

Study on the Transfer of Prosecution from Private to Public in Cases of Cyber Violence-based Insult and Defamation Crimes

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Abstract: Network violence-type insult and defamation behaviors arose in the Internet Web3.0 era, which is essentially a kind of network behavior after the alienation of the misbehavior, with the current situation and development trend of the occurrence of group violence, diversification of the form, behavioral concealment and "industry chainization". The introduction of the Guiding Opinions on Punishing Network Violence and Illegal Crimes in accordance with the Law, through further clarifying the standards of public prosecution, clarifying the specific procedures of "private prosecution to public prosecution", and clarifying the obligation of public security organs to assist in obtaining evidence, to a certain extent solves the dilemmas mentioned above, but there are still certain obstacles in the practical operation, and this paper is intended to provide a clearer and more detailed explanation of the dilemmas of network violence and defamation behavior. This article intends to analyze the practical difficulties of transferring the self-indictment to public prosecution of insult and defamation, and provide solutions for the realistic handling of such cases.

Keywords: Cyber Violence-based Insult and Defamation Crime; Criminal Prosecution; Private Prosecution to Public Prosecution; Assisting in Evidence Collection.

1. Introduction

The rapid development of artificial intelligence and other Internet technologies makes the Internet enter the Web3.0 era, Internet users are no longer confined to passively accepting the limited information provided by the network platform, and they can take the initiative to create information freely, and the Internet applications such as artificial intelligence AI tend to be intelligent and personalized, and the dissemination of the information network is more accurate, efficient and convenient, which provides an excellent environment for the growth of the criminal act of violent insults and defamation on the network. Violent insult and defamation are a product of the information network era, and is not a direct application of traditional "violent" behavior on the network, which usually involves a complex relationship between freedom of speech, insult and defamation, and is associated with the behavior of multiple subjects. According to statistics, nearly one-third of the respondents said that they had encountered network violence, and nearly one-fifth of the respondents said that they had personally committed network violence [1]. At present, there are frequent cases of cyber-violence-based insult and defamation crimes, and it is of great practical significance to realize the effective prosecution of cyber-violence-based insult and defamation crimes.

2. Overview of the Crime of cyberviolent Insult and Defamation

2.1. Characteristics of the Criminal Act of Insult and Defamation in the Form of Internet Violence

Unlike traditional real-life acts of violence, the criminal act of cyber-violence-based insult and defamation is a combination of cyber and insult and defamation, with its own unique nature of behavior, objects and methods. In terms of

the nature of the behavior, network users usually complete the network interaction behavior by expressing their views, and other behaviors such as collecting information, making short videos, etc. are also aimed at expressing certain views and fully exercising the right to freedom of expression on the network platform. If network users abuse the right to freedom of expression will make the behavior of alienation, alienation beyond the scope of the general network misconduct to reach the extent of illegal and criminal acts will constitute network violence type insult and defamation, so some scholars believe that network violence criminal behavior is the general network misconduct of the alienation of [2]. In terms of the object of behavior, the attribute of network violent insult and defamation behavior determines that the object of its infringement is a specific subject [3], including but not limited to natural person subjects. In terms of behavior, the form is not limited to insult, defamation, illegal collection of personal information, group "human flesh search" has become a common means of network violence insult and defamation behavior. At this stage, the criminal acts of cyber-violence-based insults and defamation have shown a trend of concealment, diversification and industrialization.

