially after the second world war, when more than 6 million jews were persecuted, and people began to pay attention to the fate of the victims. The theoretical circle began to reflect on the phenomenon that The Victims were forgotten. [5] Many countries aroused social attention to The Victims through the movement of The Rediscovery of Crime Victims. The status of The Victims was improved, but the status of The bystanders of The Victims was still unchanged. China Criminal Procedure Law established the party status of the victim in the criminal proceedings, the victim rights are further perfect, but compared with the accused person change range of rights, is still very insufficient, in criminal litigation legislation and judicial, the rights of the victim and the prosecution in criminal proceedings without balance, need from the legislative, judicial, and the system level to give more attention.

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