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ЗАКОНОДАТЕЛЬНЫЕ ПОЛОЖЕНИЯ ВЬЕТНАМА, РЕГУЛИРУЮЩИЕ СУДЕБНОЕ ПРЕСЛЕДОВАНИЕ ПО ЖАЛОБЕ ПОТЕРПЕВШЕГО

Аннотация: по сравнению с Уголовно-процессуальным кодексом (далее – УПК) Вьетнама 2003 г., УПК Вьетнама 2015 г. содержит многочисленные дополнительные элементы, ужесточающие порядок и способы разрешения уголовных дел. Существуют ограничения привлечения к ответственности по заявлению потерпевшего в целях сохранения и соблюдения прав потерпевшего в уголовном деле. После более чем двухлетней реализации в СPrС 2015 этот пункт выявил множество практических проблем и препятствий. В данной статье рассматривается проблема, с которыми сталкиваются процессуальные органы и органы по делам потерпевших, а также некоторые предложения по повышению эффективности регулирования.

Ключевые слова: уголовно-процессуальный кодекс, уголовное дело, потерпевший, законный, суд, следственный орган, отвод.

VIETNAM'S LEGAL PROVISIONS GOVERNING PROSECUTION AT THE VICTIM'S REQUEST



Annotation: in comparison to the Criminal Procedure Code (further – CPrC) of Vietnam 2003, the CPrC of Vietnam 2015 has numerous additional elements that are tighter on the order and methods for resolving criminal cases. There are restrictions on prosecution at the victim's request in order to preserve and respect the victim's rights in a criminal case. After more than two years of implementation in the CPrC 2015, this clause has shown a variety of practical challenges and hurdles. Within the course of the paper, the author presented a number of issues experienced by procedural and victims' agencies, as well as some proposals to increase the regulation's efficacy.

Key words: the criminal procedure code, prosecute the case, victim, legal, court, investigating agency, challenge.

1. Legal provisions governing prosecution at the victim's request

“When detecting acts with criminal signs, within the scope of their tasks and powers, the agency competent to conduct legal proceedings shall be responsible for prosecuting the case, applying the measures prescribed by this Code to identify the crime and handle the offender, the legal person committing the crime...”, states Article 18 of the CPrC of Vietnam 2015 [1]. As a result, upon identifying activities with criminal indicators, the obligation to pursue criminal cases falls to entities authorized to undertake criminal proceedings. However, in some situations, in the victim's best interests, the law allows the victim to choose whether to file a criminal complaint or not, and whether or not to settle the case.

The victim is a person who has directly experienced bodily, mental, or property harm, or an agency or organization that has suffered property or reputation damage as a result of, or as a result of, a crime (Article 62 of this Code). They have extensive powers under criminal procedural legislation, including the authority to urge prosecution in specific situations. Because of the obligation to uphold the concept of objectivity and comprehensiveness in case resolution, pursuing a case sometimes not only fails to accomplish its aim but also causes greater hurt and damage to the



patient. The victim's emotional states have an impact on their honor and reputation. As a result, lawmakers have implemented laws on prosecuting the case at the victim's request in order to provide advantageous circumstances for the offender to overcome the repercussions of his/her illegal conduct, so limiting the penalties of the crime. The sufferer may sustain undue injury. This material is also inherited from the CPrC Vietnam 2003 regulations and is now detailed in Article 155 of the CPrC Vietnam 2015:

“1. Criminal cases may only be pursued for offences described in Clause 1, Articles 134, 135, 136, 138, 139, 141, 143, 155, 156, and 226 of the Penal Code if the victim or the victim's representative is under the age of 18, mentally or physically handicapped, or dead.

2. If the person who sought prosecution withdraws his/her request, the case must be terminated, unless there are reasons to believe that the person has withdrawn the lawsuit request without his/her will did so owing to duress or coercion. Even if the individual who sought the prosecution withdraws his or her request, the investigative agency, the Procuracy, and the Court will continue to handle the matter.

3. A victim or victim's representative who withdraws a prosecution request has no right to resubmit it, unless the withdrawal is due to pressure or coercion.” Some factors to consider about prosecution at the victim's request are as follows:

First, let's talk about the sort of offense. The agency authorized to conduct processes may only prosecute the following sorts of offenses at the request of the victim, including the required ten offences: Clause 1 of Article 134: Intentionally injuring or endangering the health of others. Clause 1, Article 135: Intentionally injuring or endangering the health of others when in a condition of agitation. Clause 1, Article 136: Intentionally injuring or endangering the health of others beyond the scope of lawful defense. Clause 1 of Article 138: Intentionally injuring or endangering the health of others. Clause 1, Article 139: Unintentionally injuring or endangering the health of others owing to a breach of professional or administrative



norms. Article 141, Clause 1: Rape as a crime Article 143, Clause 1: Rape as a crime Article 155, Clause 1: Crime of humiliation of others Clause 1 of Article 156: Slander Clause 1 of Article 226: Infringement of industrial property rights is a crime.

