

VICTIM'S RIGHT TO DISCUSS THE DECISION OF NOT GOING TO TRIAL IN THE PRE-TRIAL STAGE OF THE PROCEDURE. THE CASE OF SPAIN, COLOMBIA AND USA.

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ABSTRACT

The faculties of the victims to discuss a decision of not going to trial, in the pre-trial phase of criminal procedures, from Spain, Colombia and the United States, are compared in this paper. To accomplish that goal, using a functional approach to comparative law, first, the concrete procedural phases to be compared are identified, and then, the faculties of the victims in these scenarios are described, using each criminal procedure structure and the concept of victim in each context as frameworks. Finally, comparison is executed identifying advantages and disadvantages of each model.

KEYWORDS

Criminal procedure, victims, victim's rights, preliminary hearing, comparative method.

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DERECHO DE LA VÍCTIMA PARA DISCUTIR LA DECISIÓN DE NO IR A JUICIO EN LA ETAPA ANTERIOR AL JUICIO DEL PROCEDIMIENTO. EL CASO DE ESPAÑA, COLOMBIA Y EE.UU.

RESUMEN

En este artículo se compara la forma en que, en los procedimientos penales de España, Colombia y Estados Unidos, se regula la facultad de las víctimas de controvertir la decisión de no proceder con la fase de juzgamiento, cuando se toma en la fase intermedia del proceso penal. Para tal fin, partiendo de una perspectiva funcional del derecho comparado, se identifican las fases procesales a comparar de cada ordenamiento, y se describen las facultades de las víctimas en dichos escenarios, teniendo como marco las estructuras del proceso penal y los conceptos de víctima de cada contexto. Finalmente, se concreta el ejercicio comparativo a partir de la reflexión sobre las ventajas y desventajas de cada modelo estudiado.

PALABRAS CLAVE

Procedimiento penal, víctimas, derechos de las víctimas, fase intermedia, método comparado.

DIREITO DAS VÍTIMAS PARA DELIBERAR SOBRE NÃO IR A JULGAMENTO NA FASE DE PRÉ-JULGAMENTO DO PROCEDIMENTO. O CASO DA ESPANHA, COLÔMBIA E EUA.

RESUMO

Neste artigo, uma comparação da maneira como em processos penais em Espanha, Colômbia e Estados Unidos são regulados o direito das vítimas

de contestar a decisão de não prosseguir com a fase do julgamento, quando tomado na fase intermediária do processo penal. Para este fim, a partir de uma perspectiva funcional do direito comparado, são identificadas as etapas processuais para comparar de cada sistema, tendo como um quadro as estruturas do processo penal e os conceitos de vítima em contexto. Finalmente, a análise comparativa é gerada a partir da reflexão sobre as vantagens e desvantagens de cada modelo estudado.

PALAVRAS-CHAVE

Processo penal, as vítimas, os direitos das vítimas, fase intermediária, método comparativo.

INTRODUCTION

Victims have become an important part of criminal law procedures worldwide. The attention usually concentrated in the indicted and his punishment now gives some space to the satisfaction of victim's rights and opens some place for their participation in the process.

However, their actuation is problematic because it goes against some classical criminal law dogmas, like the monopoly of the criminal action by the State and the respect of the adversarial system (the last one in common law tradition countries).

Reviewing how different countries have developed the integration of victims role in the criminal procedure is an important task to understand the real configuration of contemporary criminal systems and the changes that victim's participation has generated.

So, in this paper, the objective is to look at criminal procedure of different States, each one with unique characteristics, and use the comparative method to determine the level of participation that they allow for the victims.

Nevertheless, this task is too large for a short essay, in that order is required to clarify the limits of comparison.

The criminal procedural systems to be compared are the ones that contemporaneously are being used in Spain, USA and Colombia. That's because each of them has important differences in context and structure of the procedure itself that allow expecting interesting similarities and dissimilarities.

