

형사조정제도의 문제점에 대한 개선방안

Improvements about Problem of Criminal Mediation System

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요약

형사조정제도에 대해 우리나라에서는 2006년 4월 대전지검 등 3개청에서 범죄피해자지원센터 주관 시범 운영되다가 2007년부터는 전국57개 지방검찰청 및 지청에서 범죄피해자센터와 형사조정제도를 본격 실시한 이래 2016년 현재는 모든 검찰청에서 형사조정제도를 운영하고 있다. 한편 검찰에서는 2009년 10월 ‘형사조정 실무운영 지침’을 제정하고 2010년 9월에 「범죄피해자보호법」에 그 법률적 근거를 마련하였다. 이는 형사조정이 범죄피해자 피해 회복을 지원하는 방향으로 운영되어야 한다는 것을 담고 있다고 본다. 그러나 형사조정제도의 전반적인 인프라는 어느 정도 구축되어 있다고 볼 수 있으나, 본 필자가 2007년부터 2016년 현재까지 G검찰청 형사조정위원 활동을 통하여 경험한 바로는 아직도 형사조정실 신변안전에 대한 취약 등 몇 가지 문제점이 대두된바, 본 논문에서 그에 대한 문제점을 검토하고 형사조정 실무에 알맞은 형사조정제도의 개선방안을 제시하고자 한다.

■ 중심어 : | 형사조정 | 형사조정위원 | 회복적 사법 | 범죄피해자 | 조정절차 |

Abstract

Criminal Mediation System in Korea, it did pilot operation by Crime Victim Support Centers such as Daejeon and other two District Prosecutors' Office in April 2006. And starting 2007, Crime Victim Support Centers and Criminal Mediation System conducted from 57 District Attorney's Office and Branch Offices and now 2016, Criminal Mediation System is operated in all the District Attorney's Office. On the other hand, the Attorney General's Office established the 'Criminal mediation practical operating instructions' in October 2009 and created its legal basis at 「Crime Victims Protection Act」 in September 2010. It seems that the criminal mediation have to operate as the direction for supporting crime victims recovery. However, it seems that the overall infrastructure of the criminal mediation system is built. But I have experienced this through G Attorney's Office as a Criminal mediator activity from 2007 to 2016 now, some issues have emerged such as weak on personal safety in criminal mediation room, etc. Thus, in this paper, I will examine the problems about this and propose improvements of criminal mediation system to fit the practical criminal mediation.

■ keyword : | Criminal Mediation | Criminal Mediator | Restorative Justice | Criminal Victims | Mediation Procedure |

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I. Introduction

1. The Purpose of Study

With reforming the criminal procedure system for rights protection of victim, the Restorative justice model is occurred by the idea that if offender compensate for the damages and apologizing to victim and recover the damage, then punishment of offender can get exemption or mitigating. A form of restorative justice can be called directly Criminal Mediation. In this regard, since the mid-1980s, in Korea the voice that the rights of victims must be protected substantially has been increased. And Thanks to these movements, December 23, 2005. The Crime Victims Protection Act was enacted and a comprehensive legal basis which can give the substantial protection and assistance for victims was prepared. Based on this, since the April 2006, including the District Prosecutors' Office in Daejeon and 3 District Attorney's Offices the Criminal mediation was conducted on a trial basis. And starting in June 2007, its target was expanded to nationwide 57 District Attorney and District Attorney's Office and Branch Offices. And then on October 29, 2009, the traditional 'Criminal mediation practical operating instructions for accusation case' was abolished and enacting the 'Criminal mediation practical operating instructions'. Criminal mediation system is operated with criticism that has ambiguous legal basis and it was laid the legal basis in the Crime Victim Protection Act article 41 with amendments Crime Victim Protection Act on May 14, 2010, and enforced on August 15, 2010. Even though, there are many legal bases, there are still many issues. In particular, regarding the traditional criminal legal system, and on the operation of criminal mediation, many problems are emerging. Thus, in this paper, through the foreign legislation case, I will do

comparative analysis the issues being raised in criminal mediation system, and presents the improvements for fixation of criminal mediation system more properly is the purpose of this study.

