

An Analysis of the Victim Participation System in the International Criminal Court

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ABSTRACT

The International Criminal Court (ICC) has set a precedent for the participation of victims in criminal proceedings by establishing a system of participation of victims in criminal proceedings, which is regulated by the Rome Statute of the International Criminal Court and the rules of procedure and evidence, and the creation is a landmark. This paper studies and analyzes the system of victim's participation in litigation, defines the scope of application of victim, and clarifies the procedure way of victim's participation in litigation. The significance of the victim's participation in litigation is evaluated from the perspective of human rights protection, the improvement of the International Criminal Law System and the promotion of the realization of human justice as a whole. The author reflects on the system of victim's participation in litigation, and summarizes the design of participation procedure, the functions and powers of prosecutors and the related issues of litigation agents.

Keywords: *International Criminal Court, Rome Statute, Participation in proceedings, Victims.*

1. INTRODUCTION

The victim participation system is established by the International Criminal Court in accordance with the "Rome Statute" and the "Rules of Procedure and Evidence". The victim participation system plays a landmark role in the exploration and development of restorative justice in international criminal law. Through the victim participation system, the victims, as the victim of the case, are no longer attached to the criminal proceedings as a passive witness, nor only for the purpose of obtaining limited compensation, but participate in the proceedings as a more positive, active and independent victim, and take the participation itself as a way to obtain compensation. However, the victim participation system of the International Criminal Court is still in the development stage, and there are still certain practical difficulties and application difficulties. The emergence of a new system is bound to have a certain impact on the traditional litigation procedure. It is necessary to study and explore the victim participation system of the International Criminal Court, and to explore the defects and deficiencies of the system while studying the significance of the establishment of the system.

2. OVERVIEW OF THE VICTIM PARTICIPATION SYSTEM

2.1 Definition of the Victim

As the main body of the victim participation system of the International Criminal Court, to explore the victim participation system, first of all, it is necessary to define the victim. The applicant of the case cannot naturally become the victim of the case. The victim needs to meet some requirements. Defining the subject of the victim is the most critical issue in the study of the victim participation system. There are certain differences and conflicts in different international documents and different chambers of the International Criminal Court on the definition of victims of the International Criminal Court. There are some differences in the definition of victims in Article 2 of the "Rules of Procedure and Evidence" (hereinafter referred to as the "Rules") and the 1985 "Declaration of Basic Principles", namely, "the person accused of committing crimes within the jurisdiction of the court" and "as appropriate, the immediate family members of the direct victims or their dependants and those who have intervened to assist the victims in the suffering or to prevent the victims from

suffering and suffering damage." The scope of victims has been expanded in the "Declaration of Basic Principles", but the extension scope of the expansion is not clear, and the resolution lacks binding force compared with the "Rules", so the definition has not been universally recognized. The scope of victims is not clearly defined in the "Rome Statute". In relevant judicial practice, the International Criminal Court still takes Article 85 of the "Rules" made by the Court as the guiding rule, and is guided by the "Basic Principles and Guidelines".

Article 85 of the "Rules of Procedure and Evidence" stipulates: "For the purposes of the Statute and the Rules of Procedure and Evidence:

- "Victims" means natural persons who are victims of any crime within the jurisdiction of the Court;
- Victims may include organizations or institutions whose property is used exclusively for religious, educational, artistic, scientific or charitable purposes, and whose historical monuments, hospitals and other places and objects used for humanitarian purposes are directly damaged."¹

It can be seen from Article 85 of the "Rules" that the scope of the victim's identity includes natural persons and legal persons. In judicial practice, international crimes infringe not only the rights and interests of individual natural persons, but also many institutions and legal persons. Such provisions expand the scope of victims and highlight the comprehensiveness and universality of the protection of the International Criminal Court. Not only that, the scope of the individual victim has also expanded from the victim who was directly injured by the previous crime to his relatives, which more reflects the protection of human rights and humanitarian spirit. At the same time, a qualified victim of the International Criminal Court must meet the following conditions. The International Criminal Court must have jurisdiction over the cases involved by the victims. First of all, the International Criminal Court should have jurisdiction. The place where the case occurred or the country where the defendant is located is a party to the "Rome Statute". Moreover, the State party has not exercised jurisdiction over this case, and the crimes charged by the victims should fall within the scope of crimes stipulated in the "Rome Statute". At the same time, the International Criminal Court

only exercises jurisdiction over the cases that occurred after its establishment, which requires that after September 2002, the victims involved in the cases, whether the crimes under the jurisdiction of the International Criminal Court are required to be crimes that occurred after the accession of the States parties, but whether the cases need to occur after the accession of the States parties to the "Rome Statute".

