

The Connotation of Criminal Procedure Contract

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Abstract

With the development of rule of law theory and judicial practice, contract theory has penetrated from private law to public law. As one manifestation of public law contract, criminal procedure contract is specific, moderate and exclusive. It has a profound theoretical foundation, such as the thought of criminal integration, theory of procedural subject and theory of criminal litigation right, etc. On the basis of will autonomy, the criminal procedure contract innovates the way of resolving criminal disputes, balances the interests of all parties, and guarantees the subject status of the parties.

Keywords

Criminal Procedure Contract, Public Law Contract, Will Autonomy

1. Introduction

A contract is a consensus between the parties, which originally existed in the form of a private law contract. Most of the early private law contracts belonged to civil contracts, and they also began to transform into commercial contracts. Later, civil contracts also expanded their scope, such as marriage contracts. Compared with civil contracts, commercial contracts are unique. On the one hand, commercial contracts share responsibilities among different subjects through their behaviors, thereby reducing various risks in commercial activities and creating a safer trading environment. On the other hand, commercial contracts provide the new cooperation mode for commercial subject, which promotes the benign development of the economy while giving consideration to the interests of both parties.

Public law contract refers to a contract which is to produce effects in public law (Zhang, 2008) that is, the core of public law contract is to regulate the legal relationship in public law. The formal requirement of the public law contract for

the parties is that one party must be a public subject. In addition, the public law contract is also limited in essence, that is, there must be a consensus on the occurrence, change or elimination of legal relations in public law, which is the core of the public law contract. The reason why the public law regulates such contract is that its substantive and formal requirements vividly reflect the public law factors in public law contracts, making the definition of public law contract and private law contract clearer and more specific.

There is interrelation and difference between public law contract and private law contract. Both public law contract and private law contract fall within the ambit of contract, and are the manifestation for both parties to dispose of rights and reach consensus. Meanwhile, when public law contract cannot be regulated, private law contract can be invoked to supplement and improve it to the extent permitted by law. In this respect, they are similar and related. However, in terms of subject, the public law contract requires that the subject of public power must be one party, while there is no such requirement for private law contract. Any subject can reach a private law contract on the basis of will autonomy.

The criminal procedure contract refers to a criminal procedure system which the prosecutor and defender, based on consensus and under the supervision and protection of the public authority, reach a criminal procedure contract with the victim on the disposition of criminal and civil rights, procedures related to litigation and related matters (Wu, 2016) and the judicial organ judges the criminal responsibility of the offender according to his attitude toward admission of guilt and expression of apology, and the specific circumstances of the case. Therefore, the criminal procedure contract has a certain legal binding force on the parties to the criminal procedure, and is the result for the contract subject to exercise the right of disposition in the substantive and procedural terms.

2. The Nature and Characteristics of Criminal Procedure Contract

1) The Nature of Criminal Procedure Contract

The criminal procedure contract is a public law contract. In the public law contract, both parties are a public authority and a citizen. The core of public law contract is the public law factors it contains, which is the fundamental difference from other contracts. The judicial organ also plays an important role in the criminal procedure contract, and the public authority is involved in the conclusion of the criminal procedure contract. Therefore, the criminal procedure contract is one manifestation of public law contract.

The criminal procedure contract is the combination of substantive law and procedural law. In the criminal procedure contract, the parties dispose of their substantive and procedural rights in order to reach a consensus, producing both the effect of substantive law and the effect of procedural law. The criminal procedure contract not only establishes the procedure and method of the contract, but also solves the problems of the application of the relevant substantive law

and the criminal responsibility of the offender. Therefore, the criminal procedure contract has a dual impact.

The criminal procedure contract is a criminal procedural act. It is generally believed that the criminal procedural act is an act conducted by the subject under the control of the will with the purpose of causing effects in the criminal procedure law (Xia, 2008). That is to say, if an act is to be defined as a criminal procedural act, it must contain both parties' consensus and the factors of criminal procedure law. The reason why the criminal procedure contract belongs to the criminal procedural act is that it has produced the dual impact of substantive law and procedural law. Meanwhile, the criminal procedure contract is a consensus reached by the parties based on the principle of will autonomy. In other words, the criminal procedure contract meets both the subject requirements and the effect requirements of criminal procedural act. In addition, the criminal procedure contract is a legal act conducted by the prosecutor and defender in the criminal proceeding, and the parties can reach a consensus at any stage of the criminal procedure.

2) The Characteristics of Criminal Procedure Contract

The effectiveness of contract is uncertain. Due to the public law factors in the criminal procedure contract, the state organs reasonably limit the contract content of the parties to avoid violating the law, and ensure that the entire activity process runs on the legal orbit. This is different from the private law contract. In the private law contract, both parties may reach a consensus through negotiation, which has legal effect without the intervention of the public authority. The uncertainty of the effectiveness of the criminal procedure contract is better reflected in the criminal victim forgiveness system. In the criminal victim forgiveness, once the victim makes a decision on forgiveness and reaches a substantive or procedural consensus with the defendant, the judicial organ must review the contract content and procedure of the parties to safeguard and protect the national and social interests, and repair the damaged criminal legal order.