The specific procedural aspect to compare must also be delimited. Taking into consideration that the institutions of the different procedures are not strictly equal, it's required to use a functional approach to the comparative method to define if there's a functional equivalence between the institutions to compare, determining whether there's comparability or not.

De Vergottinni (2005) identifies two elements to review functional equivalence: the identity of interest between institutions, and the regulation of a modality of satisfaction for that interest.

Seeing that, it's been identified that in all selected criminal procedures, there's a common interest, after the initial investigation and before going to trial, in strictly defining if there's enough evidence to continue, clearing up which is the offense charged, and ensuring that the prosecuted knows and understands the charges against him. The modality of satisfaction of that interest, and specifically, the victim's participation in each specific scenario are going to be the object of comparison.

However, the importance of the surrounding environment for the comparison must not be forgotten. The object of comparison, in each country, is a part of the structure of the criminal system and of the law of the State in general. In that order, elements like criminal process structure and concept of victim are going to be necessarily reviewed during comparison.

In that order, the first part of this essay is going to describe the participation of victims in the criminal process of the selected countries, and then the

results are going to be compared looking to identify relevant similarities and dissimilarities.

1. VICTIM'S RIGHTS IN THE PRE-TRIAL STAGE OF THE PROCEDURE.

1.1 Victim's rights in Spain

1.1.1 Criminal Procedure Structure

The procedural criminal code of Spain is the *Real Decreto de 14 de septiembre de 1882* or *Ley de enjuiciamiento criminal* (hereafter *LEC*). Structurally, it develops a mixed system of procedure, because the investigation is conducted by a judge in an inquisitive way, but during trial accusatory principle must be observed. (López Barja, 2012).

This statute contains different procedural ways to prosecute a person, and develops an ordinary process and some special ones. Specifically, initiating in article 757, the statute develops *the abbreviated procedure*², which is used to prosecute cases for offenses with punishment of nine years of imprisonment or less. Given that it is the most used procedure of all, it is the one reviewed in this paper.

In general terms, after the reception of the *denuncia* or the *querrela*³, the investigation is initiated and directed by the *instructor judge*⁴⁵, who must develop all tasks required to recollect evidence and define if the offense was probably done by the prosecuted or not. During this moment of the procedure called *diligencias previas*, the judge may do a provisional

² In Spanish *Procedimiento Abreviado*.

³ The *denuncia* and the *querrela* are the means through which the criminal notice is presented to the instructor judge.

⁴ In Spanish *Juez Instructor*.

⁵ In the case of public and semipublic offences in some cases is developed a previous stage in the procedure that is called *diligencias informativas* and is conducted by the *Ministerio Fiscal*. This stage must end with a *denuncia* or *querrela* directed to the instructor judge or with the decision of dismissing the case. (GIMENO SENDRA, 2012: 347).

imputation through the requirement to the complained attaching him to the process, or through a civil measure against him (Gimeno Sendra, 2012). The instructor judge may even order the arrest of the prosecuted if requirements of article 503 are met.

When the instructor judge considers that the investigation is done, he decides if the case must continue and gives an order to proceed. This decision is taken as a definite imputation. On the other hand, if the case must be dismissed, the instructor judge gives an order of *sobreseimiento*⁶. (LEC, 1882, Art. 779).

If the order is to proceed, then the prosecutor⁷ and the *acusador particular*⁸ assume the prosecutors role, by which they have the chance to require the opening of the trial by the presentation of an *escrito de acusación*⁹, or to require the dismissal of the charges or *sobreseimiento* (LEC, 1882, Art. 789.1).

This is a relevant part of the procedure for the victims, because if the decision of not to proceed is executed, they don't get an adequate response to the alleged harm suffered. As a result, the victim's faculties in this scenario of Spanish procedure will be the object of study.

Once the request for opening the trial is accepted, this stage of the procedure, directed to define if the prosecuted is guilty or not guilty, is initiated, and trial is necessarily conducted by a different judge than the instructor judge. As this stage is not the object of study in this paper, its characteristics will not be delved into any further.