First, in order to facilitate communication between users, web application developers have gradually developed technologies such as "private chat" and "live key", which can meet users' needs for privacy protection. But at the same time, it also provides a more hidden space for online violence. Through the user one-on-one private message way to implement network insult and defamation crime, other users and network platforms are not easy to detect, violent behavior presents a hidden trend; Secondly, the initial rise of the Internet, subject to technical constraints, network users can only be passive acceptance of the information provided by network developers and network platforms, network violence at this stage has not been a breeding ground for the environment. With the development of Internet technology,

network platforms provide users with more ways to disseminate information, such as accompanying pictures, videos, explanatory text, open live broadcasts, etc., which stimulates the enthusiasm of users to release information, and at the same time, makes the form of cyber violence diversified; lastly, driven by interests, part of the cyber violence is dominated by the relevant companies, presenting the status quo of the development of industrial chain, such as through the Finally, profit-driven, some of the online violence is led by related companies, showing the development of industrialization, such as through the "marketing strategy", "crisis public relations" and other ways to implement online violence, typical example of the "cyber hitman" placement. The "network fighter" often appears in the negative evaluation of a subject, through the release of a large amount of negative information, transferring benefits to the network platform to increase exposure, etc., to damage the reputation and honor of the subject [4]. The industrialization of cyber violence is organized and planned, with a higher degree of harm, showing a trend of industrialization.

2.2. Legal Regulation

The Criminal Procedure Law promulgated after the founding of New China clarified the scope of private prosecution cases (Article 13, paragraph 1, of the 1979 Code of Criminal Procedure states: "Only minor criminal cases that have been notified and other minor criminal cases that do not require investigation shall be accepted directly by the People's Courts."), and Article 246 of the Criminal Law promulgated in the same year stipulated that the crime of insult and defamation belongs to the cases that are dealt with only after being told, and thus the case of insult and defamation has been included in the category of pro-indictment crime. Due to the lagging nature of the law, China's criminal law has yet to explicitly provide for the crime of "cyber violence" in regard to the emerging phenomenon of cyber violence. Amendments to the Criminal Law of the People's Republic of China (IX), in response to the demand for the handling of criminal cases of cyber insults and defamation in practice, added a new paragraph 3 to Article 246, which makes it clear that when there are difficulties in the provision of evidence by the victim in the case of insults and defamation committed through the information network, the people's court may request the public security organs to provide assistance. On the whole, China's criminal law has made generalized provisions on the procedures for handling cases of network insult and defamation crimes. However, the relevant provisions of the procedural law corresponding to the provisions of the substantive law are missing, and China's criminal procedure law does not present the substantive provisions of the criminal law in the procedural operation. For example, the Criminal Procedure Law only provides for the types and basic handling of private prosecution cases, and the Judicial Interpretation of the Criminal Procedure Law of the People's Republic of China only specifies that the crime of insult and defamation is a crime to be dealt with only by telling the court and the exception of the application of the public prosecution procedure, i.e., the situation where private prosecution is transferred to public prosecution, but does not specify how to make the linkage of the private and public prosecution procedures between the procedures work smoothly and the appropriate way of dealing with the case after the procedural transformation.

On September 20, 2023, the Guiding Opinions on Punishing Cyber Violence and Illegal Crimes in accordance

with the Law (hereinafter referred to as the Guiding Opinions) was jointly issued by the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security, aiming at applying accurate criminal law offences to severely punish cyber violence crimes, and exerting guiding influence on judicial practice, which embodies the tendency of China's activation of cyber violence criminal acts through criminal law regulation. In addition to demonstrating the positive defense against the risk of criminal acts of cyber violence in criminal law, the Guiding Opinions also emphasize that the criminal law system of cyber violence will be put into practice through smooth litigation procedures, and make detailed provisions on the procedural handling of the transfer of criminal cases of cyber insults and defamation from private prosecution to public prosecution. In addition, Article 3 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law to the Handling of Criminal Cases Involving the Use of Information Networks to Commit Slander and Other Criminal Cases specifically enumerates seven situations in which network defamation seriously jeopardizes the social order and the interests of the State, providing the basis for the initiation of the public prosecution procedure. It can be seen that the criminal law system is only to a certain extent to declare the risk of having embarked on the adoption of mandatory measures to deal with the relevant behaviors, for the lack of the actual effect of combating and preventing cyber-violent criminal behaviors, should start from the smooth flow of litigation procedures, will be the relevant criminal law system means of combating and preventing crime effect to the practical.

