

Сделки, совершенные под влиянием обмана или угроз: соотношение уголовного и гражданского права Research on the Issues of the Criminal and Civil Cross of the Crime of Forced Transactions

Ху Сяовань,

научный сотрудник

Китайско-российского центра сравнительного правоведения Хэнаньского университета,

г. Кайфэн, Китай

e-mail: pangdongmei71@163.com

Hu Xiaowan,

Researcher at the Chinese-Russian Center

for Comparative Law

at Henan University,

Kaifeng, China

e-mail: huxiaowan2022@163.com

© Ху Сяовань, 2024

DOI: 10.17803/2587-9723.2024.7.081-091

Аннотация. Принудительные гражданско-правовые акты с правом отзыва и преступление в виде принудительной сделки относятся к двум понятиям в сферах гражданского и уголовного права и не имеют между собой ничего общего. Но, анализируя судебную практику, можно сказать, что акт принудительной сделки может одновременно нарушить свободу воли сторон, охраняемую гражданским законодательством, порядок совершения социальных сделок, а также личные права и имущественные права сторон, регулируемые уголовным законодательством. Таким образом, даже если гражданское законодательство предусматривает, что стороны имеют право на расторжение договора и гражданско-правовую систему компенсации, это все равно не в состоянии покрыть ущерб, причиненный социальным правам и интересам, охраняемым уголовным правом. Гражданско-правовая действительность не равна уголовно-правовой законности, поэтому, независимо от того, действуют ли отменяемые гражданско-правовые акты, или после отмены гражданско-правовых актов принудительная сделка может быть признана преступлением. Это также является результатом реформы принципа судебного разбирательства уголовного процесса, предшествующего гражданскому процессу. И установление факта преступления не обязательно означает уголовную ответственность виновного, уголовное законодательство предоставляет истцу возможность оправдаться.

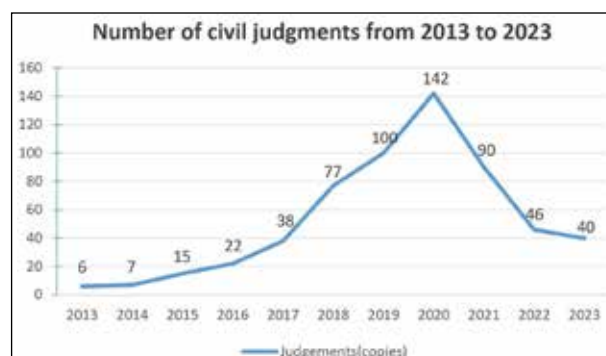
Ключевые слова: действие по принуждению, преступление в виде принудительных сделок, установление единства правопорядка

Abstract. The coerced civil juristic acts with the right of revocation and the crime of forced transaction belong to two concepts which have nothing to do with each other in the scope of civil law and criminal law, but by analyzing the status quo of the judicial practice of the coerced civil juristic acts and the crime of forced transaction, It can be known that the act of forced transaction violated the party's freedom of will protected by the civil law and the order of social transactions and the personal rights and property rights of the parties regulated by criminal law at the same time. Therefore, even if the civil law provides that the parties have the right of revocation and a civil compensation system, It is still unable to cover the damage suffered by social rights and interests at the criminal level. Civil validity is not equal to criminal legality, so whether in the state of revocable civil juristic acts or after the elimination of the right of revocation of civil juristic acts, it may be established as a crime of forced transaction. It does not violate the principle of the unification of legal order and the modesty of criminal law, and it is also the embodiment of the reform of the principle of judicial trial of criminal procedure prior to civil procedure. And the establishment of the crime does not necessarily mean the criminal responsibility of the perpetrator; the criminal law gives the litigant the scope to be excused.

Keywords: action of coercion; crime of forced transactions; establishment; unity of legal order

With the development of the modernization of the rule of law, the implementation of the Civil Code, especially the ideas of autonomy of private law, freedom of contract, principle and honesty, and protection of rights contained in the Civil Code, which is increasingly integrated with other laws based on the characteristic of the extensiveness of social relations regulated by civil law. This has led to a rise in a significant number of civil and criminal cross cases in judicial practice, presenting new challenges for the legal workers. The traditional approach of working, which was confined to a single area of legal regulation, no longer adapts to the new stage of development. The transition from “civil-criminal cross” to “civil-criminal coordination” has gradually become a new trend in the development of the relationship between civil and criminal.

judgment documents are not online and the impact of the COVID-19 pandemic, so it indicates that the overall trend have been upward. The number of coerced transactions in the form of coercion is rising in the market transaction, and the relationship between it and the establishment of “crime of forced transaction” is worth investigating.