Second, the victim or the victim's legal representative who is under the age of 18, has a mental or physical disability, or is deceased has the right to seek prosecution. In comparison to the CPrC 2003, the rules in the CPrC 2015 on the topic of having the right to seek the prosecution of the case in the event of prosecution at the request of the victim increase the scope of the issue. Aside from the victim, the legal representative of the aforementioned disadvantaged individuals has the right to submit a request. However, in addition to Article 155 of the CPrC 2015, the victim's legal representative has the ability to seek prosecution if the victim dies. This displays the humanity of legal requirements in ensuring the victims' maximal rights and interests, and is compatible with relevant legal measures such as restrictions on in the Civil Code 2015 [2].

The third instance is the withdrawal of the prosecution request. Clause 2, Article 155 of the CPrC 2015 stipulates that “In case the person who requested the prosecution withdraws his/her request, the case must be stopped, unless there are grounds to determine that the person who requested the withdrawal of the prosecution request is against his will. their case owing to duress or coercion, despite the person who sought the prosecution withdraws the request, the investigative agency, the procuracies and the court must continue to perform proceedings for the case”. Even during the appeal court hearing, the victim's plea for prosecution is not limited by this rule. Because clause 2, Article 105 of the CPrC 2003 states that the case is only suspended if the victim withdraws his request before the opening of the first-instance court hearing, this is a new point of the CPrC 2015 about withdrawing the petition to prosecute at the request of the victim [3, c.89]. As a result, the CPrC 2015 does not restrict the period for withdrawing the victim's petition to prosecute in order to respect the victim's desire and establish circumstances for the offender to overcome



the consequences, so limiting the future cause. The victim may suffer unneeded loss, spiritual loss, or loss of dignity.

Furthermore, the rule states that “the victim or the victim's representative who has withdrawn the lawsuit request has no right to seek it again, save in cases of withdrawal owing to compulsion or coercion” (Clause 3, Article 155 of the CPrC 2015). The rules of the CPrC 2015 are appropriate since the right to withdraw the request for prosecution applies to both the victim and their representation. Legislative strategy. At the same time, avoid squandering societal resources on the case.

2. Practical implementation of the Criminal Procedure Code's provisions on victim-initiated prosecution

It is clear that the provisions of the CPrC 2015 have made many more progressive modifications than the provisions of the CPrC 2003 [4]; these laws have partially satisfied the criteria of practice in the event of prosecution. at the desire of the victim. However, the actual use of this legislation provision has shown several flaws and issues, notably as follows:

To begin, there are restrictions governing the substance of the request to pursue a criminal matter. It is required to characterize the request's substance as the request to prosecute a criminal case, that is, the request to treat the case with criminal signs in accordance with the rules of the Criminal Procedure Law. In many circumstances, the victim or the victim's legal representative has a request, but it is merely a claim for compensation for property damage, health, honor, dignity, or the owner's desire. The opposite party may be required to apologize,... In some circumstances, a request is made to the investigating agency, but the application just states the facts and instructs the investigating agency to handle it in line with the law, such as: As a result, the request's substance is unclear, many instances are tough, and the authorities have difficulties in resolving the case [5]. Furthermore, there are circumstances when the victim's prosecution request given to the investigating agency includes information about the case with criminal indicators (criminal sources), resulting in the request prosecution becoming a criminal complaint as well. It is one of the foundations for



spotting indicators of wrongdoing and is utilized to prosecute criminal cases. In this instance, the agency in charge of the procedures should rapidly evaluate and verify whether or not there are indicators of crime in order to provide legal procedural conclusions (Decision to prosecute the case or decide not to prosecute the case). criminal charges).

Second, the rule requiring the withdrawal of the prosecution request. Clause 2, Article 155 of the CPrC 2015 “In case the person who requested the prosecution withdraws his/her request, the case must be discontinued, unless there are reasons to conclude that the person who has withdrawn the lawsuit petition against his/her will. Despite the fact that the person who sought the prosecution withdraws the request owing to duress or coercion, the investigative agency, the procuracies, and the court should continue to perform proceedings for the case.” Thus, the legislation states that if the petitioner withdraws the request, the case shall be terminated, unless the petitioner withdraws the request against their will owing to duress or coercion. However, the law makes no provision for being misled, intimidated, or otherwise abused. In fact, there have been cases where the victim requested that the case be prosecuted, the investigating agency opened a criminal case (identified by criminal signs), and the subject (defendant) committed to "adequate" compensation for the victim and his/her family; the victim then withdrew his request for prosecution. However, once the inquiry was halted, the subject did not reimburse the victim as agreed. The victim cannot go to the investigative agency at this time to seek a prosecution since Clause 3, Article 155 of the CPrC 2015 states that a victim who withdraws a request will not be allowed to request it again, save in circumstances of compulsion or coercion (not in any case prescribed by law). As a result, more precise reasons why the victim withdraws the request against their will must be specified.

Third, the motivation necessitates prosecution. The practical application of the law demonstrates that, in many cases, victims or victims' legal representatives make prosecution requests with impure motives, lack of transparency, for personal interests, and with no intention of reclaiming the public reason and dealing with



criminal acts in accordance with the provisions of law. In certain circumstances, the victim used the investigating agency and legal measures to exert pressure on the perpetrator of the crime (mainly to demand compensation for damage). He did not cooperate with the investigative agency's demands to contribute to the case's settlement after obtaining the benefits, despite abandoning the request for prosecution [6].

