

On the Mode of Thinking and Rules of Handling Criminal-civilian Intersection Cases

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ABSTRACT

Criminal-civilian cross-difficulty cases have gradually become a hot topic in judicial theory and practice. In reality, the deep-rooted "criminal concept" seriously affects the process of China's judicial practice, the modesty mode of thinking and the use of correlation mode of thinking on the basis of the principle of the unity of the legal order plays an important role in resolving the criminal-civilian intersection of the difficult cases of judgment. Whether adhere to the "criminal before civil", or adhere to the "civil before criminal" rule, in the criminal-civil intersection of different value orientation, in the social order and human rights protection are also very different. In practice, the selection and application of criminal-civilian intersection cases are more confusing, and some strategies are proposed to alleviate the problems in judicial practice: firstly, we should break the stubborn thinking mode of "criminal first", secondly, we should play the role of the judgment of criminal-civilian intersection cases by prior law, and finally, we should formulate the unified laws and regulations to make clear criminal-civilian intersection processing mode.

KEYWORDS

"Criminal Concept"; Moderation Thinking; Social Order; Human Rights Protection

1 The thinking mode of criminal-civilian cross-case

1.1 "The first criminal concept"

"The first criminal concept" refers to the criminal-civilian cross-complex disputes in the case, highlighting the criminal law of the punishment and regulation of the role of the criminal law as a cross-criminal-civilian cross-case of the criminal law as the main or even the only basis of The concept of "criminalization first" refers to the fact that the criminal law is emphasized as the main or even the only basis for dealing with civil-criminal cases. As a mode of thinking, "criminal concept" seriously affects the judicial practice of China in dealing with the process of criminal-civilian cross-dispute cases, which is inextricably linked to the long history of Chinese society and the ideology of heavy criminalism.^[1]

In the Chinese nation's history of thousands of years, almost all dynasties have been punished by criminal law as the main means of maintaining the rule. Xia and Shang period of the five penalties, the Spring and Autumn and Warring States period of a break in the development of the law to the Qin Dynasty period of severe punishment, although the Tang Dynasty legislative thought preached "virtue and ritual for the basis of the political and religious, criminal law for the use of political and religious," emphasizing the virtue of the main criminal auxiliary, the rites and laws, but the root of the penalty as the main means of indoctrination. China's ancient agricultural suppression of business, to the small peasant economy, the status of businessmen is low, the market economy is curbed, seriously impede the development of civil and commercial law, civil law, the development of civil and commercial law. The development of civil and commercial law, civil law system is weak mostly dependent on the criminal law. In his book "Ancient Law", Mein pointed out: "The cultural level of a country can be known by the ratio of its civil law and criminal law. In all semi-civilized countries, the civil law is less and the criminal law is more, and in the evolved countries, the civil law is more and the criminal law is less."^[2] "From this, we can learn that, in the historical development and social upheaval still remain in the judicial practice, strict punishment and heavy law is passed down from generation to generation, the heavy criminalism has become a deep-rooted ideas affecting people's thinking concepts.

Nowadays, in dealing with criminal-civilian cross-dispute cases, most of the judicial personnel to criminal law as the main point of entry, most of the disputes can be solved by means of civil and commercial law, instead of applying criminal law to deal with. It can be seen that the heavy criminalism on China's judicial practice to play a subtle influence, "the concept of the first criminal" in the handling of criminal-civilian cross-cutting cases gradually transformed into an intransigent legal value orientation.

1.2 Modest mode of thinking

The criminal law is modest in nature, and when dealing with cases of cross-cutting disputes between the criminal and civil sectors, the criminal law can be adjusted as the last safeguard when the antecedent laws, such as civil and commercial laws, are not sufficient to resolve the legal disputes, which is determined by the basic features of the criminal

law. Criminal law is the law that stipulates crimes and penalties, which is different from other laws such as civil and commercial law, and has the distinctive features of broad scope of adjustment and safeguard. The scope of adjustment of criminal law is very broad covering national security, social and economic order, life and property security, etc., and also includes the legal relations adjusted by civil law, which determines that criminal law has the safeguard and complementary nature, and criminal law is regarded as the safeguard law of other laws.

