

## On the Protection of Victims' Rights and Interests in Civil-Criminal Cross Cases

Yuke Dan, Hang Chen

Law School, Lanzhou University, Lanzhou, 730000, China

### Abstract

Civil-criminal cross cases involve quite complex legal relations that may lead to some disputes and/or conflicts between the civil litigation procedures and criminal litigation procedures. In practice, civil-criminal judicature features the following steps: filing to execution may cause the civil litigation to be affected by the criminal part, resulting in the victims not being fully protected. From a theoretical point of view, victims have two roles in the cross cases of civil and criminal litigation. With the complexity of the cross case of civil and criminal litigation, the identity of the victim is prone to contradictions in the cross case, and it is difficult to carry out the relevant procedures. Combined with the actual situation, it is found that the problems existing in the protection of victims' rights and interests in civil-criminal cross cases mainly belong to civil criminal procedure, the limitation of the role of criminal incidental civil litigation and so on. If we want to improve these, we should strengthen the protective measures by constructing the principle of "people before punishment" and optimizing the relief ways of incidental procedures.

### Keywords

Civil-criminal cross cases; Victims; Protection of rights and interests.

### 1. Introduction

Civil-criminal cases could be defined as those cases that involve both civil issues like private disputes and other affairs between individual(s) and organization(s), and criminal cases that concern individual safety, social and national stability and security. They represent crossovers between both civil and criminal cases [1].

Over the past decades, Chinese economy is developing in a sustainable and rapid manner, and some problems like civil-criminal cross cases have been becoming increasingly prominent. As a result, more and more research efforts have been made on civil-criminal laws and regulations. However, the problems of civil and criminal litigation are becoming more and more complex and marginalized, which involves not only practical problems, but also procedures, as well as restitution and recovery. The analysis of civil-criminal cross cases needs to be studied from multiple angles. In order to solve the problem of the protection of victims' civil rights and interests, we should fully stand on the macro perspective, strengthen the research on judicial practice, and put forward relevant theories to provide effective coordination and connection ideas for civil-criminal cross procedures.

### 2. Practical Issues on the Protection of Victims' Rights and Interests in Civil-Criminal Cross Cases

The main filing departments of criminal cases are the public security organs and some courts and procuratorial organs. There will be conflicts among the public security, procuratorial and judicial organs in the filing of civil-criminal cross cases, so the filing process of the murdered people's affairs is not smooth. In the trial of civil-criminal cross cases, there are no precise

provisions on the filing of civil-criminal cases. If there is no connection between criminal and civil aspects, there will be no problems in their respective filing. However, during judicial practice, there may be the impact of criminal filing on civil affairs. For example, for the criminal part of the sentenced civil, there may be the problem of no longer managing the same matter. The specific circumstances of the convenience of filing a civil case are the same as those of the criminal case. The standards for filing civil and criminal cases are different. According to relevant laws and regulations, in order to ensure the litigation rights of the parties, the filing hierarchy system should be implemented. As long as the civil case meets the criminal factors within the scope of the case, the case should be filed. For whether the case is true or not, the acceptance should not be ignored in the case filing [1]. Therefore, if it is determined that the legal facts of the civil-criminal cross cases are the same and the case is not filed, the factors considered by the court may be to save judicial resources and absorb civil litigation, but this is not consistent with the value of the hierarchical system in essence, and deprives the victims of their civil litigation rights.

At the same time, there is also the problem of "one size fits all" trial in civil litigation. If a criminal crime is found in the trial of a case involving the intersection of civil and criminal law, it may have an impact on the civil procedure. According to relevant laws and regulations, in general, the trial of civil cases will be terminated by the judgment result of criminal cases. For example, in the crime of infringing trade secrets, it involves the identification of the right to trade secrets and the judgment of whether the infringement is established as a civil problem, which is the premise of defining the crime of trade secrets. If it involves the content of terminating civil procedures, the cart before the horse may appear, and it will lead to the difficulty of conviction and sentencing in the case, However, it will reduce the efficiency of civil and criminal procedures [2].

Although the termination of case trial is not absolute, in judicial practice, judicial personnel are not a trial practice because they are used to interest demands. For example, in economic crime cases, through the handling organ to advocate the termination or transfer of civil cases suspected of economic crime, the court will generally terminate the case and transfer the case, which can not only reduce the pressure of handling the case, but also reduce the problem of miscarriage of justice. It can be seen that the termination of trial has become the normal treatment of civil and criminal cross cases [3]. However, because the sentencing cycle of criminal procedure is long and some civil cases can not be solved, it will damage the secondary rights and interests of victims and can not effectively protect civil rights and interests.

