

The Coordination of the Relationship between Civil Law and Criminal Law from the Perspective of the Crime of Contract Fraud

Shaoshuai Wang

School of Law, Qingdao University, Qingdao 266000, China

*wssjb891@163.com

Abstract

The crime of contract fraud is a typical cross-criminal case in my country, and such cases tend to confuse the boundaries between civil lawlessness and criminal crime. Therefore, it is necessary to study the relationship between the criminal and the civil in depth in theory, starting from the civil and criminal concepts of contract fraud, when dealing with such cross-criminal cases as the crime of contract fraud, by studying the interweaving of the criminal-civilian relationship, grasp the unity of the legal order between the two, clarify the difference in the way of thinking of the criminal and the people, and pay attention to the processing of the relationship between the criminal and the people, so as to coordinate the relationship between the civil law and the criminal law.

Keywords

Crime of Contract Fraud; Civil Code; Criminal Law; Cross between Criminal and Civil.

1. Introduction

The Civil Code of the People's Republic of China (hereinafter referred to as the Civil Code) has come into effect on January 1, 2021. From this date, it has regulate various personal and property relations of various civil subjects, involving all aspects of social and economic life. The relationship entanglement was officially taken over by the Civil Code. Civil Code mainly regulates civil disputes between equal civil subjects. However, sometimes due to the greater degree of subjective malice of one party, it often breaks the boundaries of civil disputes and falls into the scope of the jurisdiction of criminal crimes. It can be seen from this that there is no insurmountable gap between civil law and criminal law, and the legal fields bound by the two are not without integration. This article also analyzes the criminal composition of "contract fraud" stipulated in the sub-rules of our country's criminal law, and compares it with the clauses on contract constraints in the Civil Code, and finds out the relationship between our country's civil law and criminal law.

2. The Relationship between "Crime of Contract Fraud" and Civil Law

As we all know, a contract is a contract, which is an agreement between civil subjects to establish, modify and terminate civil legal relations. A legally established contract is of course protected by the laws of our country, and a legally established contract is only legally binding on the parties agreed in the contract and signed into effect. However, there is a crime of "contract fraud" in the criminal law of our country, which has an inseparable relationship with the contract breach fraud in the civil law.

2.1. Regulation of Fraudulent Behavior in Civil Law

The regulation of fraud in the field of civil law in our country is reflected in the Civil Code. Article 148 of the Civil Code stipulates that the fraudulent party has the right to request the people's court or arbitration institution to revoke the civil juristic act committed by one party against

the true will of the other party by fraudulent means. The provisions of this article give the defrauded party, in the face of civil fraud, the remedy for his legal rights and interests by rescinding the contract through a people's court or an arbitration institution.

On the other hand, although one party in the contract may not have the intention of fraud, but subjectively does not want or objectively cannot continue to perform the contract, Civil Code also provides relief to the other party to the contract to make the infringing party bear the responsibility for breach of contract. That is to say, Article 577 of the Civil Code stipulates that if a party fails to perform its contractual obligations or performs contractual obligations that do not conform to the agreement, it shall be liable for breach of contract such as continuing to perform, taking remedial measures, or compensating for losses.

Professor Chen Xingliang believes that fraud in the conclusion of a contract is a civil tort rather than a civil breach of contract; if it is a fraud in the performance of the contract, it is a civil breach of contract. It can be seen that civil fraud can be divided into two types: the first is the fraud of civil breach of contract, and the second is the fraud of civil tort Issue[1]. This paper finds out the relationship between civil law and criminal law by comparing the fraud of civil breach with the crime of contract fraud in criminal law.

2.2. The Criminal Law Meaning of Contract Fraud

The crime of contract fraud is stipulated in Article 224 of Criminal Law of the People's Republic of China , a larger amount of behavior. The contract stipulated in the Civil Law is only legally binding on the parties within the scope of the contract. However, with the continuous development of China's market economy, the use of contract signing to defraud money is becoming more and more serious. Some contract fraud behaviors not only violate the The property rights of others and disturbing the market order require the intervention of the criminal law. Moreover, in judicial practice, it is extremely difficult to distinguish and identify contract fraud and economic disputes, so it has been a hot issue for a long time.