Prof. Zhang Mingkai mentioned in his book "Criminal Law" that "the modesty of criminal law is both a legislative principle and a principle to guide the judicial staff in interpreting and applying the criminal law, but it is not a rule to deal with individual cases."^[3] The essence of the modesty of criminal law lies in the fact that it is the principle to guide the judicial staff in interpreting and applying the criminal law. The essence of the criminal law of modesty is when the civil and commercial and other antecedent law can not be achieved to the satisfaction of the parties to the dispute, only to apply the criminal law to adjust. It does not mean that when dealing with any criminal-civilian cross-dispute cases must first consider the civil and commercial law, when the criminal behavior has obvious social harm, can directly apply criminal law.

The main reason why Prof. Zhang Mingkai concluded that modesty is not a rule for dealing with specific cases lies in the fact that, in the context of the rational interpretation of specific criminal law provisions guided by the principle of legality of crimes and penalties, as long as a hazardous act conforms to the specific criminal composition, criminal responsibility should be pursued. But on this basis there must be an extremely clear precondition: under the guidance of the principle of the law of crime and punishment, can make a clear and reasonable interpretation of the behavioral attributes of specific civil and criminal cross-case conclusion^[4]. However, in the reality of the processing process, most of the criminal-civilian cross-dispute cases there is a debate between crime and non-crime, this crime and the other crime. Therefore, in dealing with criminal-civilian cross-dispute cases must also have the modesty of criminal law thinking, when the current placement of the law can not achieve the satisfaction of the parties to resolve the dispute, only when the application of criminal law adjustment.

1.3 Relevance thinking mode

In criminal and civil cross-dispute cases, based on the principle of the unity of the legal order, relevance thinking is utilized to explore the relevance of criminal and civil cases to each other. Cases cannot be analyzed solely from their respective fields, focusing on the intersection of criminal law and civil law to reasonably deal with disputes and achieve the satisfaction of the parties.

The principle of unity of law and order refers to the fact that within a country or region, all laws, regulations, systems, etc. are supposed to coordinate, cooperate and complement each other to form a complete legal system to maintain social stability and order. The principle requires that when dealing with criminal and civil cross-disputed cases, the normative order of criminal law and civil law should not contradict each other, and the behaviors that are allowed in civil law should not be punished in criminal law, otherwise the laws will be contradictory and null and void^[5]. German scholar Roxin once said, "When a demeanor that is permitted in any field of law is still subject to criminal penalties, it would be an intolerable contradiction of values and would also contradict this subsidiarity of criminal law as the last resort of social policy."^[6]

The case of criminal-civil cross-dispute involves not only the two substantive laws of criminal law and civil law, but also the two procedural laws of criminal and civil litigation, straddling the substantive and the procedural, and involves the harmonization of a country's overall legal order. The relationship between criminal law and civil law for the protection of legal interests, and the different pursuits of justice and efficiency in criminal and civil litigation belong to the contradiction of values and principles.^[7] even if the judge for each case should be individual decision, its judgment still can not be outside the overall legal order, because in the application of a legal provision at the same time also under the overall legal order^[8].

2 "Criminal before civil" and "civil before criminal" processing rules comparison

In the criminal-civil cross-case, adhere to the "criminal before civil", or adhere to the "civil before criminal" rule reflects the different value orientation. "Criminal before civil" starts from the realm of public power and focuses on safeguarding the interests of the public, while "civil before criminal" starts from the realm of private power and safeguards the private interests of individuals.

2.1 In the field of social order

"Criminalization before civilization" means that the law and penalties are regarded as the most important means in

the process of establishing and maintaining social order. Under this conception, severe penalties for illegal and criminal acts are the first priority, and social stability is maintained through intimidation and sanctions. This order emphasizes the authority and binding force of the law, and the stability of law and order and social peace are achieved through strict law enforcement and speedy trials. However, "people before punishment" emphasizes that the establishment and maintenance of social order should be based on the interests of the people. Laws and penalties are regarded as a means, not the only means, under this philosophy. Emphasis is placed on preventing crime and improving the social environment, reducing the crime rate through the provision of basic services such as education, employment and medical care, as well as the establishment of social justice and democratic mechanisms. This order focuses on social justice and the well-being of the people, and social stability is achieved through the improvement of social structures and economic conditions.