These laws and regulations together constitute the legal framework for the regulation of network violence-based insult and defamation criminal behavior, and the effective management of network violence criminal behavior is guaranteed by the above laws and regulations with state coercive power with their justification basis, on the one hand, clarifying the constitutive elements of network violence-based insult and defamation criminal behavior in order to clarify the accurate application of specific criminal law charges, on the other hand, smooth and perfect the recourse procedures for the characteristics of network violence criminal behavior. improve the recourse procedure, to effectively punish the criminal behavior of network insult and defamation, protect the legitimate rights and interests of citizens, let the people feel fair and justice in every judicial case, and safeguard the public interests of the society and the order of national governance to provide procedural safeguards.

3. Basis for the Justification of Transferring Private Prosecution to Public Prosecution in Cases of Cyber Violence, Insults and Defamation Crimes

As mentioned above, China's current criminal law has not established a separate "crime of cyber violence", and the regulation of cyber violent insult and defamation crimes is mainly applicable to the relevant provisions of the crimes of insult, defamation and infringement of citizens' personal information. These three offenses belong to the category of non-purely pro-indictment offenses in the Criminal Procedure Law, which are dealt with only after being told, so the

regulation of these three offenses mainly adopts the recourse of "private prosecution". However, due to the uniqueness of cyberspace, when cyberviolent acts such as insult and defamation enter cyberspace, their degree of concealment and complexity increases significantly, and there is a legitimate basis for timely conversion of private prosecution into public prosecution:

First, for traditional insult and defamation crimes, citizens are given the right to bring private lawsuits, making the prosecution of criminal acts deeper within society, such as in the realm of citizens' private lives and their daily interactions with friends and family, with the aim of facilitating the redress and safeguarding of citizens' individual rights. A scholar's empirical analysis of 100 samples of online defamation cases from 2003 to 2012 found that in such cases, 39% of online defamation perpetrators were not legally liable, 17% were civilly liable, and 16% were criminally liable [5]. From the perspective of the parties, in cases of insults and invasion of privacy, the parties will also choose to give up filing criminal proceedings out of the need to protect their privacy and avoid secondary psychological harm. When private prosecution fails to solve problems such as the impact on social stability brought about by criminal acts such as online insults and defamation, the conversion of private prosecution into public prosecution can stop the unlawful infringement in a timely manner, and reduce the serious consequences of the continuation of criminal acts for the victims and society.

Secondly, the nature of the private prosecution process is similar to civil litigation, the two subjects are equal, the defendant can file a counterclaim in the private prosecution process, while the public prosecution party is a state organ, the two sides are unequal subjects, the defendant cannot file a counterclaim, but only to accept the burden of litigation. And at this time, the case has not been finalized, did not form the effective judgment, did not produce "res judicata", so the private prosecution to public prosecution in line with the principle of "no longer a matter of principle" requirements. After conversion to public prosecution, only one lawsuit exists in respect of the defendant's criminal conduct. In addition, cases of cyber-violence that require public prosecution often have a large social impact within a certain social group or a certain geographical area, to the extent that they seriously jeopardize social order. In this case, the people's procuratorate on behalf of the state to bring public prosecution of criminal behavior, in line with the "state prosecution monopoly", the nature of the crime and the transformation of the type of case determines the need to be punished by the state prosecution [6]. There is a legal justification for the transfer from private to public prosecution in the case of cyber-violence-based insult and defamation crimes.

Finally, the Judicial Interpretation of the Criminal Procedure Law makes "a clear defendant" and "evidence proving that the defendant has committed a crime" a condition for the people's courts to accept private prosecution cases. Most insult and defamation cases take place in acquaintance societies, and there are no obstacles to the parties being able to identify a clear defendant and provide accurate evidence in the actual operation of the case. However, due to the uniqueness of cyberspace, when insults and defamation and other acts of cyber violence enter cyberspace, it will make it more difficult for the victim to collect and fix evidence and find out the perpetrator of the crime, and it will be timely converted into a public prosecution, and the national public

prosecution authorities will collect and fix the evidence using specialized tools, and take coercive measures against the perpetrator of the crime if necessary, so as to be able to combat the criminal behavior more effectively, to stop the unlawful harms, and to prevent the continual expansion of the harmful consequences of the criminal behavior. The continued expansion of the harmful consequences of criminal acts is justified in terms of its practical effect.

