

The Study on the Selection of Procedures in Cases of Apparent Agency with Forgery

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Abstract: In the past judicial practice, it is not uncommon to dismiss all the apparent agency cases involving punishment. In fact, based on the differences in the evaluation of facts between penal code and civil law, the litigation mode of blocking civil proceedings with criminal proceedings, replacing civil proceedings with criminal proceedings or criminal proceedings followed by civil proceedings is not universally applicable to all the cross cases of criminal and civil in judicial practice. After the issuance of the "Proceedings of Civil and Commercial Trials of Courts" and the new "Judicial Interpretation of the Supreme People's Court on Private Lending", "the same fact" has become the core standard of choosing whether criminal procedure should absorb civil procedure or criminal procedure and civil procedure should be parallel. Two conditions should be met to judge "the same fact": one is the same subject and the other is that there is concurrence or basic concurrence in the case facts. However, the subjects of criminal and civil cases involved in the apparent agency cases in fraudulent form are not the same, and although the case facts are related, there is no concurrence or basic concurrence. So the court can not dismiss the civil cases, namely the apparent agency cases, on the grounds of criminal involvement, but should transfer the criminal clues to the relevant authorities and the case will continue to be tried.

1. Introduction

The case of employees privately engraving official seals and using their company's name to sign contracts with others for the purpose of defrauding money is a typical example of a criminal-civil intersection case. Whether the suspect's criminal activity, constituting fraud, affects or "crushes" the determination and assumption of their civil liability is a substantive issue at the intersection of criminal and civil law. However, this substantive intersection inevitably leads to conflicts in different legal relationships procedurally. Considering that the same apparent agency behavior touches upon both civil and criminal legal norms, it becomes necessary to carefully consider the applicability of civil litigation and criminal proceedings. In judicial practice, there isn't much controversy over substantive issues; the key to solving criminal-civil intersection problems lies in determining which litigation procedure should be used to handle such cases, how to choose between litigation procedures, and how to coordinate them. This is a major challenge faced by this field.

The question this article aims to explore is whether a civil case of apparent agency with forgery

will be dismissed or continue to be heard if the agent is suspected of crimes such as fraud. In other words, it concerns the selection of litigation models for such cases.

2. Legislative Review

Currently, the application of laws concerning the procedural selection in criminal-civil intersection cases is more complex, especially with numerous and varied judicial interpretations. The methods and standards for handling such cases vary, and the lack of uniformity has led to a rampant phenomenon of "different judgments for the same case".

At the legal level, aside from the suspension of proceedings stipulated in Item (5) of Clause 1, Article 153 of the Civil Procedure Law [Article 153 of the Civil Procedure Law states: Proceedings shall be suspended under any of the following circumstances: (1) if one party to the action dies and it is necessary to wait for the heir to indicate whether to participate in the action; (2) if one party loses the capacity to engage in litigation and a legal representative has not yet been determined; (3) if the legal person or other organization that is one party to the action is dissolved and the successor to rights and obligations has not yet been determined; (4) if one party is unable to participate in the action due to force majeure; (5) if this case must rely on the judgment result of another case, and that other case has not yet concluded; (6) other circumstances that should suspend proceedings.], there are no other explicit legal provisions to address procedural issues in criminal-civil intersection cases. Looking at past judicial practice, when a civil act is suspected of a crime, the procedural issue in such cases was mainly based on judicial interpretations issued by the Supreme Court regarding the handling of economic disputes and economic crimes. These include the Notice on Timely Investigation and Punishment of Economic Crimes Discovered in Economic Dispute Cases and the Notice on Timely transfer Economic Crimes Discovered in the trial of Economic Dispute Cases jointly issued by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security in 1985 and 1987, and Provisions on Several Issues Concerning Suspicious of Economic Crimes Discovered in the Trial of Economic Dispute Cases issued by the Supreme People's Court in 1998 (hereinafter referred to as the "Provisions on Economic Disputes Suspected of Economic Crime"). The above judicial interpretations gradually established "identity" [1] as the basic standard for dealing with procedural conflicts in criminal-civil intersection cases, correcting a long-standing misconception that economic dispute cases should be transferred to criminal justice authorities for processing whenever they intersect with economic crimes.[2] However, the above interpretations have not resulted in a unified standard. They have used various criteria such as "the same fact", "the same legal fact", and "the same legal relationship" to determine the mode selection in criminal-civil intersection cases, and there are certain flaws and ambiguities in their expression [3][4], making it difficult to establish a rigorous and unified standard in practice, leading to confusion in the application of judicial interpretations.