2.2 The judicial concept of "people-oriented"

The difference between "criminalization before the people" and "criminalization after the people" lies in the degree of importance attached to human rights protection and the manner in which it is practiced. In a "criminal before civil" social order, the purpose of criminal law is to punish crime in order to protect the people, and the law is regarded as an important means of maintaining a stable social order. In such a situation, human rights guarantees may be limited to a certain extent, as the focus is on punishing violations of the law rather than on safeguarding people's rights. Individuals may face excessive law enforcement, unfair trials and other possible human rights violations. In such an order, the authority of the law may take precedence over individual rights. In contrast, a social order that "prioritizes people over crime" places greater emphasis on safeguarding human rights. People's rights are safeguarded through the provision of basic services and the establishment of a fair judicial system and democratic political institutions. This order emphasizes the dignity and rights of the individual, and law and punishment are seen as one of the means of protecting human rights, but not the only means. In this social order, individual rights may be more respected and protected, and the authority of the law is more subordinate to the guarantee of human rights.

3 The criminal-civilian cross-case processing mode strategy

3.1 To break the "first criminal concept" mode of thinking

New era, our country adhere to the rule of law, unswervingly take the road of socialism and the rule of law with Chinese characteristics, the times are progressing, the old and backward concepts also need to be updated. Criminal law is a country's entire legal system of protection law, is the backing rather than the vanguard; criminal law in the whole society with a variety of illegal and criminal behavior in the process of the fight is the last barrier, rather than the front line^[9]. Handling of criminal-civilian cross-case, break the stubborn "first criminal concept" mode of thinking is not urgent. Break the "first criminal concept" the first task is to update the concept of criminal law. Concept determines success or failure, our country for thousands of years, mainly criminal, criminalization of traditional thinking is deeply rooted, deeply affecting the contemporary judicial practice. Confucianism also by the initial "benevolence" and "propriety" gradually fused with legalism, and became a tool for rulers to maintain their feudal autocratic rule. In modern times, with the spread of the Western idea of the rule of law, the end of the Qing Dynasty led to the disintegration of the Chinese legal system. Times are changing, the backward and stubborn "first criminal concept" should also keep pace with the times.

3.2 Playing the role of judgment of the antecedent law on the cross-cutting cases of criminal and civil law

In the whole legal system, no sectoral law exists independently, and it must be coordinated with other sectoral laws and cooperate with each other. According to the principle of the unity of the legal order mentioned above, the evaluation result of the criminal law may be the same as that of the civil law, i.e., with the infringing nature of legal interests, or it may be different from that of the civil law, without the infringing nature of legal interests in the criminal law for the behaviors that are illegal in the civil law. However, behavior tolerated under civil law should not be evaluated negatively under criminal law. In dealing with difficult cases of criminal-civil intersection, we should give full play to the judgmental role of civil and commercial antecedent law, exclude crimes with the help of antecedent law, and reasonably adjust disputes that can be resolved with civil law by the use of civil law.

3.3 Formulation of uniform laws and regulations to clarify the mode of criminal-civilian cross-processing

In dealing with criminal-civilian cross-processing disputes, the lack of comprehensive and uniform laws and regulations is a major factor contributing to the difficulty and complexity of the mode of processing cases, and even

judicial interpretations have not explicitly formulated uniform normative documents on the mode of criminal-civilian cross-processing. As mentioned above in the legal order on the basis of the principle of unity, the use of relevance thinking, reasonable handling of criminal-civilian cross-cutting disputes, must develop a unified criminal-civilian cross-processing mode of laws and regulations, specific to the choice of ruling, dismissal of the prosecution, the continuation of the trial, suspension of the complaint three ways should be expressly specified in the application of the conditions, or else the legitimacy of the modern legal process will be at a loss ^[10]. Clear legal provisions, first of all, in the substantive law, procedural law, legislative concept to achieve unity. Uniform laws and regulations are the first condition to enhance judicial authority and protect the legitimate rights and interests of the parties ^[11].

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