2. Review the Advanced Study

Since the April 2006, including the District Prosecutors' Office in Daejeon and 3 District Attorney's Offices the Criminal mediation was conducted on a trial basis based on the Crime Victim Support Centers. Now 2016, Criminal Mediation System is operated in all the District Attorney's Office. During the criminal mediation process too much works, change the Criminal Code to Civil Code, professionalism issues to criminal mediator, lack of time to mediate, etc. are occurred. If see these advanced study, it seems like as below.

Soon Nam, Jang(2013) said that the range of crime of criminal mediation system are regulated bigly, therefore set the limitation of crimes are hard, there for it need to reasonable mediation such as from the accusation cases to normal criminal cases, from the simple crimes to serious crimes, prohibition of sending the indefiniteness cases, etc.

Bi Hwan, Go(2009) said that the criminal justice institutes do not have to have the awareness to use the criminal mediation as the means of reduce works. Above all, review properly the accusation cases from the first, and make nonsuit the civil cases and it will be the good example.

Jin Su, Kim(2014) said that during the mediation step, to prevent the occurrence issue such as mental confusion, unilateral coercion the mediation, we suggested that we have to education for the mediator such as theory and actual works, legal ethics etc.

Chang Ryeol, Kim(2011) said that the criminal mediation system is composed of other law's details. Due to this, there are some legal system issues. One

and unificative legislation have to occurred. However, they just present the legislation bill of criminal mediation as improvements.

3. Concept of Criminal Mediation

Criminal mediation is the a series of procedure[1] which want to achieve a consensus about the apology and compensation for the mental and material damage caused by crime through certain adjustments by criminal cases parties, and it means that helping each parties to reach reconciliation by compromise of both claims and mediating the parties at the neutral position by three criminal mediator. Thus, the criminal mediation can protect the benefit of victims through a voluntary dispute resolution between offender and the victim. And ultimately, at the harmonious point as social return for victim and offender, it has the means that can make the restoration of legal peace.

Generally, the significance of Criminal mediation can be divided into wide and narrow sense. About this, it means the narrow sense of criminal mediation in Korea and it refers to arbitrate disputes in criminal mediation committee which composed people who has the learning and virtue and expertise such as legal knowledge of the local community to make a reconciliation and settlement between victim and offender against the sue cases[2] about personal dispute such as defamation · encroachments, medical disputes, unpaid wages, intellectual property infringement, insults between individuals, etc. and the property crimes which was sued by fraud, embezzlement, breach of trust, etc. by financial transactions such as borrowed money, construction price, between individuals investment funds etc.

4. The Necessity of Criminal Mediation System

Criminal mediation is not just legal argument

between prosecutor and lawyer in court, it is the space where can communicate between assailant and victim, and through this, it minimize the aggravation in relation between two parties. Also, until now, in case of normal trial, it gives the unavoidable disadvantage to each party about their activities and occupation or had to have the burden that they have to appoint a lawyer etc. However, criminal mediation can help minimizing the expense and timely onerousness, also, moreover they consider enough the convenience of parties who cannot do mediation through the mediation of night time·holiday·visiting. Also, after criminal mediation if they did not the fulfillment of a promise, they make a connection to secure the executive force, and the Prosecution supports the notarization charge. Therefore it is the important system to solve the solution of conflict.

5. Record of Criminal Mediation

Since the April 2006, including the District Prosecutors' Office in Daejeon and 3 District Attorney's Offices the Criminal mediation was conducted on a trial basis. And starting in June 2007, it was expanded to nationwide District Attorney. And when see the management record from 2011 to August 2015, the number of requests and mediation is increasing gradually and ratio of mediation is more than 50%. Thus, it shows its records are in good performance. Also, it can be seen that the requests against total number of sue cases is increasing.