6 The *sobreseimiento* is the juridical figure through which the cases are dismissed in an early stage of the procedure in Spanish criminal procedure.

7 In Spain procedure the prosecutor is called *Ministerio Fiscal*

8 This concept could be translated as *Popular prosecutor*. The faculties of this participant of the process are described later in the article.

9 The *escrito de acusación* of Spanish criminal procedure is functionally equivalent to the indictment in US Procedure.

1.1.2 Concept of victim.

In 2015 the Congress approved a new statute with the *Ley 4/2015* of April 27 called *Estatuto de la victim del delito* (hereafter EVD)¹⁰. This is a complete compilation of all the victim's rights and guarantees in the criminal process. This statute is coherent with the Directive 2012/29/EU of the European Parliament and the Council of the European Union of 25 October 2012, which establishes minimum standards on the rights, support and protection of crime victims.

Both statutes make reference to the victim as a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offense. They also recognize the possibility of relatives to be considered victims when the direct victim has suffered death or disappearance as a direct result of a criminal offense. Spanish rule specifically dictates that other people, not contemplated in the last two cases, that suffered harm caused by a criminal offense must not be considered victims (EVD, 2015: Art. 2) (Directive 2012/29/EU, 2012: Art. 2 – 1).

So, it's clear that there's a different treatment of direct and indirect harm in this regulation, and that on most cases only direct harm gives a person the legal quality of victim.

1.1.3 Victim's rights on the procedural stage.

Coherently with Directive 2012/29/EU, the EVD develops a complete catalogue of victim's faculties during the criminal procedure, recognizing the main rights to information, protection, support, active participation, acknowledgment and adequate treatment. (EVD, Preámbulo: IV)

¹⁰ Crime's victim statute.

Specifically, Article 11 of Directive¹¹ 2012/29/EU mandate that Member States shall ensure that the victims have the right to a review of a decision not to prosecute. Also, in numeral 43 of the previous part of the document is established that this right applies to cases referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not the ones taken by courts. Additionally, it establishes that the review must be carried out by a different person or authority to that which made the original decision.

In accordance with that, article 12 of the EVD determines that the decision of *sobreseimiento* must be communicated to the victims, and that they have right to a review of the decision of not to proceed, without the necessity of any previous participation in the process. LEC, article 779.1, develops that right, and defines that victims have 20 days from the communication of the decision of not to proceed, to oppose to it.

Furthermore, article 14 of the EVD recognizes the victim right to receive a refund of the resources spent during the procedure when a conviction is declared after a successful review of a decision of not to proceed required by the victim, or after an *escrito de acusación* exclusively promoted by the victim.

So, Spanish legislation is consistent with the Directive 2012/29/EU, fulfilling its international obligation.

What's more, there's another procedural institution through which victim's faculties in the studied stage are widened, and it is the possibility of an *acusador particular*.

The institution of the *acusador particular* allows the offended with the crime to exercise the criminal action independently of the prosecutor's actuation. (Fernández Fustes, 2004, p. 38). It implies that, fulfilling certain

¹¹ Directives are mandatory for the Member States about the result that must be achieved, but the elections of the means to achieve the result are a discretionary choice of each State. (López Barja, 2012, p. 2426)

formal requirements and adequately represented by a lawyer, the offended as *acusador particular* is capable of presenting the *escrito de acusación* and exercising the accusatory role during the trial, even without the prosecutor's acknowledgement. (LEC, art. 783)

It implies that the victim, a category that is almost equivalent to the offended¹², once the decision of the instructor judge to proceed is taken, may take the defendant to trial by his own will.

In conclusion, in Spain, victims have extensive tools to act in criminal proceedings. Referring to the object of this paper, they are capable of opposing the decision of not going to trial, and they also can make the accusation and act in trial by their own means with no need to be represented by the prosecutor, by the use of the institution of the *acusador particular*.