It is worth noting that the point where contract fraud and economic disputes are extremely difficult to distinguish is the crime of contract fraud in the process of contract performance. In the process of contract performance, the "crime of contract fraud" in criminal law is established, which requires the perpetrator to realize that the contract is difficult or impossible to continue to perform, and the purpose of illegal possession is subjectively generated. In the process of performance, it is mainly realized in the form of inaction, that is, continuing to perform the contract), which makes the other party fall into the misunderstanding that the contract can still be performed, thereby defrauding the property of the other party; and economic disputes occur in the process of contract performance. The contract cannot continue to be performed. As a result, the contract could not be fulfilled. The difference between the two lies in whether the perpetrator subjectively has the purpose of illegal possession and committed fraud.

2.3. From the Perspective of Contract Breach and Contract Fraud to See the Logical Relationship between Criminals and Civilians

Fraud is not just a civil law problem, it is also a criminal law problem. My wife Rong, a famous Japanese civil jurist, pointed out: "Generally, fraud and coercion have the effect of both civil and criminal law. Criminal law strives to punish those who commit fraud and coercion, and remove social harm. Civil law seeks justice for those who have been defrauded and coerced. For this purpose, the civil law regards fraud and coercion as torts, and recognizes the victim's claim for damages against the injurer and the victim's revocation of the deceit and coercion. However, the three effects of punishment in criminal law and damage compensation and revocation in civil law have their respective purposes, so their requirements are different.[2]" It can be seen that the fraud in the criminal law evolved on the basis of the fraud in the civil law, and the

understanding of the crime of fraud in the criminal law must be based on the fraud in the civil law. conduct an inspection.

In civil law, the civil liability caused by the breach of contract is the liability for breach of contract, and the liability for breach of contract refers to the liability that the parties to the contract should bear for breaching the obligations stipulated in the contract. should bear civil liability. If it involves criminal fraud, it is a criminal breach of contract, which constitutes a crime. A civil breach does not necessarily lead to a criminal breach, while a criminal breach necessarily leads to a civil breach.

Strictly speaking, there is a certain range of overlap between civil wrongs and criminal offenses. In judicial practice, civil breach of contract and criminal offense are often intertwined because of this overlap, making it difficult to distinguish the boundaries between them. For example, in contract fraud, when there is only a civil breach of contract fraud, it does not necessarily violate the criminal law, only its behavior endangers deeper interests on the basis of infringing on the property rights and interests of others like disturbing the social market order, thereby obtaining substantial illegality Sex is a punishable act in criminal law.

3. A Comparison of Criminal-Civil Relations Induced by Contract Fraud

In my country's judicial system, civil breach of contract fraud and contract fraud are two different types of violations. The former is civil and the latter is criminal. However, judging from the provisions on the crime of fraud in Article 263 of the German Criminal Code, in the German and Japanese criminal law doctrine system, there is no strict distinction between civil fraud and criminal fraud, but the civil fraud considered in our country is also identified as fraud[3].It can be seen that in the world, there is no strict distinction between criminals and citizens in contract fraud.

3.1. The Interweaving of the Criminal-civilian Relationship

The interweaving of criminal legal relationship and civil legal relationship is reflected in the fact that in a case, there are objectively two different legal relationships between criminal and civilian, and these two legal relationships are entangled and intertwined.

There is a close relationship between crimes in our criminal law, especially property crimes, and civil legal relations. For these property crimes, the correct identification of civil legal relationship is of great significance to the judgment of the nature of the crime, including the distinction between one crime and another. Taking the crime of contract fraud as an example, in the case of "in the process of performance" in the crime of contract fraud, there is a phenomenon of interweaving of the criminal-civilian relationship. Civil fraud has become an element of criminal fraud and can be grasped as an objective constituent element of criminal fraud. Only behaviors that meet the objective constitutive elements and the subjective constitutive elements, that is, the purpose of illegal possession, have the criminal illegality of the crime of contract fraud, and there is room for further discussion of the actual illegality of contract fraud. If there is no civil breach of contract fraud, criminal fraud also ceases to exist due to the lack of constituent elements[4].