In 2014, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Public Security jointly issued the "Opinions on Several Issues Concerning the Application of Law in Handling Criminal Cases Involving Illegal Fundraising" (hereinafter referred to as the "Opinions on Illegal Fundraising"). Article 7 of this document clearly stipulates how to handle matters related to civil cases. When public security organs, people's procuratorates, or people's courts are in the midst of investigating, prosecuting, or trying a criminal case involving illegal fundraising, if any unit or individual files a civil lawsuit or requests the execution of involved property based on the same facts, the people's court shall not accept the case. Instead, they should transfer relevant clues and materials to the public security or procuratorial organs for handling. Similarly, if during the civil trial or enforcement process, the court discovers signs of suspected illegal fundraising crimes, it should dismiss the lawsuit or suspend enforcement and transfer the relevant materials to the public security

or procuratorial organs. Therefore, this normative document concerning the handling of criminal cases involving illegal fundraising has adopted "the same fact" as the standard for not accepting criminal-related civil cases.

In 2019, the Supreme People's Court issued the "Summary of the National Conference on Civil and Commercial Trial Work" (referred to as the "Jiumin Summary"), which clearly stipulates in Articles 128 and 129 that if parties have both civil and commercial disputes and are suspected of criminal offenses based on different facts, the civil case and the criminal case should be tried independently. However, when a victim initiates a civil lawsuit against a person who is suspected of a crime or facing criminal charges based on the same fact, the court shall make a ruling to refuse to accept the case. This is essentially a reiteration of the "same fact" standard in the "Jiumin Summary".

In 2020, the Supreme People's Court revised the "Provisions on Several Issues Concerning the Application of Law in the Trial of Private Lending Cases" (hereinafter referred to as the "Judicial Interpretation on Private Lending"), where Article 6 stipulates that after the people's court has filed a private lending case, if it is found that the case is related to crimes such as illegal fundraising but both are not based on the same fact, the court should continue the trial of the private lending case and transfer clues and materials related to suspected illegal fundraising or other crimes to the public security or procuratorial organs for handling. This reflects the continued emphasis and application of the "same fact" standard by the "Judicial Interpretation on Private Lending". Moreover, to fully protect the litigation rights of the parties involved, this judicial interpretation has added supplementary provisions. If the public security or procuratorial organs decide not to file a case, or if they dismiss the case after filing and investigating, or if the procuratorial organ decides not to prosecute, or if the court's effective judgment determines that there is no crime of illegal fundraising, and the party again brings a lawsuit based on the same fact, the court should accept the case and cannot refuse to accept it on the grounds of "non bis in idem" (not twice for the same case).

In practice, after the release of the "Jiumin Summary" and the newly revised "Judicial Interpretation on Private Lending", courts across various regions and the Supreme People's Court still primarily use the "Provisions on Economic Disputes Suspected of Economic Crime" issued by the Supreme People's Court in 1998 as the legal basis for handling procedural issues related to criminal involvement in cases of apparent agency with forgery. However, in terms of choosing procedural standards, there has been a gradual abandonment of expressions like "legal fact" or "legal relationship", shifting focus to whether criminal and civil cases involve the "same fact." Whether a criminal and civil case constitute the "same fact" is key to selecting the appropriate model for handling cases involving both criminal and civil law—that is, this standard is central to deciding whether to adopt a criminal procedure that absorbs the civil procedure or to proceed with "parallel criminal and civil" procedures. In principle, if a criminal case and a civil case involve the "same fact", they should be resolved through criminal proceedings, meaning the criminal procedure absorbs or encompasses the civil procedure; conversely, if they do not involve the "same fact", the criminal and civil cases should be tried independently, that is, "parallel criminal and civil" proceedings. Although the criteria for judgment are becoming more unified and precise, there are still instances of "different judgments for similar cases" in practice when looking at the outcomes[5-7].