4. Dilemma of Transferring a Private Prosecution to a Public Prosecution for an Insult and Defamation Offense based on Cyber Violence

The issuance of the Guiding Opinions has expanded the scope of public prosecution, clarified the specific procedures for transferring private prosecution to public prosecution in cases of cyber-violent insult and defamation crimes, and clarified the obligation of public security organs to assist in the collection of evidence, which, to a certain extent, has solved the problem of transferring private prosecution to public prosecution in cases of cyber-violent insult and defamation crimes, but real dilemmas still exist in practice.

4.1. Vague Prosecution Standards

China's Criminal Law clearly stipulates that the four types of crimes in the pro-indictment category can be prosecuted only when they seriously jeopardize the social order and the interests of the State. Therefore, "seriously jeopardizing the social order and national interests" is the criterion for instituting public prosecution for these four types of crimes. However, the criminal law does not specify the content of this criterion, leading to ambiguous criteria for public prosecution in cases of cyber-violence-based insults and defamation, so that in practice there is a large margin of discretion for the judiciary to decide whether or not to apply the public prosecution procedure in cases of cyber-violence-based insults and defamation.

In order to solve this problem, the Guiding Opinions should adopt a comprehensive determination of whether a criminal case of online insult and defamation "seriously jeopardizes the social order", taking into account such factors as the target of the act, the purpose of the act, the manner of the act, the scope of dissemination of the information, and the harmful consequences of the act. In addition, the Guiding Opinions include "causing the victim or his/her close relatives to suffer from mental disorder or commit suicide", "organizing or instructing people to spread defamatory or insulting information in large quantities", etc., as circumstances that can be directly recognized as "seriously endangering social order", so that such cases can be considered as "seriously endangering social order". "This makes the criteria for prosecuting such cases more definitive. However, in addition to the situation of "causing the victim or his close relatives to suffer from mental disorder or commit suicide", other situations are still adopted by fuzzy users, such as "a large number of", "many", "many times", "many times", "many times" and "many times". "many times" "more than one", more than how many times the amount of forwarding meets the standard of "a large number of", more than how many online platforms count as "more than one", and whether it is necessary to distinguish between the victim or close relatives of the mental health of the victim or suicide. The Guidance is unclear as to how many retweets meet the criteria of "large

number" and how many online platforms are considered "multiple", and whether the size of the volume of users of the online platforms needs to be differentiated to make a judgment. At the same time, in each specific case, are attached to the "social impact of bad" conditions, in fact, fuzzy public prosecution standards. Even if the victim and his/her close family members were caused to suffer from mental disorders or commit suicide, but the condition of "adverse social impact" was not met, the prosecution standard was still not met, and the prosecution could not be initiated. Therefore, although the Guiding Opinions have further clarified the criteria for prosecution in cases of online insults and defamation, there is still a strong room for discretion in practice, and the criteria for prosecution remain vague.

The vagueness of the prosecution standard makes it possible in practice to grasp that there is a high or low standard of prosecution in the case of network insults and defamation crimes, and that too low a standard of prosecution will lead to undue encroachment by public power on the private sphere of the victim, crowding out the space for the exercise of the victim's right of self-representation, and rendering the procedure of self-representation incapable of fulfilling its expected role. Too high a standard of public prosecution will lead to the failure to stabilize the social order. Network insult and defamation crime cases are different from traditional insult and defamation crime cases, and most of their targets are unspecified objects, resulting in many cases with bad social impact, and the high prosecution standard will affect the effective combating and curbing of network insult and defamation criminal behavior by the public prosecution authorities. Therefore, it is important to further clarify the standards of public prosecution in cases of Internet insults and defamation crimes, and to standardize the circumstances in which they are applied, so that public prosecutions can have the practical effect they should have.