1.2 Victim's rights in the US.

1.2.1 Criminal Procedure Structure

In the United States of North America, as a federal State, criminal jurisdiction is divided. So there is a federal jurisdiction and there is also a jurisdiction for each of the States of the Union. However, due to Constitution's sixth article supremacy clause, the criminal procedure of each state must be developed in conformity with the constitutional provisions. That and the cultural tradition of an oral, contentious and jury guaranteed procedure (Pound, 1966) make the different existing procedures pretty similar among them.

In the federal jurisdiction, the highest criminal law sources are the rights included in the Federal Constitution and their interpretation developed mainly by the Supreme Court of Justice. Below them, there is a written rule named Federal Rules of Criminal Procedure (hereafter FRCP), promulgated

¹² The difference between the victim and the offended is that offended is only the person that suffers direct harm with the offence, meanwhile according to art. 2 of EVD, it is possible to consider as victims the relatives of a person that has suffered death or disappearance. However scholars clarify that the two concepts are being used in the practice as equals (Fernández Fustes, 2004).

by the Supreme Court with faculties granted by Congress, that regulates the different stages of the procedure used in federal courts. The common law derived of relevant Supreme Court cases is also an important source of law, and finally, some law enforcement agencies promulgate written regulations that contain important rules for the criminal practice (Dressler and Michaels, 2010).

Scholars divide the criminal procedure in two basic moments, the investigatory and the adjudicatory stages (Dressler and Michaels, 2010).

The investigatory stage is mainly conducted by the police officers developing all investigative practices to define if there is an offense and who committed it (Dressler and Michaels, 2010).

The adjudicatory stage begins with a document prepared by the police or a prosecutor, presented to a magistrate judge called complaint that: *“is a written statement of the essential facts constituting the offense charged. It must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.”* (FRCP, Rule (3)).

If the magistrate finds out that there is probable cause, he must issue an arrest warrant or a summons looking for the prosecuted to appear for further proceedings (FRCP, Rule (4)).

Nevertheless, in some cases police can arrest a suspect when they consider that there is probable cause to sustain it, even without an arrest warrant. In that specific case, before any other proceeding, a probable cause hearing must be conducted for a judicial review of the arrest (Dressler and Michaels, 2010).

After the warrant or summons, the next step in the procedure is a hearing named the initial appearance (FRCP, rule 5), in which basically the prosecuted receives notice of the complaint against him, is informed of his rights, and is decided if he must be detained or released on his own recognizance or with the payment of a bail (Bergman and Berman Barret, 2003).

At this point there is a difference in the procedure that must be used to prosecute the most serious crimes and the one used to prosecute less serious crimes. In the first case the prosecuted is entitled to the right of a grand jury procedure, in the second case, depending of the specific procedure, a preliminary hearing can replace the grand jury procedure or both can be conducted. Anyway, at this point, the prosecutor must prove that there is sufficient evidence to support probable cause, if he succeeds, then the procedure goes on with an indictment (in grand jury cases) or with an information (in preliminary hearing cases). When is considered that there is not enough evidence to continue with the case, the defendant is dismissed and discharged (Dressler and Michaels, 2010).

This procedural stage has great relevancy for the victims of the crime, because it is a moment in which the case could be dismissed with no penalty to the offender and no satisfaction of victim harm, so victim's faculties at this specific procedural moment will be the object of study and of subsequent comparison.

The indictment or the information, accordingly with FRCP, rule 7 (c) (1), is a written statement of essential facts constituting the offense charged and must give the official or customary citation of the statute that the defendant is alleged to have violated. So, it is a document in which the case that the attorney wants to take to trial is defined.

When an indictment or information is filed, the next step in the US procedure is the arraignment hearing, in which the offenses charged are read and explained to the prosecuted. At this moment he can make a plea to the offenses charged.

After this, the procedure continues with the pretrial motions and the trial, stages, that not being part of the object of this study, are not going to be explained in this paper.