1. The origin of the issue

A scientific grasp of judicial status arises from effective data analysis, and it is the quickest and most effective method to research the precise application and intersections of legislative provisions of the coercive behavior and the crime of forced transaction through the judicial decision of the people's court. This study investigates the association between coerced civil legal activity and forced transaction behavior by selecting and researching open cases on the Judgment Documents network using keywords like "coercion" and "forced transaction." Relevant data and conclusions are drawn:

1.1. Analysis of judicial situation

Different from the previous belief that the crime of forced transaction can only exist in the criminal field, the author discovered that “forced transaction crime” occurs in a significant portion of civil judgments through research and analysis. Although the judiciary will not pass judgment beyond the area of jurisdiction, it still illustrates some problems existing in the judicial situation.

The author conducted a search with “forced transaction” and “coercion” as the key words. A total of 583 civil judgments were identified on the Judgments Document Network within the ten-year span ranging from 2013 to 2023. The frequency of their occurrence has shown a steady upward trend since 2013, but it has increased dramatically since 2017, maybe as a result of the market commodities economy's quick growth and the public's increased knowledge of litigation. The number of civil judgments peaked in 2020 at 142, although there has been a downward trend since then, it is necessary to take into account the trend in recent years that

The following information can be obtained by carefully analyzing the 40 civil judgments in 2023, : first, all of them occurred in contractual disputes, of which 57.5 % were disputes over commodity house pre-sale contracts, 10 % involving disputes over house purchase and sale contracts, 7.5 % each were disputes over construction contracts and house lease contracts, and 5 % were disputes over property service contracts, which centered on the commercial house transaction and other related areas; Secondly, the majority of the amounts involved—roughly 100,000 yuan—accounted for 62.5 % of the total, the greatest amount is 72 million yuan, while the lowest was 2,274 yuan, which shows that the social harm of the acts involved was greater; Furthermore, a comprehensive analysis revealed that all the plaintiff's lawsuit claims pointed out the fact that the defendant had coerced the transaction, but the defense reasons of “there is no coercion and other facts of forced transactions” is as high as 90 % of the cases, the cases involving whether to establish another crime of coerced transaction accounted for 12.5 %; Ultimately, 10 % of the judgment results determined that facts regarding forced trading could only be identified if there were already criminal judgments in place, otherwise can not be identified; 15 % of cases were closed on the basis of “Insufficient evidence beyond a reasonable doubt and insufficient to prove coercion”, judicial decisions strictly observe the boundaries of separating civil and criminal.

In various civil judgments, the courts have mentioned that the coerced party who has been coerced by another person to commit a civil juristic act against his or her true will has the right to request the people's court or arbitration institution to set it aside,¹ but the court will not investigate whether a crime of forced trade or other serious crime has

¹ Article 150 of the Civil Code stipulates that “a party or a third party has the right to request the people's court or arbitration institution to revoke a civil legal act committed by the other party in violation of its true intention by means of coercion.”

been established, as it does not fall within the scope of the civil law. It can be seen that there are no particular law-making stipulation or specific judicial cases regarding the relationship between the exercise of the right of revocation of civil juristic acts under duress and the establishment of the crime of forced transaction.

However, the purpose of civil law is to protect the legitimate rights and interests of civil subjects and upholds social and economic order, while criminal law aims to deter crimes and defend human rights. There are overlap and competition interactions between them, but no direct conflict. Therefore, to a certain extent, acts that safeguard the legitimate rights and interests of civil subjects are also fulfill the purpose of criminal law. Thus, it is necessary to explore the relationship between the exercise of the right of revocation of civil juristic acts under duress and the establishment of the crime of forced trading to provide scientific theoretical guidance for judicial practice.

1.2. Problem basis: The cross-competition of forced trading behavior and coercive behavior

Prior to formally debating the paper's argument, it is necessary to clarify whether the act of coercion and forced trade behavior truly constitutes a criminal-civil conflict. In the legal provisions, the criminal law defines forced trade behavior as the use of violence or coercion to forcibly purchase and sale of commodities, to compel others to provide or accept services, to force others to participate in or withdraw from bidding or auctions, to force others to transfer or acquire shares, bonds or other assets of a company or enterprise, and to force others to participate in or withdraw from specific business activities.