4.2. Uncertainty in the Handling of Private Prosecution Cases

According to the theory of transfer of rights, when a private prosecution case meets the criteria for public prosecution, it should be transformed into a public prosecution procedure in a timely manner, at which time the victim loses the right to private prosecution, i.e., the victim's private prosecution cannot block the initiation and establishment of public prosecution. The network violence type insult and defamation crime cases and traditional insult and defamation crime cases are very different, network information dissemination rapid characteristics of the former influence may be expanded in a short period of time, so that the network violence type insult and defamation crime cases are prone to the coexistence of private prosecution and public prosecution. Therefore, it is particularly necessary to clarify the handling of cases in which private prosecution and public prosecution co-exist.

Currently, by the "hangzhou express case" triggered the academic community on the private prosecution to the public prosecution program discussion, in the private prosecution and public prosecution coexist in the treatment, there are different views in the academic community: some scholars believe that the private prosecution and the public prosecution can coexist, when the two coexist, the private prosecution can be ruled to suspend the processing of the public prosecution to wait for the trial [7]. Some scholars believe that private prosecution and public prosecution cannot coexist, can only choose one, the court should persuade the victim to withdraw

the private prosecution or ruling to dismiss the prosecution. [8] When the victim does not agree to withdraw the private prosecution, the court should decide to terminate the trial to end the private prosecution process [9]. The Guidance holds the view that "public prosecution is prioritized", i.e., when there is a co-existence of private and public prosecution in the case of cyber insult and defamation crimes, regardless of whether the private prosecution is established first or not, the case that meets the conditions for public prosecution should be prioritized for the application of the public prosecution procedure, and the cases cannot be tried together.

As to how to deal with private prosecution cases, the Guidance also gives corresponding solutions: for private prosecution cases that have not yet been accepted, the people's court may persuade the private prosecutor to withdraw the private prosecution or rule that it should not be accepted; for private prosecution cases that have already been accepted, the people's court should terminate the trial. However, the above arrangements still do not address other procedural issues regarding the handling of private prosecution cases in the case of cyber-violence-based insult and defamation crimes, such as the handling of private prosecution cases when the victim has already filed a private prosecution prior to the filing of the case by the public security authorities, and the handling of private prosecution cases when the public security authorities are examining whether or not to file a case. If the court refers the case to the public security authorities and the public security authorities do not open a case, can the private prosecutor file another private prosecution?

4.3. Poor Procedures for Public Security Organs to Assist in Obtaining Evidence

In self-represented cases, "the denier does not bear the burden of proof", and the self-represented person bears a heavier burden of proof, with the Criminal Procedure Law of China stipulating that the standard of proof requires that "the facts of the crime are clear and the evidence is solid and sufficient". In the trial of network violence-type insult and defamation crimes, the victim bears a heavier burden of proof. In order to solve the real dilemma of the victim's difficulty in obtaining evidence, the Guidance clearly states that "if the public security organs assist in obtaining evidence and meet the conditions for acceptance of private prosecution cases, the people's court shall decide to open a case". This institutional arrangement can effectively address the real dilemma of victims in cases of cyberviolence being unable to obtain evidence due to their lack of ability to do so. The public security authorities make use of their specialized investigative resources to compensate for the victims' lack of evidence-gathering ability. This demonstrates that public authorities are able to intervene appropriately in the private prosecution process, and provides a certain basis for the further improvement of the private prosecution process.