1.2.2 Concept of Victim

Traditionally, no relevant role was recognized to the victims of the crime in the US Criminal System. The reason for that may be the idea of fairness that in their legal culture implies the necessity to build the legal procedure as a fair fight between the prosecutor and the defendant (Fletcher, 1998).

However, the participation of the victims in the criminal procedure has become a topic of discussion and regulation in recent years. It is as well, that in 2004, US Congress enacted the Crime Victims Right's Act, looking to improve the victim's role in the Criminal Procedure and giving the victims specific rights (HOUSE OF REPRESENTATIVES, 2010: 1). This act is now integrated to the US CODE, so Title 18, Part II, Chapter 237, develops the Crime Victim's Rights in the US.

In this statute, rule (e) (2) (A) defines victim as: "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia".

To establish the real scope of the definition, there might be a hint in the case *In re de Henriquez, 2015*, filed in the Court of Appeals for the District of Columbia Circuit. In there, in a drug conspiracy case, the family members of a person allegedly murdered by the defendant, for a situation related with the drug conspiracy, require to be considered as victims during the procedure. The court defines the case considering that: "*The pertinent question under the statute is whether the murder bears the requisite connection to the overall conspiracy to manufacture and/or distribute cocaine knowing or intending that it would be unlawfully imported into the United States*".

This case implies the idea of a wide interpretation of the statute allowing victims to be acknowledged in the proceedings.

1.2.3 Victim's rights in the procedural stage

US Code, title 18, chapter 237, rule (a), contains a list of the rights recognized to the victims in the criminal procedure, being them:

The right to be reasonably protected from the accused; the right to notification of any public court and parole proceedings and the release of the accused; the right not to be excluded from public court proceedings under most circumstances; and the right to be heard in public court proceedings relating to bail, acceptance or a plea bargain, sentencing or parole; the right to confer with the prosecutor; the right to restitution under the law, the right to proceedings free from unwarranted delays; and the right to be treated fairly and with respect to one's dignity and privacy. (House of representatives, 2010, p. 3).

Among those, there is not any reference to a victim's right to be heard in a preliminary hearing or in a grand jury procedure, and much less to a right to discuss a decision to discharge at this moment. On the contrary, rule (d) (5) clarifies the cases in which the victim may make a motion to re-open a plea or sentence, and in none of them is included the studied stage of the process. Additionally, rule (d) (6) clarifies that: "Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction".

Moreover, the decision of which offenses must be charged to a defendant, with the indictment or the information, rests entirely in the attorney's discretion, so victims have no right to discuss that topic. (United States v. Batchelder, 1979).

In conclusion, the victim may have the possibility to speak with the case prosecutor before the preliminary hearing and to assist to the hearing itself, but has no right to be heard, nor to controvert the decision taken. So, it's clear that the task to prosecute rests entirely on the government attorney, and victims have no role to play in this area. Furthermore, victims can't discuss a decision of dismissal of the case taken by the judge or the grand jury, even

when that decision directly affects their possibility of accomplishing their interests during the procedure.

1.3 Victims' Rights in Colombia

1.3.1 Criminal Procedure Structure

The Colombian criminal procedure has had an important transformation during this millennium. That because it has been implemented a new model or criminal procedure through the *Ley 906 de 2004 or Código de Procedimiento Penal*¹³ (hereafter CPP), inspired in the US criminal procedure, that is completely different from the criminal procedures historically used in this country, that were inspired in an inquisitorial and written criminal procedure. However, Colombian procedure is structurally different from US procedure constituting a very unique model.

Basically, the Colombian procedure is divided into three stages: previous investigation, investigation and trial.

During the previous investigation stage, once a criminal notice is presented, the *Policia Judicial*, directed by the prosecutor¹⁴, must execute the required investigative practices to define if the crime was really committed and who committed it. When the prosecutor has recollected enough evidence and has formed a clear opinion about the case, he can take a decision of dismissing the case by an order of *archivo*¹⁵ or continuing with the investigation stage requesting a hearing of *formulación de imputación*.