And only to the extent of serious circumstances can be included in the scope of criminal law, otherwise it should be restricted by administrative law. While coercion in civil law refers to the act of forcing the other party to make an act that is contrary to the true

intention by threatening to cause damage to the life, health, honor, reputation and property of the citizens and their relatives and friends, or by threatening to cause damage to the honor, reputation and property of legal persons and other organizations.²

Although modern law only protects the "free will" that it recognizes,³ the Civil Code grants the parties the freedom to conclude contracts and expressly provides that the contract will be revocable if the free will is violated. So that the act of forced transaction is included in a coerced civil juristic act in which the free will of the perpetrator is violated, as provided for in the Civil Code.

In terms of the relationship between coercive and civil juristic act, first of all, when it comes to the degree of coercion, the means of the crime of coercion include two kinds of behavior, such as violence and threats, there are obvious differences under the detailed distinction, but coercion refers to a type of behavior, violence and threats are the lower concepts of coercion, and therefore they are comparable.

The theory of coercion is divided into three types according to the state and degree of coercion: the first is generalized coercion, which is to cause others to produce psychological fear to implement any nature and content of the notice of the evil, but as long as the perpetrator has carried out the act, as for the others whether others have psychological fear is no matter;⁴ the second is the narrow sense of coercion, which requires that it be sufficient to cause the victim to commit a certain act or omission as a result of the psychological fear created by the coercive act;⁵ and the third is the narrowest sense of coercion, which requires that it be sufficient to achieve a level of psychological fear that would suppress the other party's resistance.⁶

The degree of coercion in the academic circle on the crime of forced trade agreed that should be the narrowest sense of coercion, violence and threat must reach the degree of suppressing the victim

Article 152 stipulates: Code ne of the following cases, the right of revocation is eliminated: (a) the parties do not exercise the right of revocation within one year from the date of knowing or should know the cause of revocation, and the parties with major misunderstandings do not exercise the right of revocation within ninety days from the date of knowing or should know the cause of revocation; (b) The party is coerced and has not exercised the right of revocation within one year from the date of termination of the coercion; (c) After the parties know the cause of revocation, they expressly express or give up the right of revocation by their own behavior. If the parties do not exercise the right of revocation within 5 years from the date of the civil legal act, the right of revocation will be eliminated."

² Chen Zhi-jun. The Resolution of the Conflict between Civil Legitimacy and Criminal Illegitimacy — Taking the Effectiveness of Fraud and Coercion as a Perspective // Journal of the Chinese People's Public Security University (Social Science Edition). 2014 (2). P. 147.

³ Zhang Song-lun. Economic Analysis of Coercion Regime-Centering on Illegality and Sanctions // Peking University Law Journal. 2018 (3). P. 637.

⁴ Chen Hong-bing, An Wen-lu. Study on Coercion-type Crimes -- Analysis of the Crimes of Forced Transactions and Forced Labor of Employees // Journal of Shanxi Politics and Law Institute for Administrators. 2014 (4). P. 26.

⁵ Zhou Hong-bo, Tian Kai. Judicial Application of Crimes against Market Management Order. Beijing: Law Press, 2005. P. 283.

⁶ Zhang Ming-kai. Outline of Foreign Criminal Law (third edition). Beijing: Law Press, 2020. P. 435.

from resisting and forcing him to transact with the perpetrator. In contrast, the definition of coercion in civil law is perhaps more oriented towards coercion in the narrow sense, so it can be inclusive to evaluate the forced transaction behavior that only requires the narrowest sense of coercion in criminal law.

Secondly, in terms of the types of behavior, the types of forced transactions stipulated in the criminal law only include the above five types of behaviors. Coercive behaviors includes all civil juristic acts carried out by the perpetrator, so the types of coercive behaviors in the civil law include forced transaction behavior.

Furthermore, as for the seriousness of the circumstances, since not all threats are illegal, otherwise the public power backed by the coercive force of the state will become the strongest tool to violate the freedom of will of others, therefore, even if all threats are bound to affect the free will of the other party, the key to the question is whether the influence exceeds the limits prescribed by law and constitutes a threat because of the violation of the law.⁷ As noted above, the criminal law only briefly stipulates that “if a person commits... an act under aggravating circumstances by means of violence or threat, he shall be punished by...”, so the coercive acts that can be regulated by the crime of forced trading should only be limited to the forced trading behavior with serious circumstances, which is illegal because of their extremely serious social harm. Although the current law and related regulations did not make a clear definition of what is “serious circumstances”, it is certain that the forced transaction behavior with serious circumstances is only a further limitation of the scope of coercive behavior, and it still belongs to the category of coercive behavior in civil law, they are not inconsistent. Coercive behavior includes forced transaction behavior, but for the convenience of writing, the act of forced transaction is collectively referred to as the serious forced transaction behavior that met the requirements of criminal law and the cross-competing parts within the scope of civil and criminal regulations in the following.