In cases of apparent agency with forgery where the parties are suspected of a crime, should the people's court dismiss the lawsuit or continue with the trial? Firstly, in past judicial practice, it was not uncommon for cases involving apparent agency that touched on criminal law to be uniformly dealt with by dismissing the lawsuit. However, in reality, due to differences in the assessment of facts under criminal and civil law, litigation models such as blocking civil proceedings with criminal proceedings, replacing civil proceedings with criminal proceedings or criminal proceedings followed by civil proceedings are not universally applicable to all cases involving both criminal and civil law in judicial practice. When evaluating civil legal relationships, criminal law norms must adhere to their

subordinate and restrained nature to prevent excessive penetration of state power into citizens' private lives. Secondly, although the "Opinions on Illegal Fundraising", the "Judicial Interpretation on Private Lending", and even the "Jiumin Summary" all clearly use the "same fact" standard to define and categorize cases involving both criminal and civil law, these provisions have not formed a refined and systematic institutional supply, and there is considerable divergence in their application in judicial practice. Therefore, in judicial practice, the people's courts must accurately define the "same fact" and should not mechanically dismiss all cases of apparent agency with forgery that are suspected of a crime. The procedural choice for such cases should not be absolutized or generalized but should be determined prudently according to the spirit, principles, and standards established by the latest judicial interpretations.

3. Concrete Interpretation of the "Same Fact" Standard

According to Article 129 of the "Jiumin Summary", if a victim files a civil lawsuit against a criminal suspect or defendant based on the same fact, the people's court should make a ruling to refuse acceptance and transfer the relevant materials to the investigative organs, procuratorial organs, or the people's court that is currently trying the criminal case. In terms of literal interpretation, "same fact" and "criminal suspect or defendant as the party" are in parallel relationship, both aiming to modify the "civil lawsuit". Therefore, when deciding whether to accept the case, two aspects need to be examined: firstly, whether the parties in the criminal and civil cases are the same, which is the subject standard; secondly, whether the basic facts involved in the criminal and civil cases are the same, which is the factual standard—both are indispensable. Generally speaking, if the subjects of the civil case and the criminal case are the same, and there is a concurrence or substantial concurrence in the basic facts of the cases, it can be determined that the criminal case and the civil case constitute the "same fact". If the subjects of the criminal case do not match those of the civil case, they cannot be determined as the "same fact"; even if the subjects are the same, if the facts for conviction and sentencing are unrelated to the basic facts of the civil case, the "same fact" also cannot be established.

3.1 Criteria One: Whether the Subjects Are the Same

Article 128 of the "Jiumin Summary"[Article 128 of the "Jiumin Summary" states: Where the same party has separate disputes arising from different facts in civil or commercial matters and is suspected of criminal offenses, the civil/commercial cases and the criminal case should be tried separately. This mainly includes the following situations: (1) The debtor of the main contract is suspected of a criminal offense or has been convicted by a criminal judgment, and the creditor requests the guarantor to assume civil liability; (2) An individual enters into a contract on behalf of a legal person, unincorporated organization, or another person, suspected of a criminal offense or convicted by a criminal judgment, and the counterparty requests the legal person, unincorporated organization, or other person to assume civil liability; (3) A legal representative, person in charge, or employee of a legal person or unincorporated organization is suspected of a criminal offense related to their official duties or has been convicted by a criminal judgment, and the victim requests the legal person or unincorporated organization to assume civil liability; (4) A tortfeasor is suspected of a criminal offense or has been convicted by a criminal judgment, and the insured, beneficiary, or other claimants request the insurer to pay the insurance compensation; (5) The victim requests parties other than the suspected criminal offender to assume civil liability.] lists four specific situations based on different facts. The commonality lies in that the defendants in the civil cases are not the same as the suspects or defendants in the criminal cases. For instance, in the first item, the parties involved in the civil case are the creditor and the guarantor, whereas the subject of the criminal case is the debtor of the main contract. The fifth item states: The victim requests parties other than the suspected criminal

offender to assume civil liability, which is served as a catch-all provision, further highlighting the commonality mentioned above. Therefore, the identity of the subjects becomes one of the criteria for determining whether criminal and civil cases belong to the "same fact". If criminal and civil cases with different subjects are classified as the "same fact", it would be inconsistent and incompatible with the scenarios that handled only by criminal proceedings stipulated by various judicial interpretations and documents. This could affect the operability and specificity of dealing with relationship between criminal procedure and civil procedure by type.