Although the Guiding Opinions have supplemented the obligation of the public security organs to assist in the collection of evidence, the relevant procedures are still unclear: Firstly, the Guiding Opinions only clarify the obligation of the public security organs to assist in the collection of evidence at the stage before the filing of a case of cyber-insults and defamation, and they do not make clear whether the obligation of the public security organs to assist in the collection of evidence extends to the trial stage of the case, i.e., whether the public security organs' assistance in the collection of evidence can support the Secondly, the public

security organs to fulfill the obligation to assist the premise that the court review that the victim's private prosecution does not meet the admissibility criteria, and the Guiding Opinions did not clarify the court's review of the standard, as long as it does not meet the admissibility criteria, the court should notify the public security organs to assist in the collection of evidence. If the people's court does not notify the public security authorities to assist in the collection of evidence, whether the private prosecutor enjoys the right to apply to the court for the public security authorities to assist in the collection of evidence; finally, the public security authorities may use arbitrary investigative measures in the investigation of cases under public prosecution, as well as mandatory investigative measures. The Guiding Opinions do not clarify whether the public security organs can use compulsory investigative measures when assisting victims in obtaining evidence and what means of obtaining evidence should be used. The lack of clarity in these procedures affects the realization of the litigation objectives of the private prosecutor, and there is an urgent need to refine the procedures for the public security organs to assist in the collection of evidence so that they can truly play a positive role in assisting.

5. Cracking the Dilemma of Converting Self-Prosecution to Public Prosecution for Internet Violence-based Insult and Defamation Crimes

5.1. Clarification of Prosecutorial Standards

Compared with traditional criminal acts of violence, the criminal acts of cyber-violent insult and defamation involve many participants, have a wider scope of harm, and it is not easy to determine the causal relationship between individual acts and the ultimate harmful consequences; therefore, the Guidance puts forward the guidelines of comprehensive assessment and specific judgment, assessing the harmfulness of cyber-violent acts from a macroscopic perspective rather than focusing only on the social dangers of individual acts. Specifically, the Judicial Interpretation of Internet Defamation takes "more than 5,000 views" and "more than 500 retweets" as the criteria for determining the "seriousness" of online defamation. However, the criminal offense of online insult and defamation is not recognized as "serious". However, it is difficult to measure the harmful consequences of the criminal act of online insult and defamation with simple figures, which may lead to the situation that "the victim commits suicide and has a greater social impact, while the number of retweets or the number of times viewed does not exceed the standard", and thus cannot be recognized as "aggravating circumstances". This may lead to the situation that "the victim commits suicide and the social impact is large, but the number of retweets or views does not exceed the standard" and thus cannot be recognized as "aggravating circumstances", which makes the recognition of the criminal act of insulting and defaming on the network violence overly formalized, and makes it impossible to truly measure the degree of social harm. Therefore, the Guiding Opinions do not adopt specific quantitative standards as a criterion for determining "seriously jeopardizing the social order", but rather adopt general expressions such as "many times" and "many people".

The clarification of the prosecution standard requires an accurate understanding of the generalized quantitative terms in the Guidance. Some scholars believe that whether the specific circumstances belong to "seriously jeopardizing the social order" can be measured from whether it is in line with the original intention of the tell-tale system [10], which believes that in the case of "randomly taking the general public as the target of infringement, the relevant information is widely disseminated on the Internet, triggering a large number of vulgar and malicious comments, and seriously disrupting the network order", the parties concerned are neither friends nor relatives, and there is no actual interaction between them. Serious damage to the network order", the parties involved are neither friends nor relatives, and there is no actual interaction, which makes it impossible to realize the purpose of the pro-indictment crime to resolve conflicts and maintain harmonious relations through reconciliation, and then public power should intervene to restore social order. In other words, when the network insult and defamation behavior beyond the private sphere or the victim cannot tell, the need for public prosecution. This point of view in the current positive argumentation considerations are too broad, but from the reverse side can provide guidance for the judgment of specific circumstances.