2.2 Procedure for Victim Participation System

The so-called victim participation in the proceedings refers to the right of the victim to participate in the proceedings of the International Criminal Court as a participant in the proceedings in accordance with the "Rome Statute" and the "Rules of Procedure and Evidence". The participation of the victim in the proceedings is different from the participation of the victim in the proceedings in the capacity of a witness or plaintiff or in accordance with the provisions of the law. The "Rome Statute", the "Procedure and Evidence" and the relevant documents of the International Criminal Court stipulate the conditions and ways for victims to participate in the proceedings. Specifically, the ways for victims to participate in the proceedings correspond to different procedures according to different circumstances. In some cases, victims can definitely participate in the proceedings. In some cases, victims can only participate in the proceedings by applying to the International Criminal Court. In some special cases, the victim will also be invited by the court to participate.

2.2.1 Clearly Defined Procedures for Victim Participation

In article 15, paragraph 3, of the "Rome Statute", it is clear that the victim has the right to participate in the proceedings when the prosecutor requests the Pre-Trial Chamber to authorize the investigation. With the authorization of the Pre-Trial Chamber, in addition to the States parties to the "Rome Statute" and the Security Council can submit the criminal situation of the case to the International Criminal Court within the jurisdiction of the Court, the prosecutor also has the right to investigate by himself. In the provision of self-inspection by the prosecutor, the victim has space to participate in the proceedings. The "Rome Statute" provides in article 15, paragraph 3, that "if the prosecutor believes that there is a reasonable basis for conducting the investigation, he shall request the Pre-Trial

1. Rules of Procedure and Evidence, Article 85

Chamber to authorize the investigation and attach any auxiliary materials collected. The victim may make a statement to the Pre-Trial Chamber in accordance with the 'Rules of Procedure and Evidence'.² This provision provides a legal basis for victims to participate in the investigation procedure of the Prosecutor's request for the Pre-Trial Chamber. From a practical point of view, the facts of the case and the suspect are not clear when the case may still involve the jurisdiction of the court. Because of the prosecutor's right to apply to the pre-trial court for self-inspection, a large part of the source of information obtained by the prosecutor is provided by the victim. If the victim participates in the procedure of the prosecutor's self-inspection and makes a statement in the court, listening to the victim's opinions and reflecting the victim's demands will be more conducive to the promotion of the case and the identification of the facts, and will achieve procedural justice while meeting the substantive justice.

In addition to article 15, paragraph 3, article 19, paragraph 3, of the "Rome Statute" also provides for the participation of victims in the proceedings. According to the provisions of the Rome Statute, victims have the right to participate in the relevant issues concerning the jurisdiction of the case or whether the court accepts the case. After the prosecutor submits the investigation results, the court confirms whether it has the corresponding jurisdiction or whether it is accepted. Besides the national victims with jurisdiction, the court has the right to raise objections to the confirmation of jurisdiction and acceptance of the court. With regard to the result of the objection raised by the jurisdiction or admissibility, the Registrar of the Court will inform the corresponding victims or their legal representatives of the result when initiating the procedure on the jurisdiction or admissibility, and the victims have the right to submit their opinions to the court.³