The participation process is moderate. In the traditional criminal procedure, the state organ dominates the proceedings, and the exercise of its power is mandatory and unidirectional. There is no opportunity and way for negotiation between the parties, which is highly antagonistic. The parties have no right to negotiate on relevant issues, and no space to dispose of their own rights and interests. However, the criminal procedure contract has broken the limitation. The prosecutor and defender communicate and negotiate in a relatively peaceful way. The state organ allows the parties to compromise on substantive and procedural issues within the legal scope, and the exercise of public power has shown a certain degree of moderation as a whole.

The participant is exclusive. The criminal procedure contract, which occurs in the criminal procedural activities, is a special legal activity carried out by the public authority and its litigants to resolve criminal disputes. Generally speaking, the subjects of the criminal procedure contract can only be the prosecutor and defender who have an interest in the litigation outcome, and other subjects have

no right to participate in the conclusion of the contract. In contrast, the private law contract does not impose obvious restrictions and provisions on the parties, and only requires the parties to reach an agreement based on will autonomy, regardless of their qualifications. Therefore, the particularity of the criminal procedure contract lies in the specificity and exclusivity of the contract subject.

3. The Theoretical Cornerstone of Criminal Procedure Contract

1) Theoretical Basis of Criminal Procedure Contract

Principle of will autonomy. The will autonomy means that the subjects of legal relations have the right to conduct activities based on independent free will, without being forced and interfered by the state power and other parties. In the criminal procedure contract, the parties deal with substantive and procedural issues based on the principle of will autonomy. Although they will be restricted by public power to a certain extent, this does not affect free exercise of their rights. The parties resolve their disputes through consultation to fully protect their rights and interests. In addition, it also increases the experience of criminal procedure so that the parties convince and respect the state organs and criminal trials more.

Thought of criminal integration. The connotation of criminal integration is the reasonable internal structure of criminal law (internal coordination) and the restriction before and after the operation of criminal law (external coordination) (Chu & Yan, 2013). The criminal integration requires breaking through the boundaries of disciplines, integrating all disciplines, so as to solve criminal law problems and maximize the benefits and values of criminal law. The criminal procedure contract is a powerful practice of the thought of criminal integration. It absorbs the thought of criminal integration, and combines the thoughts and theories in private law with public law to break the situation of the absolute use of public power in criminal procedure, and develop the thought of solving criminal disputes.

Theory of interest balance. According to the theory of interest balance, the interests of a criminal suspect, a defendant and a victim in criminal procedure are strongly independent as a result of different claims. Therefore, the public authority should take measures to keep their interests in a relatively balanced state, and protect the rights and interests of the criminal suspect, the defendant and the victim equally, rather than safeguarding the interests of one party by harming the interests of the other party. The criminal procedure contract embodies the concept of cooperation and negotiation, and the diversified claims of the litigation subject can be balanced on this platform. In the criminal procedure contract, either interest subject can freely express its own claims and views, and can also listen to the claims of the other party. Therefore, the criminal procedure contract has realized the maximization of the overall interests.

2) The Criminal Law Theory Bases of Criminal Procedure Contract

Theory of procedural subject. According to the theory of procedural subject, the parties to criminal procedure have independent litigation status equal to the public authority in the sense of procedure. Meanwhile, the parties are allowed to take actions and make decisions on their own without violating the law. In the criminal procedure contract, criminal suspects and defendants have the right to dispose of their own litigation rights and choose procedural matters, which restricts the public power to a certain extent. In addition, the criminal procedure contract also endows the criminal suspects and defendants with the qualification of procedural subject, and thereby assumes the favorable or unfavorable litigation consequences caused by their own procedural acts, which not only guarantees substantive equality, but also promotes the realization of formal equality.

Theory of limited agency of public power. According to the theory of limited agency of public power, the agent of the victim is a public authority in criminal procedure, which exercises public power and accuses and punishes the offender according to the law, should consider the victim's intentions and ask for the victim's opinions, but cannot represent all claims of the victim. The criminal acts of criminal suspect and defendant not only destroy the national and social order, but also infringe upon the rights and interests of the victim. Although criminal acts are harmful to the whole society, the infringement upon the victim is most direct and original. Therefore, it is reasonable and legitimate for the parties to exercise certain private rights in the criminal procedure. The criminal procedure contract enables the parties to express their views and opinions on the case fully and freely, and to a certain extent, it changes the situation that the public authority interferes excessively with the parties' litigation rights. Therefore, the theory of limited agency of public power provides an important theoretical basis for criminal procedure contract.

Theory of criminal litigation right. The criminal litigation right is the right that the law endows social subjects with the right to request the judicial organ to protect their legitimate rights and interests through trial when their rights and interests are infringed or when they have disputes with others (Xu & Xie, 1992). In the theory of criminal litigation right, the parties have their own litigation rights independent of any rights. In addition, the theory also emphasizes the mutual checks and balances and equal status between the prosecutor and defender in criminal procedure, which makes the structure of criminal procedure an evolution from the traditional "dual structure" to the current "ternary structure", and improves the structure of rights and powers in criminal procedure. The criminal procedure contract makes it possible for the parties to realize their criminal litigation rights.

