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## Specific application of the principle of criminal action preceding civil action in juridical practice and its reasonableness

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### ABSTRACT

The principle of criminal action proceeding civil action can effectively save the litigation resources and is significant to improve the litigation efficiency. With the application of the principle of criminal action preceding civil action as the research basis, by starting from the principle of criminal action preceding civil action, the reasonableness and applicability of this principle are introduced.

### KEYWORDS

Principle of criminal action preceding; Juridical practice; Reasonableness.

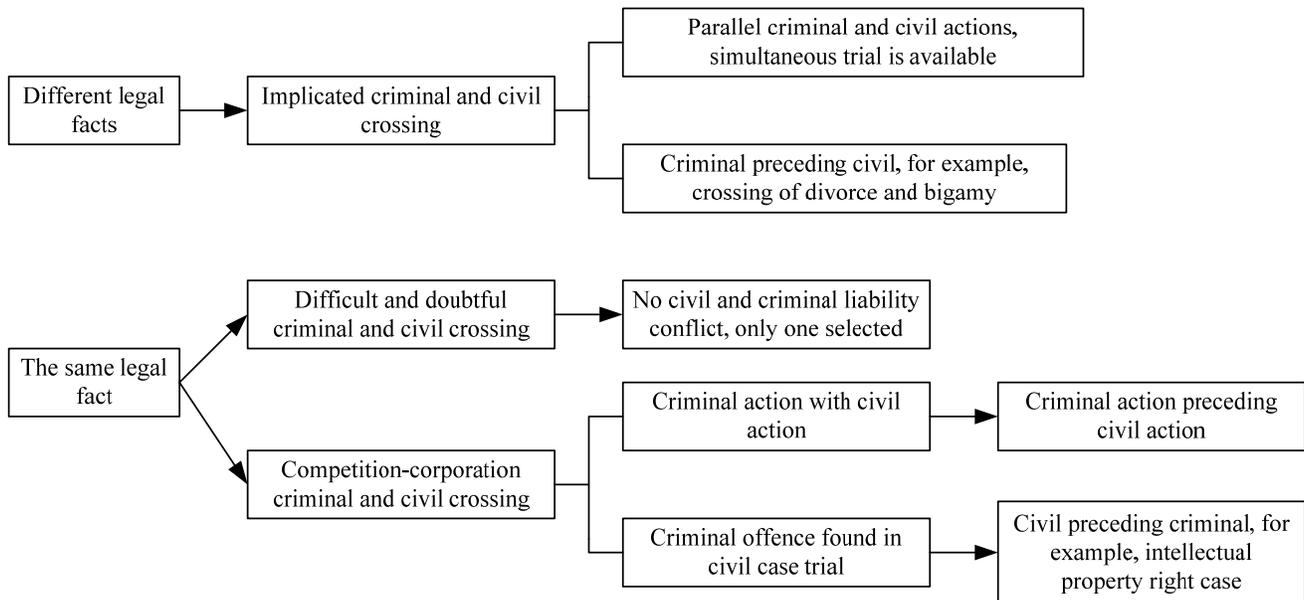


**INTRODUCTION**

The so-called criminal action proceeding civil action is no more than a legal concept, which is a juridical principle that is always complied with in the judgment practice. The principle of criminal action proceeding civil action means that during the treatment of civil action, when discovering the behavior involved in criminal offence, first, the investigation organ should clearly investigate the criminal facts, the court judges the criminal offence, and then the court within the jurisdiction judges the civil liabilities or makes the court judge the criminal offence with civil cases attached. The principle of criminal action proceeding civil action is a method to deal with the cases with criminal and civil actions crossing, so as to play an important role to improve the litigation efficiency and save cost. Due to different factors, this principle still has some difficulties in the actual movement process, and more seriously, it will hinder the reasonable channel of civil juridical relief, without protecting the rights and interests of the victims maximally. In this paper, with the specific application of the principle of criminal action preceding civil action in juridical practice and starting from the significance of the principle of criminal action preceding civil action, the author briefly introduces the applicability of this principle and evaluates its actual application condition.

**BRIEF INTRODUCTION TO THE PRINCIPLE OF CRIMINAL ACTION PRECEDING CIVIL ACTION**

The principle of criminal action preceding civil action is also called “first criminal and then civil”, which means that in the civil action, if the party concerned is suspected of being involved in crime, the criminal problems of the party concerned must be investigated and judged first, and then the civil disputes trialed. In recent years, the principle of criminal action preceding action faces more challenges, generally, the value of this principle is reflected in saving litigation resources and preventing inconsistent judgment. The criminal and infringement liabilities are exactly the same whether in substance or procedure, only on the same subject can the crime subject and civil infringement subject reflect the implication of liabilities of the two. So it can be concluded that the criminal behavior and infringement behavior are two different liabilities formed by the same subject on the same behavior, and the two ligations have the characteristics of the same proved truth and consistent process. As the civil criminal proof has a lower standard then criminal proof, in this way, the criminal offence judged to be criminally accomplished within the implicated cases is surely civil offence. Adopting the principle of criminal action preceding civil action can avoid civil case testification and repeated fact investigation and can save litigation resources very well (as shown in Figure 1).