2.2.2 *Litigation in Which Victims Can Apply for Participation*

Article 68, paragraph 3, of the "Rome Statute" provides the legal basis for victims to participate in the proceedings. Article 68, paragraph 3, stipulates that the court should provide an opportunity for victims to put forward opinions and concerns for consideration at the appropriate stage of the

proceedings when their personal interests are damaged.⁴ This represents the importance that the court attaches to the rights and interests of victims. In order to clarify the procedures for victims to participate in the proceedings, it is necessary to combine the "Rome Statute" and the "Rules of Procedure and Evidence". The provisions of the "Rules of Procedure and Evidence" make up for the lack of the provisions of the "Rome Statute" on the specific participation procedures of victims, and specify the procedures that victims can apply to participate in. The application of the "Rome Statute" needs to be supplemented by the "Rules of Procedure and Evidence". In the provisions of article 53 of the "Rome Statute", the prosecutor should take into account the seriousness of the crime and the interests of the victim when deciding whether to start the investigation, whether these factors still have substantial reasons to believe that the investigation is not conducive to the realization of justice, and whether the prosecutor should take into account the interests of the victim to judge whether there is sufficient basis for prosecution after conducting the investigation. However, this only refers to the victim, and does not involve the victim in the process of the prosecutor's review decision. However, paragraph 2 of Article 92 of the "Rules" stipulates that "in order to enable the victim to apply for participation in the proceedings in accordance with Article 89 of the 'Rules'", the victim prosecutor shall be informed of the decision not to initiate the investigation.⁵ It provides provisions and logical basis for the victim to participate in this procedure, indicating that the interests of the victim are directly related to the procedure that the prosecutor decides not to investigate or not to prosecute on the grounds that it is not conducive to the realization of justice, and reflects the substantive participation of the victim.

3. THE SIGNIFICANCE OF VICTIM'S PARTICIPATION IN LITIGATION

3.1 *Respect and Protection of Human Rights*

The victim participation system is the result of the continuous development of human rights in the international community. By examining and analyzing every article related to the victim

2. Rome Statute, Article 15, paragraph 3

3. Rome Statute, Article 19, paragraph 3

4. Rome Statute, Article 68, paragraph 3

5. 5 Rules of Procedure and Evidence, Article 92, paragraph 2

participation system, people can see the pursuit and protection of human rights behind the victim participation system of the International Criminal Court. The active action of the original public authority is sufficient to achieve the purpose of punishing crimes and alerting potential offenders. The International Criminal Court's litigation designs the system of victim participation, and the allocation of corresponding rights is essentially to respect and protect the interests of victims. It can be achieved by simply allowing the litigation process to be realized by obtaining the due criminal damage results for the individuals who should bear the adverse consequences. To attract the victims to participate in the litigation process is to pursue or highlight the deeper respect. It is to pursue the ultimate goal of the changes and struggles of human legal thoughts and systems and the operation mechanism of the multi-pattern legal system, and to return to the human itself.

3.2 Promoting the Improvement and Development of the International Legal System

As a part of the framework of criminal procedure system, the victim system of the International Criminal Court has the same value pursuit as criminal procedure, that is, to respect and protect human rights. Law is the product of human creation in the process of the development of human society. Since the existence of society and law, the judgment of whether it is the rule of good law, whether from an abstract or a specific dimension, cannot lack the measurement of human interests. The manifestation of the continuous development of human rights protection in the field of international criminal law is the continuous improvement of the status of international human rights law in the international law system and the improvement of the law itself. The improvement of the awareness of human rights protection has changed the original concept of criminal law. The construction and improvement of the victim's litigation participation system is the most favorable proof of this change. In the past, the criminal law concept focused on combating crime and achieving the justice of the case through punishment. In the past, the criminal law pursued prevention and punishment. Under this concept, the design of the system focused more on the people who were punished by criminal law, which was a measure of punishment and protection for them. Such an unbalanced pursuit would inevitably lead to the sacrifice of human rights. The design and operation

of the victim participation system is not only a simple increase of the victim's right to participate and speak in the process of international litigation. The victim participation system makes the provisions on the protection of the victim's rights recorded in the international human rights documents of various international laws clear, implemented and improved. From a more macro perspective, it is to pay real attention to the interests of the victims themselves, to recognize the value of human beings themselves, and to affirm and respect the value of human beings themselves. The significance of the system of victim's participation in litigation cannot be simply defined as the innovation of the International Criminal Court system. The real significance of its system is related to whether the pursuit of the whole international law deviates, whether it can shift from the pursuit of abstract concepts to the attention of specific people and society, whether it can return to the original purpose of law creation and the ultimate goal of law formulation and implementation, and realize the pursuit of human interests. At the same time, the victim litigation participation system has made the public have a deeper understanding and recognition of trial justice, and promoted the maintenance of the international legal order.