So, the investigative stage of the procedure begins with the *formulación de imputación* hearing¹⁶ (CPP, art. 286). This is a hearing in which the

13 It could be translated as Criminal Procedure Code.

14 In Colombian criminal procedure the prosecutor is called *Fiscal*.

15 The *archive* is a dismissal of the case decided in an early stage of the procedure by the prosecutor. In addition to the *archivo*, the prosecutor may also require a *preclusion* hearing in this stage of the procedure for a judge to enforce the dismissal of the investigation.

16 This could be translated as *imputation hearing*.

prosecutor communicates to the defendant the facts constituting the alleged offense that he committed, defining the charges that he must probably face and enunciating the evidence that support the imputation. Then, in this stage of the procedure, the defendant may plead guilty of the charges with the benefit of a reduction of even fifty percent of the full penalty.

The hearing is conducted by a *Juez de Control de Garantías*, who is a judge that must review that all the constitutional and legal guarantees are respected during the procedure. It's important to remark that only after this hearing, the prosecutor or the victims may require the provisional arrest of the defendant when legal requirements are met (CPP, art. 306).

After the *Formulación de Imputación*, the prosecutor has ninety days to finish his investigation and to take the decision of presenting an *escrito de acusación*¹⁷, looking for a trial to achieve a decision against the defendant (CPP, art. 175), or to require the discharge of the defendant with a request of *preclusion* that must be decided by a judge at an open hearing (CPP, art. 331).

The *escrito de acusación* that the prosecutor presents to the *juez de conocimiento*¹⁸ must contain, mainly, the identification of the processed, the facts that are intended to be proved at trial, the evidence which aims to prove the facts, and the definite charges that the prosecuted must face at trial.(CPP, art. 337)

After the *escrito de acusación* is submitted, it must be held a *formulación de acusación*¹⁹ hearing, which main function is to communicate the *escrito de acusación* to the defendant, and to clearly define the facts, evidence and charges that are going to support the prosecutor's case during trial.

17 The *escrito de acusación* in Colombian Criminal Procedure is functionally similar to the indictment in US Criminal Procedure.

18 The *juez de conocimiento* is the judge in charge of the trial in Colombian Criminal Procedure.

19 This could be translated as *indictment hearing*.

The next stages of the process, after the *formulación de acusación* hearing, are the preparatory hearing and the trial that not being the object of this paper won't be developed here.

So, the relevant stages of the Colombian criminal procedure for the object of this article are the *escrito de acusación*, the *formulación de acusación* hearing and the *preclusion* hearing, because these are the moments in which the case could be dismissed in a pre-trial moment, with the consequent impact that it has to the satisfaction of the victim's rights, and also this stage is, in a positive perspective, the moment in which the definite content of the trial debate is defined.

1.3.2 Concept of victim

The concept of victim, applied to the criminal procedure, is inserted in Colombia by the *Acto Legislativo 03 de 2002*, in which the victims are implicitly recognized as an actor in the criminal procedure.

Later, with the new *Código de Procedimiento Penal*, promulgated through the *Ley 906 de 2004*, this category is effectively regulated. Article 132 of this statute defines victim as a natural or juridical person and other law subjects that individually or collectively have suffered any direct harm derived of the crime.

This definition has been developed by case law, and especially the Colombian Constitutional Court (hereafter C.C.) has done some precisions about it. In the decision C – 516/07, this Tribunal considered that the concept of direct harm used in the statute was too narrow, and because of that, decided that any harm caused by crime, and not only direct harm, if it's real, concrete and specific, entitles a person with the possibility to be recognized as victim. Additionally, in the same decision, the Court clarifies that there's a difference between the direct victim and the *perjudicado*²⁰, but also dictates

²⁰ With the category *perjudicado* Colombian constitutional court make reference to who suffers indirect harm caused by the offense.

that both of them are entitled to the rights recognized to the victims when the requirements are met.