**Figure 1 : Simple list for solving of civil liability conflict**

The fact investigation for civil case is mainly proved by the party concerned, and the means are too simple. The criminal case needs the interference of national public power, and it is possible to obtain the written evidences, material evidences, identification evidences and other relevant evidences that the party concerned cannot provide by special investigation means. The insider of criminal cases have the obligations of testifying, so as to obtain the witness evidences that the party concerned to the civil case cannot provide. In this way, trialing the criminal cases can detect many ambiguous civil cases more clearly, so as to ensure higher efficiency of the civil cases trialed and well protect the rights of the parties concerned.

## APPLICABILITY OF THE PRINCIPLE OF CRIMINAL ACTION PRECEDING CIVIL ACTION

The purpose of implementing criminal laws in China is to maintain the social stability, punish crime, and also play the functions of educating and reconstructing the crimes. Using the principle of criminal action preceding civil action scientifically and reasonably can obtain a good legal effect. The basis of adopting the principle of criminal action preceding civil action is that the same legal fact involves in civil dispute and criminal offence simultaneously, and meanwhile, the two belong to the same legal relation. Specifically, in addition to the crossing of criminal offence and civil dispute of the case, there should also be the relation between subject and fact, in short, the civil legal behavior and criminal offence act are conforming, the subject within the two cases is coincide, and meanwhile, the case involves in the same legal relation. The applicable tables of personality right dispute and succession right dispute of civil case of Supreme People's Court of China are as shown in TABLES 1 and 2, the following civil actions can be treated first: ① intellectual property right case: intellectual property right has certain property of granting, the ownership and constitution of the right are not so visual as in other cases. Meanwhile, during the litigation of such cases, for the infringement behavior, pre-litigation evidence is adopted to preserve the infringement evidence, and the series of measures needs to be applied in the civil litigation. ② Crime escape case: such case has clear criminal suspect, the escape of criminal suspect causes it is impossible to proceed to the criminal litigation, but the civil litigation can be carried out based on the state that the defendant is absent to implement the defendant's property so as to achieve the purpose of relieving the victim. ③ supplementary, joint or replaced reliability case: the criminal liability is strictly based on the principle of self-responsibility undertaking, and the responsible person of the civil liability might not be the doer.

**TABLE 1 : Statistical form of judgment result of different procedures for the same nature of case**

Litigation method	Final trial time	Final trial court	Case name	Whether constitute offence	to	Spiritual damages
Criminal	2003	Shanghai Minhang District Court	Sun Zhiyong et al. traffic offense case	Yes		Rejected
Joint	2004	Henan Minquan County Court	Guo Haiting traffic offense case	Yes		Rejected
Civil	2005	Beijing Daxing District Court	Zhang Feng traffic offense case	Yes		Rejected
Litigation	2005	Jiangsu Jiangyan Municipal Court	Li Honglin traffic offense case	Yes		Rejected
	2006	Jiangxi Ganzhou Intermediate Court	Li Zuwen traffic offense case	Yes		Rejected
Additional	2002	Jiangsu Gangzha District Court	Wang Feng et al. sued Sun Qin et al. for damage compensation of road traffic offense	Yes		RMB 33,225
Civil action	2004	Guangdong Foshan Intermediate Court	Huang Weiqiang and Chen Hanlan et al. road traffic accident personal injury compensation	Yes		RMB 20,000
	2005	Anhui Bangshan District Court	Chi Ruhua sued Ge Duolin et al. for road traffic accident personal injury compensation	Yes		RMB 20,000
	2006	Guizhou Leishan County Court	Zhang Yingju sued Pan Nianhui et al. for road traffic accident personal injury compensation	Yes		RMB 1,313,781.2
	2007	Hainan Intermediate Court	Sun Laixi and Chen Bingyuan et al. road traffic accident personal injury compensation	Yes		RMB 24,000
	2007	Jiangxi Ganzhou Intermediate Court	Chen Sibin and Peng Hongqun et. Al. road traffic accident personal injury compensation	Yes		RMB 20,000