With regard to the relationship between the four specific circumstances stipulated in the Guiding Opinions and "bad social influence", some scholars believe that these four circumstances should be regarded as specific manifestations of "bad social influence" (Liu Runyu: procedural law), i.e., as long as any one of the four circumstances enumerated in the Guidelines is met, it is automatically presumed to be in line with "bad social influence", and the prosecuting authority will initiate public prosecution proceedings to pursue the case. Some scholars believe that these four circumstances should be regarded as specific manifestations of "bad social influence" (Liu Runyu: in the perspective of procedural law), i.e., as long as any of the four circumstances listed in the Guidance is met, it will automatically be presumed to be in line with the "bad social influence", and the pursuing organization will initiate the public prosecution procedure. This approach can, on the one hand, clarify the ambiguity expressed in the Guidance and increase the applicability of the prosecution standard, and, on the other hand, meet the expectations of society, avoiding the emergence of a situation in which "the victim or a close family member suffers from mental disorder or commits suicide without meeting the criterion of a bad social impact".

5.2. Clarifying the Handling of Private Prosecution Cases

The Guiding Opinions indicate the general direction of the handling of private prosecution cases, namely, that private prosecution cases cannot be tried together with public prosecution cases, in addition to which the specific procedures for the conversion of private prosecution and public prosecution procedures should be clarified. According to the supreme law "interpretation" "the first instance of private prosecution" chapter of the relevant provisions of the trial of private prosecution cases, including the examination of the acceptance of the proceedings and the trial proceedings itself two links [11], so in accordance with the stage of the litigation to clarify the handling of private prosecution cases, the specific stage of the litigation can be divided into the court examination of the case stage, the court trial stage The

specific litigation stages can be divided into the stage of court examination and filing, the stage of court trial, the stage before the court judgment comes into effect and the stage after the court judgment comes into effect.

The first stage is the court's examination of the filing of the case; when the people's court examines the filing of a private prosecution case and finds that the case meets the criteria for public prosecution, it should transfer the case to the public security authorities for processing. In the case of a private prosecutor who has filed a lawsuit, the private prosecutor is persuaded to withdraw the private prosecution or to rule that the case is inadmissible, in accordance with the provisions of the Guidance (cited: Jia Zhiqiang). It should be noted that in such cases, when the private prosecutor withdraws the private prosecution or the people's court rules that the case is inadmissible, if the public security authorities fail to open a case or the procuratorial authorities fail to prosecute, the conditions for "public to private prosecution" should be deemed to have been met, and the private prosecutor should be allowed to bring another private prosecution. Secondly, at the court hearing stage, where the people's court finds that the case meets the criteria for public prosecution, it shall rule that the hearing should be suspended and that the case should be transferred to the public security authorities for processing, and that the procedure for following up a private prosecution should be clarified in each case: if the public security authorities do not open a file after examination, the people's court shall rule that the case should continue to be heard on its own motion; if the public security authorities decide to open a file after examination, the case shall be transferred to the public security authorities based on the "principle of prohibiting repeated prosecutions". If the public security authorities decide to open a case after examination, then, based on the "principle of prohibiting repeated prosecutions", the people's court shall rule to terminate the trial of the private prosecution case. In such cases, the Guidance provides that the private prosecutor may participate in the proceedings in the capacity of a victim. Again, before the people's court judgment has entered into force, the situation where the judgment has not yet entered into force is divided into the period before it enters into force and the appeal filed by the private prosecutor. First, when the judgment has not yet reached the effective period, the people's court shall wait for the expiration of the effective period before initiating retrial proceedings to transfer the case to the public security authorities for processing; second, where the private prosecutor has filed an appeal, the people's court shall adjourn the trial in the second instance proceedings, and, when the public security authorities and procuratorate have processed it, shall make a ruling on the private prosecution case in such a manner as it would have done had the case been at the stage of the court proceedings described above. Finally, when a people's court judgment has entered into force and the people's court finds at this stage that the case meets the conditions for public prosecution, it shall initiate the trial supervision procedure, i.e., the retrial procedure, and transfer the case to the public security organs for processing.