3.2. The Dispute over the Unity of Legal Order

In essence, the deeper problem involved in the system coordination of civil code and criminal law is how to understand the unity of legal order. In academic discussions on the intersection of criminal and civil relations, there has been a great controversy over whether the legal order is unified. Scholars who hold the theory of illegal relativity believe that the legal order should not be unified, so the judgment of the illegality of the criminal law should not depend on the judgment of the illegality of the civil law. The scholars who hold the unity of illegality believe that the judgment of the illegality of criminal law needs to rely on the judgment of illegality of

civil law. At present, some scholars believe that the legal order established by civil law and the legal order established by criminal law should be understood by moderation (moderated illegal monism)[5].

In contrast, I agree more with the dualism of developing the legal order on the basis of the unity of the legal order. As mentioned above, the criminal system of the crime of contract fraud, the violation of the civil law order is included in the constituent elements of criminal violations, and belongs to the content of the normative evaluation in the constituent elements. Civil illegality is a constituent element of ensuring criminal offenses. Desirability is the necessary condition for formal illegality, and only civil illegality is not enough to explain its criminal punishment. On the basis of formal illegality, it is still necessary to judge the actual illegality of the behavior, such as the crime of contract fraud. Among them, only the civil breach of contract fraud and the purpose of illegal possession are only the elements that constitute the crime of contract fraud, which are all forms of illegality. Only when the perpetrator realizes that his behavior has gone beyond the scope of infringing on personal property and has expanded to disrupt social order and obtain a criminal illegality that cannot be recognized by the criminal law, will it be criminally punishable, and the behavior is a punishable behavior. punished crime[6].

3.3. Differences in Way of Thinking

There are formal judgments and substantive judgments in both civil law and criminal law. Of course, civil law pays more attention to formal judgments, while criminal law pays more attention to substantive judgments. It should be pointed out here that when we say that criminal law pays more attention to substantive judgment, it does not mean that formal judgment is not used in criminal law. In fact, based on the principle of statutory crime and punishment, in the determination of the constituent elements, it is first necessary to make a formal judgment according to whether there are express provisions in the criminal law, so as to determine the appropriateness of the constituent elements. Substantive judgment can only be made on the basis of the equivalence of the constituent elements, and the function of the substantive judgment is to exclude those acts that have the constituent elements but are not infringing on legal interests from the crime. The logic of civil law and criminal law are different, so there are differences in the way of thinking between civil law and criminal law.

In civil law, more emphasis is placed on the analysis method of legal relationship, and in civil procedure law, facts are also determined based on the form of evidence. But the criminal law is different in that it has the nature of substantive judgment. From the perspective of violating legal interests, when legislators make legislation, they set certain acts that are invasive to legal interests as constitutive elements of a crime. Therefore, under normal circumstances, behaviors that meet the constitutive elements are invasive to legal interests. However, in individual cases, although the behavior meets the constitutive elements, it does not infringe legal interests. In this case, a substantive judgment is required to exclude the conduct from the crime.

More emphasis on substantive judgment in criminal law does not deny the importance and priority of formal judgment, but means that when determining a crime, it does not stick to legal relations as in civil law, but directly examines whether the behavior meets the constitutive elements of a crime, and Not subject to civil legal relations. For example, the crime of contract fraud, which only has a formal illegality, is not much different from the civil breach of contract in civil law, and can only be excluded from the crime through substantive judgment. Moreover, in the judgment of evidence, due to the difficulty of the victim in providing evidence in civil proceedings, it is sufficient as long as there is evidence that can prove the civil legal relationship in form; but in criminal proceedings, even if there is evidence that meets the formal requirements, substantive examination must be carried out. The intervention of public power enables the ability to conduct substantive examination of evidence.

4. An Analysis of the Handling of Criminal-civilian Relations

4.1. The Debate on the Order of Criminal-civilian Relations

The issue of the intersection of criminal and civil is a criminal system and civil law system that is widely involved in the field of market economy, and has a certain degree of economic impact. The arguments presented by scholars also vary in terms of the order in which they are processed.

4.1.1. Criminal Law First

Some scholars believe that the procedural order of "priority before the people" is adopted to deal with the intersection of criminal and civil issues, because whether in theoretical research or in judicial practice, what should be presented should be the power of criminal law to represent this public law. Protect the public interest. Civil law represents private rights. Specifically, it protects the individual rights and interests of a person or unit, which belongs to the field of private law. From the perspective of the value orientation of the two, public interests should be greater than private interests. From a practical point of view, from a country, a collective, to a small enterprise or individual, they have different views of interests. Scholars who advocate the principle of "prior to punishment before the people" believe that too much emphasis is placed on handling disputes and protection of private civil rights and interests, and on the contrary, the criminal responsibility of criminal suspects is too neglected. In this regard, a cautious attitude should be upheld.