At the same time, there are still practical problems in the protection of the rights and interests of victims in civil criminal cross cases. The criminal incidental civil litigation has certain limitations, and the conflict between criminal recovery and restitution and civil litigation. There is a certain difference between civil action and incidental compensation in essence. Although in recent years, new provisions have been added to relevant laws and regulations, such as increasing the impact of pre litigation property preservation and incidental civil litigation mediation, compensation, conviction and sentencing, there are still some loopholes. On the conflict between recovery and restitution and civil litigation, there are "white notes" in the hands of the victims of the recovery and restitution judgment, and the problem of preventing the victims from filing another civil litigation. At the same time, there are also problems such as concurrence of civil execution. Although in essence, the nature of criminal restitution and recovery and civil enforcement is a relief procedure to protect the civil rights and interests of victims, the relevant legal basis and nature of the two are not the same, and there is no exact definition. Although they are equivalent to enforcement, they are not equivalent to general civil enforcement, and they are also different from the characteristics of criminal property punishment, Therefore, it has certain enforceability, which also means that civil execution may produce concurrence. To fully solve the current problems, we must combine the actual

problems and explore the relevant laws and regulations, so as to master the protection measures for the rights and interests of victims in civil criminal cross cases [4].

### **3. Protection Measures of Victims' Rights and Interests in Civil-Criminal Cross Cases**

#### **3.1. Constructing the Case Handling Principle of "People First and Punishment Later"**

##### **3.1.1. Establish the Principle and Concept of Handling Cases**

In the process of judicial practice, the status of civil litigation is lower than that of criminal litigation, so there is no need to emphasize the priority of criminal litigation, but to be unified with the development of criminal litigation. Adopting the principle of "people before punishment" will reduce certain civil rights and interests of victims, and can not be effectively corrected in the short term, so it is necessary to establish the content of the principle. The establishment principle is as follows: "when there are two procedural conflicts in civil criminal cross cases, civil litigation precedes criminal litigation, and this priority includes the order of handling cases and the order of execution." In dealing with cases, we should fully consider the rights and interests of victims, and the principle of "people before punishment" is also reasonable in practice. Moreover, the implementation of this principle can ensure the "parallel punishment between the people", reduce the conflict between the two systems, prevent the civil rights and interests of victims from being hindered by criminal procedures, and ensure that the principle of "first people and then punishment" is theoretically reasonable and practical [5].

##### **3.1.2. Clarify the Application of the Principle**

"People before punishment" belongs to a flexible principle, which can effectively ensure the general use of the country and the rational utilization of resources. Although there are some disadvantages, it will not be completely denied. In the specific implementation, it will produce different judicial effects due to different ideas. Combined with practice, for some criminal priority cases, it is indisputable to adopt this principle, such as contract fraud. It may be easy to enter the procedure and difficult to exit the procedure. From the perspective of procedure, the problem of reducing litigation efficiency due to the obstruction of criminal procedure can give priority to civil litigation. Therefore, it needs to be clear that the principle of "first people and then punishment" focuses on solving civil disputes, so it should be used flexibly in combination with the application.

#### **3.2. Optimizing Incidental Procedural Remedies**

##### **3.2.1. Improve the Relevant Civil Litigation System**

In essence, criminal litigation is a special civil litigation. The content involved in criminal litigation cannot be separated from civil litigation. As a special litigation, it is quite different from general litigation, and even causes the harm of general litigation [6].

For the relief of incidental procedure, because the criminal procedure absorbs the civil procedure and the relief for the rights and interests of victims mainly takes the criminal procedure as the leading core. If you want to effectively deal with the problem of the civil rights and interests of victims, you need to fully implement the victim's property compensation and spiritual comfort, which will lead to the obstruction of the criminal procedure to the victim's relief rights and interests. In practical measures, first of all, we should expand the specific scope of incidental civil delivery and ensure the way of relief. Secondly, we should refer to the legal relief interpretation of civil infringement, compensation standards, etc., which are the same as the civil legal standards, and the effective implementation of the victim's right to compensation.

Because the criminal incidental civil action is directly related to the relief of civil rights and interests, the victims put some expectations into practice. Excessive consideration of the conservation of judicial resources and economic principles will reduce the effect of human rights protection. We should refer to the provisions to implement the right to compensation, and gradually improve the relevant laws and regulations to ensure the spiritual and property rights and interests of the victims.

### **3.2.2. Standardize the Implementation of Criminal Recovery and Restitution**

Like the civil litigation attached to the criminal, although the goal of criminal recovery and restitution is to solve the victim's civil compensation request, it can not achieve good results in practical action. Through the research, it is found that the current systems and regulations related to criminal recovery and restitution are not clear, and their applicability in practical practice is not high. Because the laws and regulations on criminal recovery and restitution only occupy a small part, and do not indicate the nature of the law and mandatory issues, this is bound to lead to confusion in judicial practice and seriously affect the degree of implementation. The criminal recovery and restitution system directly affects the civil compensation rights and interests of victims. In specific measures, we first need to make a legal definition from the perspective of legislative restitution and restitution. Combined with the current laws and regulations, the return and recovery of criminal compensation, the execution of criminal property and civil execution are different, but they belong to the compensation for the relief of the victims. During judicial practice, the implementation rate of property punishment and civil execution in criminal law is low. From the legal level, it should be carried out according to relevant formulation procedures to ensure its essence and purpose. Secondly, we should fully get rid of the traditional idea of criminal priority, specify the recovery and restitution in the judgment, and can not simplify the subject, scope and other matters. Thirdly, criminal recovery, restitution and civil compensation are directly related to the civil rights and interests of the parties, so they are quite different from criminal property punishment. When there is a concurrence problem, the victim should be given a certain procedural option to realize the litigation right, and the victim can deal with it by himself and choose which procedure to adopt.