Table 1. Criminal mediation records over the past five years[3]

Year	Requests	Treatments	Mediations	Mediation ratio(%)
2011	17,517	16,897	8,398	49.7%
2012	21,413	18,020	10,280	57.0%
2013	33,064	28,441	14,772	51.9%
2014	54,691	45,527	25,523	56.1%
2015	56,257	43,793	25,401	58.0%

II. Foreign Legal Cases of Criminal Mediation System

1. U.S.

Criminal mediation in U.S. was originated from mediation program in 1969 that was started at the Court of Arbitration in Philadelphia court which is to solve the minor offenses and disputes in collaboration with American Arbitration Association and the Philadelphia District Attorney's Office as part of the Alternative Dispute Settlement Mechanism[4]. And then 1978, by Mennonite Church[5] in Elkhart, Indiana, the reconciliation program between offender and the victim were operated and it became the mediation system to work with the community. In the 1980s, an alternative dispute resolution system is gradually spread; it was gained strong support of the Federal Ministry of Justice. And American Bar Association in 1994 officially recognized efficiency and advantages of criminal reconciliation adjustment system, and recommended introduction of this to individual states of the United States. Since the early 2000s, each state tried to work to enact criminal mediation system; it has shown a big difference in each state about legislation of criminal mediation, enforcement agencies, and crimes. In the United States, criminal mediation enforcement and legislation has not matched, they enforce as the way that with separate provision in the Criminal Code and the Criminal Procedure Code, and governed by Council Directive not law. In other words there is no unified standard; also it shows a significant difference about crimes of criminal mediation in each state. If the mediation is made, its results are reflected and the prosecutor do non-prosecution disposition or the court do the dismissal of indictment is general.

2. U.K.

Criminal mediation system in the UK, it was

introduced in the youth support team of Exeter founded in 1979, after then there were many mediation system. However, until the legislation in 1988, it had been operated under the leadership of the various private organizations without legal basis[6]. Especially, the legal basis of criminal mediation in UK is the Crime and order violation law in 1998 which applied at juvenile justice area and the Juvenile Justice and Criminal Evidence Act in 1999. To the crimes it is not limited in express terms, generally urinate, avoidance charge, theft, intimidation, vandalism, drug trafficking, racism, fireproof, etc. And there is no legislation which control comprehensively about specific details, procedure, effects of the criminal reconciliation adjustment system. But representatively, in youth crime, if offender follows the criminal settlement or adjustment then he can be replaced in redemption or detention, and if offender follows the conditions which are presented by investigation agency, it can be replaced with a warning or a penalty or rehabilitation program.

3. Germany

In Germany, the criminal mediation had enacted as a part of a special criminal law for the boys and juvenile offenders by enactment of the Juvenile Court Act in 1990[7]. And then, in 1994, by the Crime Prevention Act the criminal mediation has been extended to adults, and through the legislation on the basis of the Criminal Procedure Code of the offender and victim mediation system for fixing the Penal Code provisions on criminal procedure in 1999 with Criminal Law Article 46 and the relevant provisions of Criminal Procedure Code was amended. Unlike British and American countries, that the criminal mediation was started from center of civic organizations, in Germany, the criminal mediation was set under the leadership of national institutions.

And it is the distinctive characteristic. As the legal basis, the Crime Victim Protection Act, Juvenile Court Act, Criminal Law can be the examples, and to its crimes there is no explicitly qualified in Criminal Law and Criminal Procedure Code. However, it can be seen the existence of internal limit about use of criminal mediation by precedents. To the effect of the mediation, in case of misdemeanor the prosecutor does not raise the indictment with the consent of the suspect and the competent court under the condition that the suspect will try to restitution the all or a significant part of the crime and do reconciliation with victim, or when sue has already been raised he can stop the procedure temporarily[8].

4. Japan

In Japan, May 19, 2000 the Act on the action for incidental to criminal proceedings for the protection of the rights profit of crime victims, etc. (Victim Protection Act) was enacted. Thereafter, at the Japanese government, the bill of partial amendment of the Criminal Procedure Code for the protection of crime victims' right benefit on March 13, 2007 has been submitted to the National Assembly. And June 20 in same year, this law was passed by the National Assembly[9]. Therefore, the criminal reconciliation system is not being introduced generally in Japan, it can be seen that reconciliation process system by the way that grants enforcement powers to civil reconciliation in this legislation. Since 2001, NPO corporation victim and the offender conversation parliament Operations Center located in Chiba, they are doing the education and training for civilian mediator training as part of a criminal mediation program at the private sector. Something made from this part, it is only limited to agreements between the parties. However, looking as a consequence, operating the practical programs for restorative justice