For example, trouble-causing car owner self-advance liability, insurance company's insurance liability, guardian's property liability and other relevant liabilities. The civil action expressly stipulates that the provision that the spiritual compensation request is not accepted in criminal supplementary civil action is reflected in the following two. First, Article 77 of Criminal Action Law expressly stipulates that if the victim suffers from material loss due to the defendant's serious crime, during the criminal action, the victim is entitled to institute supplementary civil action. Second, the Supreme People's Court pointed out in relevant regulations on instituting civil action for spiritual damages that if the victim institutes civil action for spiritual damages due to crime, the people's court will not accept the case. Article 77 of Criminal Action Law expressly the

authorized provisions, and is mainly focused on the fact that the spiritual damages are not excluded from the supplementary civil action during the procedure setting, on this basis, with the method of juridical explanation, the *Official Reply* excludes the substantive right stipulated by other relevant departments, obviously, due to the wanton expansion of legislative power, the validity is not recognized. According to the provisions of civil law, the general period for litigation is 2 years, in which the period for compensation for personal injury is 1 year, for the victims of some forms of cases, according to the principle of criminal action preceding civil action, the period expires soon. Some cases are treated in the form criminal supplementary civil action, and generally it is not deemed that their period expires. For some cases, as the suspect escapes for a long time and some suspects are not sued etc., the criminal judgment procedures are not adopted. Based on the above situations, the calculation of period date when the period for litigation expires is added. The suspension of period for litigation etc. should be beneficial for the victim for explanation, so as to prevent the cost due to the adoption of the principle of criminal action preceding civil action. The applicable form of succession dispute of civil case of the Supreme People’s Court is shown as TABLE 3.

**TABLE 2 : Applicable form of personality right dispute of civil cases of the Supreme People’s Court**

Case of action	Interpretation	Legal basis	Notes
Life, health and personal right dispute (determine the corresponding cause of action according to the actual case situation)	Means the dispute caused by others’ infringement upon life right, health right and personal right.	General Rules of Civil Law Road Traffic Safety Law Railway Law Medical Malpractice Management Regulation Interpretation of the Supreme People’s Court on Several Issues of Applicable Laws for Trial of Personal Damage Cases Interpretation of the Supreme’s People’s Court on Several Issues of Trial of Electrical Shock Personal Damages Articles 100 and 120 of General Rules of Civil Law	In case of these disputes, it is required to conclude the specific cause of action according to relevant provisions of Infringement Liability Law under the applicable infringement liability dispute. If there is no corresponding cause of action, the cause of action under the personality right dispute should apply,
Portrait right dispute	The dispute caused by the use of others’ portrait without permission	Interpretation of the Supreme People’s Court on Several Issues of Determining Spiritual Damages for Civil Infringement Articles 101 and 120 of General Rules of Civil Law Infringement Liability Law	Main disputes: 1. the portrait author transfer the portrait to others for use without the consent of portrait right owner; 2. carry out artistic processing for the portrait works created by others and then transfer to others for use.
Reputation right dispute	Dispute caused by the infringement of citizen or legal person’s reputation	Articles 130, 150 and 151 of Opinions of the Supreme People’s Court on Several Issues of Applicability to General Rules of Civil Law of PRC. Interpretation of the Supreme People’s Court on Several Issues of Trial Reputation Right Case	Main disputes: slander, insult, improper use of materials in literature works, wrong accusation without evidence or malicious prosecution and damage of reputation right

**TABLE 3 : Applicable form of succession dispute of civil case of the Supreme People's Court**

Case of action	Interpretation	Legal basis	Notes
Legal succession dispute (sub-succession dispute, subrogation succession dispute)	<ol style="list-style-type: none"> <li>1. Sub-succession means that after death of the deceased, if the successor dies before accepting the heritage, the due heritage share inherited by him should be inherited by his successor.</li> <li>2. The succession by subrogation means that when the children of the deceased die before the deceased, the later generations of the deceased's children subrogate the succession of the heritage that should be inherited by the deceased's children.</li> </ol>	<ol style="list-style-type: none"> <li>1. Civil Procedural Law</li> <li>2. Chapters 1, 2 and 3 of Inheritance Law</li> <li>3. Parts 1, 2, and 4 of the Supreme People's Court on Several Issues of Carrying out and Implementing Inheritance Law</li> <li>4. Articles 17 and 27 of Marriage Law</li> </ol>	
Testamentary succession dispute		<ol style="list-style-type: none"> <li>1. Article 34 of Civil Procedural Law</li> <li>2. Chapters 1, 3 and 4 of the Supreme People's Court on Several Issues of Carrying out and Implementing Inheritance Law</li> <li>3. Chapters 1, 3 and 4 of Inheritance Law</li> <li>4. Articles 17 and 27 of Marriage Law</li> </ol>	