3.3 Promoting the Pursuit and Realization of Human Justice as a Whole

The victim participation system established by the International Criminal Court is to build a platform for the international community to have an equal and fair dialogue and communication opportunity. On the basis of the construction of international law and relevant systems of the International Criminal Court, through a relatively impartial international judicial body, more and more subjects can participate in the handling of matters related to the overall interests of the international community in one country or even in many countries by increasing the right to speak. Human beings have never been smooth in the pursuit of justice, but the creation of every system like the victim's participation in litigation is a highlight of the hard exploration and pursuit of justice by all mankind, and is the result of efforts to protect human interests and achieve fairness and justice around the world.

The establishment of the victim participation system by the International Criminal Court has promoted the rule of law and democratization of the international community, promoted the realization

of the pursuit of justice from the perspective of the world, and provided new ideas and practices for the protection of the rights of natural persons in international issues beyond the political solution on the basis of national sovereignty. The International Criminal Court has realized the legalization of the rights of natural persons through the establishment of the victim litigation participation system, effectively safeguarded the interests of human rights by means of positive law, and promoted the enhancement of the voice and status of individuals in the public power around the world, behind which is the progress of the overall democratization under the international law system.

4. REFLECTIONS ON THE SYSTEM OF VICTIM'S PARTICIPATION IN LITIGATION

As an innovation in international criminal proceedings, the system of victim participation in litigation will inevitably have a certain impact on the original international criminal pattern and specific proceedings. It is undeniable that the system of victim participation in litigation itself has brought positive significance to the criminal procedure system and the protection of human rights in the international community, but it is also necessary to maintain continuous reflection and improvement on a new system for the sake of deep-seated goals and the realization of the value of fairness and justice for mankind.

4.1 Deficiencies in the Procedure of the Victim Participation System

According to the provisions of relevant legal documents and relevant judicial practice cases, the main way for victims to participate in international criminal proceedings is the way of application. The way of application itself is inevitable to go through the process of passing the opinions of the prosecutor and the defense and submitting to the court for decision by the International Criminal Court. In this process, the victims need to spend a certain amount of time and cost. The criminal cases involved in the International Criminal Court have a certain particularity and universality, and cannot be treated as ordinary domestic criminal cases. The number of victims involved in the criminal cases of the International Criminal Court is large, even from different countries, which increases the complexity of the cases, increases the corresponding processing time of the courts, prosecutors and defense lawyers, which will lead to longer litigation time. As the

injured party, the time cost of the delayed litigation period is also an unfair manifestation for the defendant. In addition, there are still some problems in the allocation of resources of the International Criminal Court. The cost of human resources and energy of the International Criminal Court is limited, and it is difficult to achieve a good balance between the processing of various application procedures and the processing of cases under trial, which will inevitably lead to the delay of certain procedures and damage the interests of a party. In the practice of the International Criminal Court, in the face of a large number of cases, in order to protect the interests of victims, and to avoid the problem of obstacles to the application of victims, the Pre-Trial Chamber shortened the application obstacles by setting the deadline for submission. However, this has also brought adverse effects. The International Criminal Court has been busy processing a large number of applications and neglected the investigation and daily trial of the facts of the case, which has led to the failure of the case to advance smoothly on time, and the problem of the blockage of the victim's participation in the proceedings has not been resolved.