5.3. Clarifying the Obligation of Public Security Organs to Assist in the Collection of Evidence

With regard to the obligation of the public security organs to assist, some scholars believe that it is similar in nature to the preliminary investigation before the filing of a criminal

case [12], and that the specific requirements for the public security organs to fulfill their obligation to assist can be in accordance with the relevant provisions of the preliminary investigation. This is consistent with China's criminal procedure law on the public security organs of the investigation and evidence collection behavior, the public security organs of the investigation and evidence collection power for the public power, to a certain extent, will affect the rights and interests of others, so China's criminal procedure law will be the public security organs of the exercise of the right to investigate and evidence collection time is strictly limited in the establishment of the investigation for the investigation of the investigation before the establishment of the case is not allowed to take coercive measures of the criminal investigation of the initial investigation behavior. Therefore, the obligation of the public security organs to assist in the collection of evidence should also be characterized as a criminal case before the initial investigation. Therefore, the obligation of the public security organs to assist in the collection of evidence should be limited to before the filing of a case, and the relevant procedural rules can be applied with reference to the provisions of the preliminary criminal investigation, and the investigative measures that can be taken should be limited to arbitrary measures, and not to the seizure, detention, freezing and other coercive investigative measures, and also not to the technical investigative measures. If the obligation of the public security authorities to assist in the collection of evidence is extended to the trial stage of the case, this will, on the one hand, increase the workload of the public security authorities and reduce the motivation of the private prosecutor, and, on the other hand, increase the uncertainty of the procedures for the collection of evidence by the public security authorities.

The Guidance makes it clear that the public security organs' obligation to assist in the collection of evidence is to be judged by the people's courts, but it does not specify the criteria for court review. Therefore, the court's review criteria for initiating this procedure should be further clarified, so as not to cause the public security organs to assume an overly burdensome obligation to assist. The "victims have genuine difficulties in providing evidence" is the overall review standard specified in the Guidance, and the people's courts should adopt comprehensive judgment standards when reviewing, taking into account factors such as the proliferation of criminal acts of cyber insults and defamation, the time span, the number of platforms, and the hidden nature of the criminal acts. Through the people's court's proactive review, limiting the cases in which the public security organs assisted in the collection of evidence to those cases in which the victim provided evidence with genuine difficulties can effectively allocate law enforcement resources [13]. At the same time, it is also important to avoid confusing the standard of "genuine difficulties in providing evidence" with that of the People's Court in reviewing the case, and not to deprive the right to litigate of the private prosecutor because the defendant is unknown or there is insufficient evidence (cited in: Yu Haisong: Multi-dimensional Co-administration of Cyber-Violence).

Finally, the right of application and relief should be granted to the private prosecutor, i.e., the private prosecutor may apply to the court for assistance in obtaining evidence before the case is accepted (cited: Yu Haisong: Multi-dimensional co-rule of cyber-violence). When the private prosecutor has genuine difficulties in providing evidence, he or she may

apply to the people's court, which will review the case through the criteria mentioned above and make a decision on whether to agree to the public security authorities' assistance in obtaining evidence. Failing to prevent the people's court or the public security authorities from neglecting to fulfill their obligations to review and collect evidence, the private prosecutor should be granted a certain right to relief, namely, when the people's court negatively reviews or refuses to give consent without justifiable reasons, the private prosecutor may file a complaint with the people's court or apply for a reconsideration, and when the public security authorities neglect to fulfill their obligation to assist in the collection of evidence, the private prosecutor may file a complaint with the people's court, which will notify the public security authorities of their obligation to actively fulfill their obligations.

From the "Hangzhou express case" to the "pink hair girl case", all reveal the current network violence development of the serious situation. Comprehensive management of network violence crimes, in addition to the need to improve the crime of insult, defamation and other substantive law provisions, but also need to further improve the relevant recourse procedures, open recourse channels, so that private prosecution and the public prosecution of the joint force, a sound recourse system. Cyberspace is not a place outside the law, criminal law as the last powerful weapon to punish criminal behavior, in accordance with the provisions of the substantive law, effective prosecution, can ensure that the network violence crime cases are timely and effective curb, and actively build a clear network environment.

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