### APPLICATION OF THE PRINCIPLE OF CRIMINAL ACTION PRECEDING CIVIL ACTION IN JURIDICAL PRACTICE

#### Active aspect of the principle of criminal action preceding civil action

It is generally thought that the value of the principle of criminal action preceding civil action is reflected in the saving of litigation resources and avoiding inconsistent judgment. First, let's analyze the saving of litigation resources, criminal liabilities and infringement liabilities are greatly similar where in substance of procedure. The two liabilities are basically the same in the objective and subjective elements of the offence, and there is only difference in degree. The social relation infringed by the offence is also based on the damage of the object of crime, if the behavior that there is only prepared attempted behavior but without actual damage of object of crime also constitutes offense, but the offence is not implicated with the civil case, there does not exist the problem which kind of case is trialed first. The Number of criminal supplementary civil cases is shown as TABLE 4.

**TABLE 4 : Number of criminal supplementary civil cases**

Item Year	Number of criminal cases	Number of criminal supplementary civil cases	Proportion
2007	398	24	6%
2008	509	28	6%
2009	472	23	5%
2010	397	33	8%
2011	538	39	7%
Total	2314	147	6.4%

For the accomplished crime, the casual relationship does not need to demonstrate that only on the same subject will the subject of crime and subject of civil infringement behavior generate the implication between the two. Therefore, crime behavior and infringement behavior are different liabilities generated by the same subject based on the same behavior, and the two have the same implementation and process to be proved. The criminal proof standard is higher than the civil proof, in this way, if in case of implicated case, the accomplished criminal cases affirmed must constitute civil infringement. Adopting the principle of criminal action preceding civil action can eliminate the facts repeatedly evidenced and verified in the civil cases, so as to achieve the effect of saving litigation resources.

### Negative effect of principle of criminal action preceding civil action

The negative result of adopting the principle of criminal action preceding civil action is to make some cases have criminal action without civil action, enabling it unable to protect the rights and interests of the victim. Some criminal cases are not successfully detected finally or there exists the event the criminal suspects escape, and some criminal cases are unable to be trialed for a long time because of different causes, and this will make the civil relief right of the victim not in place or cannot be played forever. With the time passing by, the deterioration or bankruptcy of one party's economic condition will make the compensation judgment a mere scrap of paper. In combination with the juridical practice, the provisions in Article 6 of *Provisions of False Statement Case* can be said to provide an effective approach of legal relief for the investors, or set a legal barrier, namely, to limit the investors' claim for right in the name of protection. The Type of criminal supplementary civil cases is shown as TABLE 5.

**TABLE 5 : Type of criminal supplementary civil cases**

Item Year	Number of supplementary cases	criminal civil injury	International injury	Robbery	Traffic offence	Rape	Trouble causing	Interference with public function
2007	24		8	4	3	3	2	1
2008	28		9	5	5	3	1	1
2009	23		7	3	4	2	3	0
2010	33		10	7	6	4	4	2
2011	39		10	8	7	5	3	2
Total	147		44	27	25	17	11	6

**Note: in addition to the several crimes listed in this TABLE, other case also include insult and destruction of public and private properties, as they are few in number, they are not listed.**

If the defendant's property is insufficient to pay the civil compensation or criminal penalty, the prior implementation of criminal penalty will also cause that the compensation to the victim cannot be met or comes to nothing. The principle of criminal action preceding civil action will also cause the expiration of period for litigation of civil compensation due to the infinite delay of criminal case; although some will be suspended or interrupted due to different reasons, it also cannot be eliminated that some cases will trigger dispute or loss the opportunity of winning due to period.

### CONCLUSION

As stated above, the principle of criminal action preceding civil action plays an important role to save the litigation resources and improve litigation efficiency, but its excessive effect seriously damages the interest of the parties to the civil cases, and deviates from the democratic and fair value of the modern litigation, so it is required to strictly limit its applicable condition and ensure that this principle will play the best efficiency. The main purpose of criminal supplementary civil action system is to solve the civil damage compensation caused by the crime behavior, and this system has its special existence significance and value. At present, the problem of difficulty in implementing the criminal supplementary civil has become a stain of this system. Today, China is devoted to constructing a harmonious society and a benign society where the power is used for the people, feeling is borne for the people and profit is gained for the people. Only by solving the problem of difficulty in implementing the criminal supplementary civil cases can we effectively relieve the social contradiction and maintain the social stability. Therefore, whether the criminal supplementary civil cases are implemented smoothly or not is directly concerned the success or failure of constructing a harmonious society. It is significant to solve the dilemma of difficulty in implementing criminal supplementary civil cases. In this paper, aimed at the dilemma of difficulty in implementing criminal supplementary civil cases, the author proposes his own ideas and opinions, hoping that this paper can provide help to perfect the implementation mechanism for criminal supplementary civil cases and make contribution for the legal construction of China.

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