3.2 Criteria Two: Whether the Basic Facts of the Case Are in Concurrence or Substantially in Concurrence

The "facts" mentioned in the "same fact" should refer to the facts of the case, and furthermore, they should be defined as "basic facts of the case" or "disputed facts of the case". From the perspective of criminal proceedings, these are the facts related to determining guilt or innocence, and this crime versus another; from the perspective of civil proceedings, they relate to establishing the basic rights and obligations of the parties and the existence or non-existence of civil liabilities. If the basic facts used for conviction and sentencing in a criminal case have no relevance to the basic facts of a civil case, then even if the parties involved are the same, it cannot be considered as constituting the "same fact". For example, when a person refuses to repay a loan with the intent of illegal possession after normally signing a loan contract and is suspected of committing loan fraud, the determination of the default on overdue repayment of the financial loan contract is still conducted independently, unaffected by the fraudulent acts that occur during the execution of the contract. Although the facts of the two cases are connected, there is no legal concurrence between them. In such a case, the people's court can continue to hear the financial loan dispute case without dismissing the lawsuit on the grounds that the loan dispute case involves criminal issues[8].

4. Summary

The foundation of state power lies in the protection of citizens' rights, and this power is balanced and constrained by the rights held by citizens in civil society. The development of civil society has promoted the evolution of legal concepts, especially evident in the relationship between criminal and civil law. Civil law tends to expand in nature, whereas criminal law is relatively more restrained. Criminal law, based on social contract theory, respect for human rights, and the value of freedom, should adhere to modesty as its core value. It aims to protect individual rights and ensure the realization of civil liberties. In cases involving apparent agency, whether viewed from the perspective of the acting subjects or the facts involved, they do not constitute "the same fact". At such times, criminal law should maintain its restraint, overcome unreasonable notion and judicial inertia of prioritization of criminal proceedings, and leave civil relationships to be dealt with under civil law. Only when civil law is incapable should criminal law, as a safeguarding law, intervene.

Firstly, regarding the "same subject" standard, in cases of apparent agency with forgery, civil law protects the reliance interest in the appearance of rights, holding the principal liable for unauthorized actions. The counterparty gets what they want, effectively obtaining the benefits they sought without any property loss. In contrast, it is the principal who bears the adverse consequences and suffers property loss. Therefore, this article identifies the victim in the criminal case as the principal who is held accountable under the civil law's system of agency estoppel. Therefore, it follows that the parties involved in a criminal case should be the agent who committed the fraudulent act and the principal who suffered the financial loss. Meanwhile, the civil case focuses on the contractual relationship, and the establishment of apparent agency shifts the legal relationship from the acting party (agent) and the counterparty to the principal and the counterparty. Thus, the parties involved in the criminal and

civil cases are not the same.

Secondly, in terms of the "factual concurrence" standard, in case of apparent agency with forgery, the counterparty typically sues to hold the principal liable for the contract. Therefore, the focus of the civil dispute is whether a credible appearance of rights exists and whether the contract is validly established. However, the criminal case focuses on whether the acting party's behavior meets the specific constitutive requirements of crimes such as fraud and, if so, how to impose punishment. Whether a credible appearance of rights exists in civil law is immaterial to criminal law, which seeks to pierce the veil of form to uncover the objective truth behind it. From this perspective, in cases of apparent agency with forgery, the facts disputed in the civil dispute are not the same factual elements that must be present for the criminal law to establish a crime. There is no concurrence or substantial concurrence between them.

In summary, cases of apparent agency with forgery involve two sets of facts: one is the fact of fraud, where the acting party uses forged documents and seals with the intent of illegal possession to infringe upon public and private property ownership; the other is the fact of contract, which refers to civil legal acts performed by the acting party on behalf of the principal with a counterparty. Firstly, criminal law and civil law have different value levels and regulatory perspectives, so the people's court cannot neglect the handling of civil disputes in cases involving criminal issues or weaken the civil litigation process. Secondly, from the perspectives of the acting subject and the facts involved, these two sets of facts are not the "same fact" mentioned in the "Judicial Interpretation on Private Lending" and the "Jiu Min Summary". Therefore, even though two civil cases are related to crimes such as contract fraud or fundraising fraud allegedly committed by the agent, they do not constitute the "same fact", and the people's court should continue with the civil dispute while transferring clues and materials related to the criminal aspects of the case to the public security authorities for processing.

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