### **3.2.3. Improve the Victim Compensation System**

Referring to the protection measures for the rights and interests of victims in other countries, national compensation can also be a measure to relieve the losses of victims. Although the state has formulated a unique national compensation system, such as the promulgation of the federal crime victims act, which has detailed provisions on the litigation rights and economic compensation rights of criminal victims, which fully reflects the state's concept of protection and compensation for criminal victims. Another example is the law on the assistance of crime victims formulated by South Korea, which protects the rights and interests of victims and stipulates that victims and their wills who have suffered damage to their lives and physical health due to the crime of others have the right to receive compensation from relevant countries. However, at present, China has no relevant regulations on this provision. Because in the incidental settlement of rights and interests disputes in criminal proceedings, it is impossible to make up for the victims completely. Some judicial resources have been consumed in the criminal procedure, and some civil disputes have been handled. If there are no other disputes, the system of victim's right to compensation in China can be established. For special victims, the compensation system can fully solve the compensation problems that cannot be solved in criminal cases.

### **3.3. Detailed Rules of Civil Procedure**

At present, the civil procedure can not effectively solve the content of victims' rights and interests relief, so the two procedures should include an effective connection mechanism to avoid the obstruction of victims' civil rights and interests by criminal procedure. In some

specific cross criminal cases, we should give civil victims the right to sue, so as to make up for some losses. In the simple criminal procedure, it is impossible to properly deal with the relief of the rights and interests of the victim. When the criminal judgment cannot relieve the victim, it is necessary to give the victim the possibility of another civil action.

Because there is no exact provision in the current law, how to practice the relief way of bringing a lawsuit should be deeply studied. In practice, the judiciary should clearly specify the litigation contents separately proposed by relevant cases, such as the scope of accepting cases and acceptance, so as to avoid the problem of repeated litigation. In practice, the effect of the separate proceedings is equivalent to that of the criminal proceedings, and has a certain degree of independence. Therefore, in the detailed provisions, the possibility of victims' realizing civil rights and interests through secondary relief is also the key guarantee to maintain the independence of civil proceedings. By refining the rules of civil procedure, we can effectively make the relationship between civil and criminal more reasonable and ensure the complementarity of civil and criminal procedures.

### **3.4. Strengthening the Role of Inspection and Supervision**

For the problem of poor civil and criminal procedure, its essence can not be separated from the research on the relationship between public security, procuratorial organs and law, nor from the relationship between criminal trial and civil trial. In handling cross cases, the investigation and filing of cases may involve the relationship between the court and the public security organ, and also the relationship between the courts during the trial and execution. In this case, as the intermediary of interests, the procuratorate can give full play to its supervision function and ensure the fairness of civil criminal cross cases.

In the trial of the whole case, we should give full play to the two supervision functions of the procuratorate. When there is a conflict between criminal and civil procedures, such as the unprovoked termination of civil proceedings and the malicious termination of criminal procedures, which damages the rights and interests of victims, the procuratorate should give full play to the role of procuratorial supervision, issue suggestions and make corrections. On the other hand, the procuratorate should give play to the function of procuratorial supervision in the procedure of civil litigation. If the civil dispute judgment takes effect and the relevant cases and criminal proceedings are considered to be crimes, it has become a normal practice to apply for supervision. The procuratorial organ should fully review the influence and relevance of civil and criminal cases to decide whether to start procuratorial supervision. The supervision function of the procuratorate for the poor handling of criminal cases and the inspection and supervision function for civil proceedings constitute all the functions of the procuratorate in the civil-criminal cross cases. At the same time, during the handling of civil-criminal cross cases, we should strengthen the supervision and procuratorial functions of cross case procedures and entities, so as to realize the fairness and effectiveness of civil-criminal cross cases, ensure the fairness of civil-criminal cross cases, and fully protect the civil rights and interests of victims.

## **4. Conclusion**

The legal issues related to civil-criminal cross cases have always been the focus of judicial practice and theoretical circles. They mainly involve two departments with different values, and there will be unavoidable conflicts. Civil and criminal cases are more inclined to judicial practice. The protection mechanism for victims should not be limited to theory, but should be fully improved simultaneously. In order to realize the good mechanism of "civil and criminal synchronization", we should constantly improve the relevant detailed rules and mechanisms, realize the standardization of civil procedure, establish the principle of "people before punishment", and correct the doctrine of severe punishment, so as to achieve the balance

between protecting private rights and safeguarding public rights, and effectively implement the protection of the victims' rights and interests.

## Acknowledgments

This work is supported by the Key Research Bases of Humanities and Social Sciences in Colleges and Universities of Sichuan Province: (JCSF2021-03) and (CJCB2021-02).

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