4.1.2. Civil Law First

Some scholars hold the opposite position, and believe that the "first the people before the punishment" should be adopted in the face of the intersection of criminal and civil issues. When faced with the complex situation of co-existence of criminals and civilians, choosing "prison before the people" or "prison before the people" actually shows different value orientations. "Punishment before the people" means the priority value of the state's public power, but it is contrary to the concept of the rule of law; if "the people are punished before the penalty", it means that the individual's private rights are given priority, which is more in line with the spirit of the rule of law. Some scholars believe that the abuse of the principle of "prison first and then people" will produce some drawbacks. For example, the abuse of this principle to obstruct the normal progress of civil cases has actually become a common pretext for protectionism in some places to intervene in economic disputes.

In contrast, I agree more with the scholar's point of view of first the people and then the punishment. Because criminal law must always maintain modesty, it cannot take the lead in civil law, and let the more moderate civil law take second place; from the analysis of the composition of the criminal system above, it is also necessary to advocate the principle of giving priority to the people and then punishing them. , Only conduct that conforms to civil lawlessness can there be room for discussion of criminal lawlessness. Civil lawlessness is the basis for criminal lawlessness. If the order of punishment is adopted before the people, it will reverse the criminal constitution system, resulting in the abuse of justice. Actions should be resolved by civil means as much as possible, and when they cannot be resolved, the criminal law can be used, so as to avoid a country's criminal law being too harsh.

4.2. Dealing with the Intersection of Criminals and Civilians

Criminal-civilian intersection cases are constantly pouring into the public eye. In order to deal with the problem of criminal-civilian intersection, it is necessary to fully coordinate the relationship between civil law and criminal law. Regarding the issue of the intersection of criminal and civil, the consensus of Chinese criminal law academia is that as long as there is a civil dispute, property crimes, including some economic crimes, can be prevented[7].

Applicable Law, 2009.]]. In the case of civil disputes, although the behavior meets the objective constituent elements of a property crime, because in many cases the purpose of the behavior is not to appropriate other people's property for no consideration, but to occupy and resolve civil affairs by taking this as a means. Therefore, it does not have the subjective illegal element required by the crime of contract fraud, that is, the purpose of illegal possession. Moreover, in practice, a large part of contract fraud cases can be resolved through civil compensation, either without prosecution, or without directly constituting a crime.

5. Conclusion

The staggering of criminal-civilian cases reflects the coordination of the relationship between civil law and criminal law, and rationalizing the legal relationship between criminal-civilian cases is of great significance for combating crimes, protecting the legitimate rights and interests of rights holders, and judicial handling. In the handling of criminal-civilian cases, it is particularly important to maintain the modesty of the criminal law. Only by clarifying the intertwining of the criminal-civilian relationship, bridging the legal order between the two, and starting from the criminal-civilian integration way of thinking, can the Well-coordinated the relationship between civil law and criminal law.

References

- [1] Xingliang Chen: The distinction between civil fraud and criminal fraud, *Research on the Modernization of the Rule of Law*, Vol.3(2019)No.5, p.2-3.
- [2] Wagatsuma Sakae: *New General Provisions of Civil Law* (China Legal Publishing House, China 2008), p.66-67.
- [3] Gang Wang: *German case law (subsection)* (Peking University Press, China 2016) p.29-30.
- [4] Weiping Zhang: The rules and jurisprudence of handling civil-criminal cross-litigation relationship, *Legal research*, Vol.40(2018)No.3, p.111-112.
- [5] Hanshen Wei: Reflections on Criminal Law Punishing Violations in the Background of Civil Code Era, *Journal of Yibin University*, Vol.21(2021)No.2, p.36-37.
- [6] Fan He: The basic idea of the trial of criminal and civil cases (China Legal Publishing House, China 2007), p.51-52.
- [7] Yaming Wang: A New Probe into the Linkage Mechanism between Court and Public Security in Civil and Criminal Cross-Cases, *Social Scientist*, Vol.1(2021)No.1, p.99-100.