1.3.3 Victim's Rights in the procedural stage

In Colombia, there is not a complete compilation of all victim's rights in one single statute. That is so, because even though the CPP has a list of the victim's rights in the criminal procedure (CPP, art. 11), through Constitutional Court and of Supreme Court of Justice (hereafter CSJ) case law, new rights have been introduced and existent rights have been developed.

Concretely, Colombian Constitutional Court has clarified that victims have the main rights to truth, justice and reparation, deriving from there other rights as: to be treated with dignity, to participate in the decisions that affect them and to obtain effective judicial enforcement of their rights (C.C, C – 516/07). In that sense, the concrete faculties that victims have in specific scenarios of the procedure are derived of the content of these basic rights.

On the specific subject of this essay, the CPP expressly recognizes the possibility of the victim to participate and to be heard during a *preclusion* hearing, it implies that victims can controvert the case dismissal request and express why they consider that the procedure must continue (CPP, Art. 333). This faculty has been widened by the Constitutional Court in the decision C-209/07, in where is decided that victims may present or request evidence to oppose the *preclusion* petition of the prosecutor. Additionally, decision C-648/10 also recognizes that victims can appeal the decision of dismissing charges taken by the judge.

About the *escrito de acusación*, in Colombian criminal procedure is absolutely clear that the prosecutor is the only one who can file it, because the prosecution is his exclusive constitutional role and victims aren't allowed to develop that function (Constitución Política de Colombia, art. 250). However, during the *formulación de acusación* hearing, victims are entitled to make comments about the *escrito de acusación* presented by the prosecutor (C.C, C-209/2007).

Nonetheless, these comments might only be about the *escrito de acusación*'s formal requirements (CSJ, AP. 15 jul. 2008. Radicado 29994), so the material content of the act is an exclusive decision of the prosecutor that in most cases can't be controlled by the judge, nor controverted by victims.

2. COMPARISON AND RESULTS

The integration of the crime victims to the criminal procedure is undoubtedly a relevant issue in each one of the juridical systems reviewed, and that is shown by the recent regulative efforts that all the studied nations have done in the latest years regarding to the topic. It means that victims are now a consolidated participant of the criminal system, their interests are now considered as a main element of the procedural debate, and that implies the necessity of political and academics attention to the implications of their role in the procedure.

Still, there is not a common approach to the regulation of victim's rights among the studied countries, and contrarily, it is possible to sustain that each country has its own model of crime victim's rights.

Starting with the victim concept, there are relevant dissimilarities between the three procedures. Spain and the United States share a delimited concept, that mainly recognizes direct harm as an adequate title to be considered victim, being the Spain concept even narrower because in their regulation only natural persons may be considered victims (although juridical persons may act as *acusador particular*). On the contrary, the Colombian concept of victim is very wide, because direct and indirect harm, related specifically to the crime, are good enough titles to consider a person victim. Furthermore, the Colombian concept of victims acknowledges the possibility of juridical persons and other subjects to be considered as victims, giving the possibility to participate on criminal procedure to an extensive number of juridical actors.

The general rights recognized to the victims are also regulated differently in the three criminal procedures. The Colombian formula of truth, justice and reparation is much more abstract than the ones used in the other countries,

in where the main rights are named according to the victims concrete faculties in the procedure. However, as shown later, it doesn't really imply that Colombian procedure necessarily acknowledges a bigger amount of faculties to the victims than the other countries studied.

At this point, is also interesting to note that US Statute doesn't expressly recognize victims a right to participate in the procedure, using more restrictive concepts as *to be heard* or *not to be excluded*. It expresses the deep apprehension for the dysfunction that victim's participation may cause in the adversarial criminal system. So victim's rights are mainly developed in other ways, as protection or restitution, but their participation in the process is carefully limited and conducted, mainly through the prosecutor's actuation.