4. The Value of Criminal Procedure Contract

1) It is conducive to improving litigation benefit

Benefit refers to efficiency and the benefits arising therefrom (Liu, 2008). Litigation benefit means that the maximum benefit is obtained with the least litiga-

tion cost in the proceedings so that the proportion of litigation cost and benefit is controlled in a more scientific and reasonable range. Litigation resources are limited, so it is particularly important to handle the relationship between litigation costs and benefits in criminal proceedings. On the one hand, with the progress and development of society, criminal cases have proliferated, the crime rate has also been rising, and new-type crimes have emerged in endlessly. On the other hand, there is a shortage of litigation resources, and the country's investment in criminal procedure is relatively limited. Some cases in judicial practice cannot be accepted and concluded in time, and judicial staff are also swamped with the huge cases.

The criminal procedure contract speeds up the proceedings, reduces the waste of judicial resources, and also shortens the time that litigants are confined to litigation, thus greatly improving the litigation benefit. Firstly, in the criminal procedure contract, the parties can negotiate and communicate on the relevant issues in the litigation to reach a substantive or procedural consensus, reduce litigation links and speed up the pace of litigation. Secondly, the parties have obtained the subject status in the criminal procedure contract, their subjective will has been fully respected, the results of case handling have given consideration to the interests of all parties, and the execution process is moresmooth, thus reducing the cost of case execution. Finally, the criminal procedure contract reduces the litigation link, enabling the judicial organ to devote more energy and resources to the difficulties of the trial and the focus of the dispute between the parties, so as to speed up the pace of litigation and resolve criminal disputes accurately and efficiently.

2) It is conducive to enhancing the acceptability of the judgment results

In the process of resolution of criminal disputes, we should not only pay attention to whether the dispute resolution procedure is legitimate, but also emphasize the value of the judgment results. That is to say, the process of dispute resolution and the result of adjudication are interrelated and interdependent. We should not focus on one of them while ignoring the importance of the other. If the case has been tried but has not produced good litigation and social effects, and the parties do not agree with the judgment results, the previous dispute resolution process will lose its significance. The acceptability of the case results connects the process and the results so than the parties can eliminate some doubts, accept and respect the decisions made by the court from the heart, and make a fair evaluation of the trial results. At this point, the dispute was resolved in a real sense.

In the criminal procedure contract, the parties negotiate and communicate together, and reach consensus independently in a relatively peaceful and rational state. Litigants actively participate in dispute resolution, give full play to their subjective initiative, and personally experience the fairness and legitimacy of the proceedings. The victim expresses its true intention and foresees the final judgment result, so that he can accept the judgment made by the judicial organ on

the offender calmly. In addition, the criminal procedure contract also gives consideration to the interests of both the prosecutor and defender, and achieves a relative balance of interests so that the parties more easily accept the results of the judgment, and enhance the sense of identity of the results.

3) It is conducive to the realization of democracy in criminal procedure

There is different manifestation of democracy in different fields, and procedural democracy is the main manifestation in the proceedings. The procedural democracy means that the parties participate in the litigation equally and fairly through the proceedings, and no one shall have the privilege prohibited by law or control the proceedings. Therefore, we must adhere to procedural democracy in order to promote the value pursuit of safeguarding the due process. In order to realize the democracy of criminal proceedings, it is necessary to insist on the parties' involvement and participation in the case. The procedural democracy is realized in their participation in case handling, expression of litigation opinions and exercise of relevant rights. Therefore, judicial organs broaden the channels and ways for parties to participate in litigation, which is an important means of protecting the criminal procedural democracy.

The criminal procedure contract gives the parties opportunity to participate in the proceedings, so that they can really participate in the dispute resolution. Such spirit of will autonomy and subject equality is the best interpretation of procedural democracy. The subject status of the parties has been confirmed and respected in the formation of the criminal procedure contract, and the judicial organs have taken the protection of relevant rights as the focus of the trial, not just as the trial object and evidence collection tool. The participation of prosecutor and defender in the proceedings has a certain impact on the results of the judgment, and realizes democracy in the substantive sense and democracy in the procedural sense, and realizes the value of procedural democracy to the maximum extent. Meanwhile, it also effectively supervises and restricts the exercise of public power. Therefore, the criminal procedure contract contains the factor of procedural democracy.

5. Conclusion

The ultimate purpose of consultation between the parties in criminal procedure is to resolve criminal disputes. The criminal procedure contract has changed the flare-up of tension between the prosecutor and defender, and fully considered the true intention of the parties to make the procedure more flexible, and avoid some shortcomings of the traditional means of dispute resolution in criminal procedure. Meanwhile, it is also conducive to maintaining social order and state. Therefore, the criminal procedure contract provides a more diversified choice for dispute resolution, which is the result of innovation in dispute resolution. By exercising their criminal litigation rights, the parties reach a consensus on criminal procedure and deepen the concept of the standard of right, which is conducive to improving litigation efficiency and realizing judicial justice.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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