4.2 The Impact of the Victim Participation System on the Prosecutor and the Defendant

From the perspective of the procedure of the victim participating in the proceedings, the participation of the victim is closely related to the exercise of the procurator's authority, and the participation of the victim will inevitably have certain interference effects on the procurator at different stages of the proceedings. Prosecutors have certain efficiency requirements when exercising their functions and powers. The participation of victims in various procedures not only provides fresh information and clues for prosecutors to conduct investigations and prosecutions, but also hampers the exercise of procurators' functions and powers due to the change of victims' participation in litigation. The number of victims involved in international criminal cases is often large and the background is complex. The uncertainty of the case increases. The complexity of the situation increases the difficulty of the exercise of the prosecutor's powers. The participation of the victims may bring new facts to the trial of the case, which will have an impact on the trial direction of the case. The content of the prosecutor's proceedings will also change accordingly. For the defendant, the victim participation system is to

identify the facts of the case and maintain fairness and justice, and will not cause damage to the defendant's right to a fair trial. However, as the victim participates in the case and provides new facts, the defendant will correspondingly increase the pressure and burden of preparing for defense activities. In the face of public power, whether the defendant who committed the crime or the victim who suffered the damage of the crime, the personal power is insignificant in front of the huge public power, and the rights and interests of any individual can not be ignored. The victim is not the judge or the accuser, but because his interest damage comes from the defendant, a series of behaviors of the victim participating in the proceedings are directed at the defendant. The participation of the victim in the proceedings will bring about an increase in uncertainties and lead to the extension of the litigation cycle, which will not only bring a burden on the exercise of the prosecutor's authority, but also have a certain impact on the defendant, resulting in the extension of the defendant's detention sentence in disguised form, and causing certain damage to the interests of the defendant.

4.3 The Corresponding Legal Agent System Has Defects

In the judicial practice of international criminal cases, due to the relatively destructive nature of the case, the number of victims of the case is large. Although each victim has the right to fully express their opinions on the factual and legal issues related to themselves to participate in the case, due to the large number of victims, it will be more appropriate for them to express their opinions by authorizing legal representatives to participate in the litigation in a collective way. According to the provisions of the "Rome Statute" and the "Rules of Procedure and Evidence", victims can freely choose legal representatives, and the International Criminal Court will not interfere in any way. In the actual case handling of the International Criminal Court, the victims of most cases are replaced by their lawyers to exercise the right to express their opinions and concerns. The provisions of paragraphs 1 and 2 of Article 90 of the "Rules of Procedure and Evidence" provide the legal basis and standard methods for victims to participate in the proceedings of the International Criminal Court by authorizing joint legal representatives. It is undeniable that the existence of the legal representative system has certain significance. The legal representative system can improve the efficiency of litigation, prevent multiple victims

from repeatedly expressing similar views and opinions, avoid the injustice caused by the different proportion of lawyers brought by the defense team, coordinate conflicts, and promote the effective realization of procedural fairness. However, the rights and interests of each individual are not exactly the same, and the rights and interests of each individual cannot be ignored. Behind the voice of the legal representative on behalf of hundreds of thousands of people is bound to represent the result of the neglect of individual appeals. Under the legal agent system, hundreds of thousands of victims are unified for the same lawsuit, and the victim is reduced to a broad and abstract concept. If the appeal of the agent is not the complete expression of the victim's will, the victim's participation is not complete. It is only the participation of part of the will. It cannot fully represent the individual's will to participate, and it cannot fully protect the individual's interests. This is contrary to the original intention of the victim's litigation participation system to protect the victim's rights and interests. The conflict and contradiction between the victim's rights and interests damage and the litigation congestion phenomenon is inevitable. The design of the existing victim participation system has not yet introduced a reasonable plan to solve the contradiction, and the victim participation system needs to be improved by balancing interests.

5. CONCLUSION

As a pioneering work of the International Criminal Court, the system of victim participation in litigation is a manifestation of social progress and the improvement of the concept of human rule of law, which is conducive to the maintenance and promotion of human rights and the realization of fairness and justice around the world. The world situation is changing constantly. Contradictions generally exist in international criminal justice practice. No system is perfect. Facing the contradiction between the interests of different proceedings and the different demands of a large number of victims, while affirming the positive significance of the victim's obedience and litigation participation system, it's needed to face up to the existing defects and problems of the system. The improvement of the system is a hard and slow process. It needs to be constantly explored in practice to find a way to coordinate the interests of all parties while maintaining fairness and justice to the maximum extent.

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