This idea is supported by the concrete practice of the US criminal procedure in which victims are not allowed to participate in the preliminary hearing nor in the grand jury proceedings. So, victims in US procedure are in a very hostile situation during this specific stage, because their interests are not directly represented or listened in a basic moment of the case, being possible the defendant's discharge with no possible opposition from them.

On the functional equivalent procedural stages in Spain and Colombia, the situation is different because, in both countries, victims are allowed to discuss a *sobreesimiento* decision or a *preclusión* decision respectively. Even more important, victims are allowed to appeal a decision of this kind taken by a judge, which mean they have a concrete juridical mean to enforce their rights in this stage of the process.

However, Colombian and Spanish models are structurally diverse in what refers to the faculties of victims in the accusatory moment of the procedure. The Colombian model allows an active participation of the victim in the *formulación de acusación* hearing but there are not legal resources to enforce their interests when they are against the position of the prosecutor, it implies that victims must be heard but the content of the *acusación* is decided exclusively by the attorney. On the other hand, in the Spain procedure, through the *acusador particular* figure, victims have independent and

complete faculties to present an *escrito de acusación* and to prosecute a defendant event without the consent of the *ministerio fiscal*. It means that in Spain victims have strong faculties to achieve justice, even when it is not one of the rights that is recognized to them, while in Colombia, even when justice is a specific victim right, the means to achieve its realization is weaker than in Spain.

In the functional equivalent stage in the US procedure, the only chance victims have to express their opinion is to chat privately with the prosecutor and hope that he is going to take their interest into consideration at the moment of deciding which charges to file, so their possibilities at this point are even narrower than in the Colombian Case.

CONCLUSION

In conclusion, taking into consideration the previously presented content it is possible to propose that the three criminal procedures compared present different levels of acknowledgment and enforcement of victim's rights in the specific stages of the procedure studied, and those are coherent with the general procedural model of each country.

Consequently, always making reference exclusively to the procedural stages studied in this article, the inquisitorial tradition and prevalent inquisitorial structure of Spanish procedure is coherent with an *extensive faculty's acknowledgment model* for victims, because there is not binding between the procedure and the adversarial principle. In the Colombian Case, criminal procedure has an inquisitorial tradition, but a prevalent adversarial structure, and this is coherent with the *limited faculty's acknowledgment model* that is established. And a solid development of adversarial principle in the United States is coherent with the *strongly restrictive faculty's acknowledgment model* that has been presented in this paper, because victim's discussion of some matters is seen as a dangerous activity for the fairness of the trial.

So, the obvious question is: Which one is the best model of victim's participation of all the three presented? Yet, the answer may be more complex than one can imagine.

Evidently, for crime victims, an *extensive faculty's acknowledgment model* is the privileged one, due to the active and enforced participation that allows for them in the procedure. It's important to note that the State interest is not always coherent with the victim's interest in the case, and it means that victim's rights are not always adequately represented by the prosecutor, additionally, the satisfaction of victim's rights must be an important goal of the criminal procedure for the social and moral meaning that it has for society and for victim itself.

Nevertheless, the criminal procedure spotlight can't be exclusively centered on the offended, because it has other functions at least as important as the victim's satisfaction. Mainly, the procedure is a guarantee for the defendant, who is facing the possibility of a conviction for the alleged commission of a crime, so, the different moments of the proceedings must represent a possibility for a fair defense and must allow prosecuted to controvert the case against him.

So, It might be concrete moments in which an excessive development of victim's faculties may collide with the best interest of defense, justice and fair trial. Therefore, each criminal procedure needs to maintain a balance, and allow as much victim's rights as possible with the least possible harm to the defendant rights. This balance must be done case by case, and taking into consideration every possible factor involved, task that exceeds the possibilities and interest of this article.

All the same, it is important to stand out the potential that comparative law and comparative method have to approach this kind of problems, to be aware of the historical and geographical contingency of juridical forms, and to think possible ways to improve the way legal institutions work around the globe.

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