Fourth, about the format of the request for prosecution. Until date, there have been no precise requirements in the criminal procedural legislation regarding the method of seeking prosecution. This is a vital document of legal significance, particularly in circumstances when the victim is the only one charged. The competent authorities currently conduct legal proceedings solely on the basis of Joint Circular No. 04/2018/TTLT-VKSNDTC-BCA-BQP dated October 19, 2018 on regulations on coordination between investigating agencies and The Procuracy in the implementation of a number of provisions of the CPrC 2015. As a result, Clause 5, Article 7 of the Joint Circular states: “In case of prosecuting a criminal case at the request of the victim, the request for prosecution of the victim or the victim's representative must show in writing with their signature or fingerprints; In case the victim or the victim's representative comes directly to present, the investigating agency or the Procuracy must make a record clearly stating the contents of the prosecution request for the victim or the victim's representative comes directly to present, the investigating agency or The Procuracy's minutes must be promptly forwarded to the investigative agency for consideration of the criminal case's prosecution and inclusion in the case file”. Thus, in the Circular, the request is represented in writing with a signature (pointing point) or is provided directly to the investigative agency or procuracy. In fact, there are cases where victims send audio files to request prosecution, make phone calls to competent authorities (when they consider that sending documents or going directly to the headquarters of competent agencies can save their lives, health, etc.), send by fax, foreigners request prosecution, and victims are sent via electronic mail (email) or network applications



in the modern era. What is the current order and method for 4.0 technology? The legislation has not yet addressed these challenges.

Fifth, after a decision to prosecute has been made, implement the law. In reality, there is a situation when the victim asks that the investigating agency pursue a criminal case for conduct involving several subjects who commit the crime (the case with accomplices), and there is an application for exemption from accountability during the victim's inquiry. One defendant in the instance faces criminal charges. The investigating agency has decided to drop the prosecution request against the accused and pause the investigation of this defendant while continuing to investigate the other defendants [7, c.112]. Such an investigation agency's decision is contrary to the requirements of the legislation for prosecution at the victim's request. It should be noted that, under the provisions of the CPrC 2015, the victim is only entitled to request the prosecution of the case, that is, to request the settlement of a case according to the criminal procedure, but the victim does not have the right to request the prosecution or non-prosecution of each subject of the crime (the accused). After the matter has been prosecuted and investigated, the procedure-conducting agency will resolve it in accordance with the order and processes provided by law, rather than relying on the accused's subjective viewpoints. In line with criminal process legislation, relevant agencies.

3. Solutions to increase the efficiency with which the Criminal Procedure Code's rules on prosecution at the victim's request are applied

Based on an examination of legislative requirements as well as the actual implementation of rules on prosecution at the victim's request, the author suggests the following suggestions to help improve the efficiency and quality of this content in the near future, specifically:

To begin, it is required to continue to augment and complete the CPrC 2015 provisions relevant to the form of the victim's request, such as establishing that the victim or his representative may seek prosecution. Supplementing the legal mechanism in case the victim has submitted a request to prosecute the case to a



competent agency but fails to comply with the request of the competent procedural authority, such as going to an injury examination, soliciting expertise... in order to properly settle the case, or the competent procedural agency has grounds to deem that the victim's request motive is incorrect. The author recommends that in such instances, the prosecution may cancel the victim's or his or her legal representative's request for prosecution, or the prosecution may continue even when the victim has withdrawn the petition for prosecution or coercion. Execute decisions and proposals of competent pre-procedure agencies in the service of proper case resolution.

Second, for agencies authorized to conduct procedures, particularly investigative agencies, investigators must be well informed of the rules of criminal procedure legislation governing prosecution at the request of the court. Know what contents the victim is allowed to seek, the extent of the request, and the authority of the agency competent to conduct the processes to handle requests. Furthermore, police on criminal duty must have the attitude and competence to handle victims' requests in conformity with the law. The application of the law from the time before the prosecution to the time the decision to prosecute is issued, as well as the pre-investigation, must be in accordance with the provisions of the Law. Forms can be organized, such as seminars for officers working on investigation and criminal duty to exchange experiences, legal training, and so on.

Third, more legal propaganda is needed to help the majority of people comprehend and appreciate the provisions of the law in general, particularly the CPPrC 2015 in its many forms and contents. In terms of format, it might be via neighborhood group meetings, cell activities, law learning competitions,... or directly by regional police officers to disseminate through professional management. The right to seek prosecution in instances authorized by law in order to enable individuals have an accurate and complete understanding of their rights and duties. Furthermore, while asking prosecution, it is required to establish the substance of the request as well as the scope in line with the norms of legislation [8, c.73].



All of the aforementioned are suggestions made by the author with the goal of facilitating the rule of law, protecting the rights and interests of victims, and facilitating proceedings against violations of this regulation by competent authorities upon the request of victims.

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