spontaneously at the private sector in the situation that without legal and institutional basis can be evaluated very high[10]. On the other hand since 2005, about two years in the juvenile justice area, the Boys conversation meeting(小年對話會) was operated and in 2007 it was introduced in earnest. Boys conversation meeting(小年對話會), which belongs to the family collective agreement, such as New Zealand that can get the opportunity to consult about crime and rehabilitate himself committed along with caregivers and victims in the police investigation to the boy committed the misdemeanor. The Victims feeling delivery system on Rehabilitation Protection Act is passing the feelings or damage of victims to offender and make the rehabilitation or recidivism prevention of offender also contribute to the recovery of victims are the purpose.

5. Sweden

Sweden has conducted the criminal mediation around youth crime since 1987, now in 2016, it is being implemented in 154 municipalities. Like other regions, mediation center of the community has partnered with the police, prosecutors, schools and other community service organizations, the government is supporting by installation of 'National Council for Prevention the Crimes' for financial support of mediation center and education for mediator. Sweden has enacted the Mediation Act and effective from 1 July 2002[11], and According to this Mediation Act, it regulated as that only in case of the suspect admitted the crime, if the victim and the suspect agree to the mediation, the mediation start and even though before the criminal investigation concluded the mediator can consultation with investigation staff and even if after terminating the investigation and before the sentencing, he should be consulted with prosecutor.

6. Review

In case of the criminal mediation is made in U.S., generally they reflect the results and the prosecutor do non-prosecution disposition or the court make dismissal of a case. In case of New York, when the criminal mediation is made, not the non-prosecution disposition or dismissal of a case they concerning the seriousness of the matter and let the report the implementation details on the dispute resolution from Dispute Resolution Center each month.

Representatively, in UK, in case of when they meet the criminal settlement or mediation in juvenile crime, It deemed to be replace with imprisonment or redemption and if they meet the conditions by investigation agency, they can be replaced the punishment with a warning or a social reintegration program participation. When the misdemeanor in Germany, the prosecutor can does not raise the statute with agreement by competent court of victim under the condition that the suspect will try to restitution about all or significant part of the offense and reconciliation mediation with victim and temporarily stop the process when the sue has already been raised.

In Japan, they do not give the legal implications about Criminal Law between offender and victim. Thus, punishment reduction of the defendant by reconciliation rely on only the informal consideration of the court, Also, there is no active function to induce reconciliation between the parties actively.

Sweden enforce the Mediation Act from 1 July 2002, and by this mediation act, when the suspect recognized the crime only, the both parties between suspect and victim agree with mediation, and it is regulated that the mediation and when the maid and the mediator have to consult with the investigation staff even if before the criminal investigation is concluded, it is regulated as that they have to consultation with staff.

7. Improvements in Korea about foreign cases

As above, compare with foreign country, the criminal mediation in Korea is now it seems like in the basic class, and the legal reason of this system can be found from the Crime Victim Protection Act. Therefore, study steadily foreign legislation cases, it need to be introduced the criminal mediation to meet to our situation. Especially, before the vitalization of the criminal mediation in Korea, like Sweden, we carry out this system to 154 local governments, it need to be considered to police, prosecution, court step. However, among them, to police step, it need to be introduced very quickly.

III. Status of Criminal Mediation in Korea

1. Status of Criminal Mediation

The Criminal mediation means that the procedure for mediation in criminal mediation committee which made by experts and community members to make reconciliation smoothly to certain criminal cases such as property crime like fraud, embezzlement, etc., and boy, medical, libel, etc.

1.1 Classification of Crimes

According to the national criminal mediator professional training data sheet, among the criminal mediation cases the classification of crimes are as follows. Among the 1,095 cases the cases of monetary damages were 502 cases, and 443 cases were suffered body damages, In the case of other appeared to be 150. Looking at the contents by a specific monetary damage, the fraud cases 291, Labor Standards Act violation cases 148, embezzlement and breach of trust cases were 63 cases. Physical damage to a crime, bodily harm 197 cases, assault incident 160 cases, law on punishment of violent acts were 86 cases. Other

criminal cases were 150 cases about traffic-related incidents.

Table 2. Classification of criminal mediation cases

Type	Division		Numbers(%)
	Main Cases		
Monetary damages	Fraud	291(26.6%)	502 (45.9%)
	Labor Standards Act	148(13.5%)	
	Embezzlement / Misappropriation	63(5.8%)	
Physical damages	Bodily Harm	197(18.0%)	443 (40.5%)
	Violence	160(14.6%)	
	Law on Punishment of Violent Acts	86(7.9%)	
Etc.	Traffic-related	150(13.6%)	150 (13.6%)
Total	1,095(100%)		

1.2 Characteristics of Mediators and Mediation rate

When see the mediation rate by criminal mediation committee holding number, establishing rate of the criminal mediation committee is held in first is 64.1 %, second is 61.5%. Considering about the case which failed to mediate in first criminal mediation committee, it held again to Second mediation committee, this case is hard to mediate. Thus, the low possibility in second than first is a natural result.

That is because, to the failed case, its case is too complicated or serious confrontation of feeling. For these reasons, it is unclear to solve the mediation with two times mediation.

Also, compares the mediation establishing rate by mediator gender who participating in the criminal mediation committee as follows. The rate of male and female members who participate in the mediation committee, the male members are high, When see the mediation establishing rate, 3 male 62.5%, 1 male and 2 female are 57.9%, and 2 male, 1 female is 67.6%, like this, mediation establishing shows highest.

Table 3. The number of mediation committee holding and mediation rate[12]

Division	Mediation rate	
Mediation Committee	Once(94.6%)	64.1%
	Twice(4.8%)	61.5%
Members	Two(62.8%)	62.3%
	Three(36.8%)	65.9%
Gender	Male	63.8%
	Female	67.0%
Committee Composition	3 male	62.5%
	2 male + 1 female	67.6%
	1 male + 2 female	67.9%

1.3 The Execution of the Agreement(Mediation)

Contents

Through the Criminal Mediation Committee, looking the execution about its agreement about incident which agreed by parties as follows. Among the established cases with agreement, 81.0% were executed. Never executed or only some of the execution cases were found in 9.4%, all executed cases of agreements were more than 80%, about the execution of the agreement, the no confirmation amounts in criminal mediation committee is 9.6%.

Table 4. Executing of Mediation

Division	Numbers(%)
100% Execution	427(81.0%)
Partially Execution	16(3.1%)
100% Non-Execution	33(6.3%)
Unconformable	51(9.6%)
Total	527(100)

2. After Criminal Mediation Processing Results

Following the agreements in criminal mediation committee, let's find the average time of processing the cases and disposal results.

2.1 Disposition Results in Prosecution of Mediation Cases

In the prosecutor's disposal results about cases brought to the criminal mediation, 71.1% were

non-prosecution disposition. In case of the cases which made mediation, 88.0% were non-prosecution disposition, 40.7% which miscarriage cases were non-prosecution disposition. Thus, if the mediation established through the criminal mediation, the non-prosecution disposition rate can be seen almost times higher results. Also, when mediation established, as the type of non-prosecution disposition, the suspension of prosecution is 53.3% it is the highest, and when miscarriage cases, non-indictment rate by freedom from suspicion were 69.9% which is the highest rate. In other words, when establish the mediation, considering the agreement about recovery of damages between offender and victim, they choice the suspension of prosecution. This looks strong inclination without presence of criminal charges. Meanwhile, when in case of mediation miscarriage, making the non-prosecution disposition is strong inclination just in case that if there is clears from suspicion.

Table 5. Prosecution Disposal by Criminal Mediation

Division		Mediation Establishment	Miscarriage	Total
Disposition of prosecution	non-indictment	604(88.0%)	156(40.7%)	760 (71.1%)
	Prosecution	12(1.7%)	50(13.1%)	62 (5.8%)
	Summary Indictment	70(10.3%)	177(46.2%)	247 (23.1%)
Type of non-indictment	No charge	68(11.3%)	109(69.9%)	177 (23.3%)
	No crime	1(0.2%)	1(0.6%)	2(0.3%)
	No right of arraignment	206(34.1%)	10(6.4%)	216 (28.4%)
	Suspension of Indictment	322(53.3%)	23(14.7%)	345 (45.4%)
	Stay of Prosecution	2(0.3%)	8(5.1%)	10 (1.3%)
	Dismissal	3(0.5%)	2(1.3%)	5(0.7%)
	Etc.	2(0.3%)	3(1.9%)	5(0.7%)

2.2 Prosecution Disposal Results by Cases

And now I will examine the difference between the disposals of the prosecution by mediation and agreed

executing degree through the criminal mediation. Among financial damage cases, when the mediation satisfied the fraud cases are 80.1%, Agreements were executed 100%, 90.4%, among the physical damage, it occurred less than the bodily harm cases. When mediation is established, generally agreements executed 100%, it shows more high than the rate of non-indictment.

Table 6. Types of Cases and non-indictment Rate

Type	Main Cases	non-indictment Rate(%) Mediation established: Agreements implemented 100%
Monetary damages	Fraud	81.0%:90.4%
	Labor Standards Act	87.3%:100%
	Embezzlement / Misappropriation	90.5%:100%
Physical damages	Bodily Harm	91.0%:91.8%
	Violence	96.9%:96.9%
	Law on Punishment of Violent Acts	81.7%:83.3%

2.3 The Average Time Required of Case Processing

When see the processing time of the cases which brought to the criminal mediation by form of the case, mediation results, and disposal results of prosecution from the period of the holding the Criminal Mediation Committee to standing court, In the case of monetary damages, mediation is established through the criminal mediation committee, and if the case was ended by non-prosecution disposition of prosecution, 35 days had taken. On the other hand, after criminal mediation is not satisfied and indicted, when the verdict of the first trial in court and if case is concluded, the average time period showed that a total of 209 days. The difference of required time is 174 days, it appeared to be almost six months more required.

And physical damage case, if the case is closed by mediation and non-prosecution disposition, the average

required time is 20 days, miscarriage of mediation and after disposition of prosecution until verdict of the first trial, the average time period was 198 days. The difference between the required times is 178, it can see that almost similar to monetary damages.

Table 7. Processing Required Time of Criminal Mediation Cases

Division			The Average Required Time per Step-by-Step Progression		Total
Type	Mediation Results	Prosecution Disposition	Mediation Meeting Held→ Prosecution Disposition	Prosecution Disposition → Sentence in Court	
Monetary damages	Establishment	non-indictment	35 days	×	35 days
	Miscarriage	Summary Indictment	65 days	56 days	121 days
		Indictment	89 days	120 days	209 days
Physical damages	Establishment	non-indictment	20 days	×	20 days
	Miscarriage	Summary Indictment	47 days	45 days	92 days
		Indictment	84 days	114 days	198 days

3.3 Review

The disposition of prosecution to criminal case is not determined only depending on whether the agreement between offender and the victim. However considering that is deemed suitable by prosecutor and I could know that if other conditions are similar to other, agreement by criminal mediation give a decisive influence to the disposal decision of prosecution[13]. Thus, in formally prosecution ratio, mediation case is just 1.7%; however not satisfied is 13.1%. Considering this, I could know that the mediation establishment influence at the disposal decision is great. And when mediation established, considering fact that the agreement on the restoration of damage between offender and victim, choice the suspension of prosecution is strong tendency apart from the existence of a criminal charge.

IV. Problems and Solutions for Criminal Mediation System

1. Problems for Criminal Mediation System

1.1 Excessive criminal mediation works in prosecution

Unlike America where can ask the mediation to arbitration institution independently or choice an alternative means to resolve non-criminal proceedings by police, in Korea, the police have no legal basis to do the mediation independently or ask. Since 2007, at the criminal mediation which is implemented in District Attorney's Office across the country[14], judicial police officers ask to criminal mediation committee which is reconciliation arbitration institution and separated under the prosecutor by taking command of the prosecutors. The reason for this, current prosecutors limiting the criminal mediation cases to directly receive by prosecutor or the case brought from police. Recently, criminal mediation cases exploded. Thus, Supreme Prosecutor's Office has established comprehensive measures for activation of criminal mediation in January 6, 2014. Its main contents are full-time mediator and same day mediation system, night and holiday mediation system, visiting mediation system etc.

1.2 Change the Criminal Code like Civil Code

In criminal mediation, when looking to the criminal damage restoration, the best problem is change the Criminal Code to Civil Code. Typically, only with the reparation of victims which is the core element of criminal mediation, give up the punishment which is criminal sanction means treat the criminal issues to civil. In a situation that law differentiated, Civil Code and Criminal Code were strictly separated mutually and also, its procedure is also surprisingly different. Today, the Illegal settlement and dispute resolution in

criminal proceedings is not just pursue the other objectives by Criminal Code and the Civil Code which is completely separated and they are interconnected and have the common point of dispute about the result of criminal conduct such as recovery of peace and law and ensuring the safety to crimes. However, it brings the result that exemption from punishment charge by only civil compensation, eventually it can be reduced to a system which protects the wealthy criminals.

1.3 The Professionalism Issues to Criminal Mediator

At the criminal mediation, the mediator have to operate the committee in neutral position, thus, In the process of mediation, they should not require the compulsory things or do not interfere with the autonomy of offender or victim. However, some mediator act as judge not did mediation act. These actions violating the neutrality of the mediator and it brings the displeasure to the parties who participating the mediation, also making mediation with force. Thus, it making different results from the fundamental purpose of the mediation and it has emerged as a problem.

1.4 The Lack of Mediation Time

The mediators who participate in the mediation should have sufficient time, substantially, they driven out time and they could not explain or omitting the criminal mediation system. Like this, consideration for the specified time of mediation is pointed out as a problem. The result that the mediation time affects to whether the mediation establishment or not and satisfaction of victims is very closely related to the mediation time. In other words, currently operation of Criminal Mediation Committee of District Attorney in Gwangju, is not in good situation to operate flexibility

with discretionary power depending on the nature or circumstances of each mediation cases. I think other Attorney General's Offices are in same situation.

1.5 Safety Issues to Criminal Mediation Room

It is true that today most criminal mediation rooms installed in Public Prosecutor's Office across the country are not safe to keep the personal safety. August 19th in 2015, according to the fact sheet about criminal mediation room installation which was submitted to Gi-ho Seo in Justice Party of National Assembly Legislation and Judiciary Committee by Department of Justice, under the process of criminal mediation in less than 58 District Prosecutors' Office, where to place the safety personnel like guard except for mediator, staff, parties is just Seoul Southern District Prosecutors' Office and Cheongju District Prosecutors' Office. So, in mediation process, adventitious accident by feeling worse between the parties can be occurred. Like this, they are always exposed to this bad situation, the prosecution negligent on safety management of criminal mediation room. It also is emerging as a problem[15].

2 Criminal Mediation System Improvements

2.1 Criminal Mediation in Police

First, at the police, they do not have to limit the mediation subject to minor offense or crimes related to personal legal interests. However when see the nature of crimes and investigation structural, serious crimes have to resolve in the prosecution phase. About the crimes which it is closely related to our daily life, such as unlicensed or drunk driving, Road Traffic Act violations, theft of property crime, violation of the Labor Standards Act, etc. introduce the police criminal mediation system and after enforcement and based on its experience, extend to other crimes can be reasonable. Already in developed

countries, has been performed the police criminal mediation system experimentally to solve the boy crimes. And through this, they extend its coverage to other crimes. Therefore, mitigating the work burden of prosecution have to made in the step of police and its effects can be maximized, among them, police criminal mediation is established before the officially accepted the case will be the most desirable.

2.2 Improvement of Civil Code from Criminal Code

Generally, to operate criminal mediation system, in order to avoid accusations that the Criminal Code to Civil Code, they must have the interest in the elements such as reparation of victims, responsibility recognition of offender, victim's forgiveness and restoration of legal peace in the community. Improvements about this, when mediation in progress with sufficient time and they try to make real mediation, and before reflecting the establishment of mediation in judicial institutions, it seems that they have to find the way that examine the authenticity of the damage recovery.

2.3 Professional Training and Standards for Mediator

The mediators in criminal mediation committee are required to maintain a neutral third party standpoint also needs an intermediary to verify the facts and issues to make it easier to understand each other and find a solution together. Therefore, the mediator should not be forcibly agreement or role of judge to cases. And the neutrality of mediation agency means that the mediators have to do the mediation work neutrally without imbalance between offender and victim. To perform this role properly, it is deemed to prepare a basic principle for mediator and the quarterly education are required.

2.4 Caring Sufficient Mediation Time

Presently, the operation of Criminal Mediation Committee of District Attorney's Office in Gwangju divided into morning and afternoon like other region, generally for 2 hours they are in charge of the three incidents. In other words, schedules were made as 30-40 min interval. Thus, the mediators always have the pressures according to schedule. This mediation time is never related with type of crimes or incident characteristics, and in some cases, considering that parties have to be separated sequentially and set the sufficient criminal mediation time from the initial. And I want to offer that through its own system in Prosecutor's Office, the program which can give the information about the case of mediator and its development are needed.

2.5 Safety Measures for Criminal Mediation Room

In December 2014, in Criminal Mediation Room of Suwon District Prosecutors' Office, there was an incident that during the criminal mediation process, the respondent sprayed sulfuric acid to the complainant. Due to this, the complainant, mediator, legal adviser, etc. total 5 people had burned[16]. After then, the prosecution tried to make vitalization of criminal mediation and announced the "Comprehensive measures for criminal mediation vitalization". However, until now, there is no special progress.

Therefore, from now, the prosecutions have to make safety measure urgently for more safe criminal mediation follows. First, inspect the belongings of parties. Second, place the security personnel. Third, install the glass wall between complainant and respondent. Etc.

3. Review

At the dimension that the criminal mediation acts

restore the relations under control by a neutral third party, it receiving a positive evaluation. And the criminal mediation can substantially achieved the interests of the victims by the mediation process, ultimately at the harmonious point that the rehabilitation of victims and perpetrators, it has the purpose for restoration of legal peace. Therefore, in terms relieve the work of prosecution, adjustments are required in the police stage, and in order to secure the professionalism to members of Criminal Mediation Committee, regular training and principle should be introduced. And for the relaxed mediation, through own system of Attorney General's Office, and let the mediators keep in their mind by checking the cases. Thus, develop the system also important. And for the safe mediation, comprehensive safety measures are needed.

V. Conclusion

Through the mediation progress, the criminal mediation can achieve the practical benefit of victims: ultimately, at the harmonious point as social return for victim and offender, it has the means that can make the restoration of legal peace. However, in order to carry out the original purpose of criminal mediation, it is true that has number of problems in practice and theoretically. Excessive works for prosecution criminal mediation, Criminal Code to Civil Code, professionalism issues to criminal mediator, lack of time to mediate, etc. These problems can be improved by following contents.

First, to the excessive works of prosecution criminal mediation, introduce the police criminal mediation to things which is closely related to our daily life such as unlicensed and drunk driving, road traffic law violation, theft of property crime, violation

of the Labor Standards Act, etc. then, it can be solved more easily.

Second, at the Criminal Code to Civil Code, in order to avoid the accusations, have the sufficient time for mediation in criminal mediation committee and they have to try for making the real mediation. Also, mediators have to keep in their mind that the punishment charge is not part of restitution, and they do their role for right awareness.

Third, at the professionalism of criminal mediator, and protect the causing mental confusion to the parties and unilateral impose the mediation in the mediation process, they have to do the theoretical training and practice for mediators and make the basic principle.

Fourth, for the criminal mediation time, it is really important that the how much mediator can solve the desires for communication between parties, and it is very closely associated with mediation time. Most mediator mediate with short time, thus, they always have the time pressures. Therefore, through its own system in Prosecutor's Office, the program which can give the information about the case of mediator and its development are acutely needed.

Fifth, the comprehensive safety measures have to be made for more safe criminal mediation in the room.

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