2. Criminal-civil conflict of the crime of forced transactions

As noted above, coercive act is inclusive of the evaluation of forced transaction behavior. Therefore, there must be some space between the exercise of the rescission right of civil juristic acts under duress and

the establishment of the crime of forced transaction. However, traditional legal theories and the general concept of society hold that since a party enjoys the right of revocation provided by law, the act has the status of “legal” (even if temporarily) in civil law whether or not he exercises its right of revocation, the victims’ economic losses may be filled up, and it is not subject to the regulation by the crime of forced transaction in the criminal law. The view that “whether the criminal law investigates the criminal responsibility of the perpetrator does not depend on whether a party to a civil juristic act exercises the right of revocation” is contrary to the principle of the unity of the legal order, the modesty of the criminal law, and the principle of criminal procedure prior to civil procedure, which, however, is not the case.

2.1. Not contrary to the principle of unification of legal order

The unity of the legal order means that there is no contradiction in the legal order constituted by the fields of law such as the Constitution, criminal law, civil law, and so on. The interpretations of the various fields of law should not be in conflict with each other.⁸ Among the several types of contradictions existing in the legal order, avoiding normative contradictions is the key point in dealing with criminal and civil cross cases. The so-called normative contradiction means that the content of legal norms in different jurisdictions is in conflict, a concrete or abstract act is required and not required, or prohibited and not prohibited, or completely required and prohibited, or being required at the same time in an incongruous manner in the legal order.

That is, a certain mode of behavior is simultaneously lawful and unlawful.⁹ The perpetrator’s conduct of forced transactions may violate the crime of forced transaction stipulated in criminal law on the one hand; it may apply the revocable system due to the provisions of civil law on the other hand. At this time, the normative application of forced transaction behavior appears the normative contradiction between the laws of different departmental laws.

The solution of the contradiction of criminal and civil norms depends on the judgment of the illegality of the behavior. The contradiction of criminal and civil norms in the scope of the competition of forced transaction behavior focuses on : The forced transaction behavior that conforms to the constitutive elements of the crime is considered to be a legitimate behavior in the civil law, so whether the legitimacy of

⁷ Zhang Song-lun. Economic Analysis of Coercion Regime-Centering on Illegality and Sanctions // Peking University Law Journal. 2018 (3). P. 639.

⁸ Chen Xi-zhen. Illegality from the perspective of the unity of legal order — taking the criminal and civil cross cases as the starting point // Legal Forum. 2022 (6). P. 101.

⁹ Carl Engisch. [Germany] An Introduction to Legal Thinking. Translated by Zheng Yong-liu. Beijing : Law Press, 2004. P. 197—211.

the behavior should also be affirmed in the criminal law, that is, whether the civil juristic acts considered to be effective in the civil law should also affirm the legitimacy of the behavior in the criminal law. There are different opinions on the issue of illegality judgment in the relationship between civil law and criminal law in the academic circles, mainly the controversy of the monism of illegal, the relativity of illegality and the pluralism of illegal.

The monism of illegality is divided into strict monism of illegality and moderate monism of illegality. The former advocates that the judgment of illegality of the same behavior should be consistent in various departmental laws, and acts that are judged to be illegal in other departmental laws cannot be prevented from breaking the law in criminal law, and vice versa, both should have a unified understanding of illegality.¹⁰

In other words, if the forced transaction is established in the civil law through the revocable system, then the legal act in the civil law should also be legal in the criminal law, and the unified evaluation of the illegality of the act should be maintained. Generally speaking, criminal law is an absolute subordinate and dependent relationship to civil law, but this extremely formal judgment ignores the substantive nature of illegality and the particularity of criminal illegality, which has been abandoned by the academic community.

The latter believes that although illegality is unified in the whole legal order, there are categories and levels of its manifestations, even if it is illegal in other fields of law, it may also lack the corresponding quality and quantity of illegality required to initiate the effect of criminal law in this field.¹¹ Therefore, it

advocates that “criminal illegality is equal to general illegality plus punishable illegality”, but what is “the degree of quality and quantity that criminal illegality should reach”, the theory does not give clear criteria for judgment. The relativity of illegality argues that each legal norm has different purposes, so each legal field is independent and does not affect each other, and the existence of illegality should be judged on the basis of teleology.

Whether the act of forced transaction is valid in civil law absolutely does not affect the judgment of its illegality in the criminal law. However, some scholars believe that if the relativity of illegality is adopted means that “extremizing the independence of the application of norms, conceals the possible conflict of purposes between criminal norms and civil norms, induces the risk of the purpose of civil law norms being overhead, and causes damage to the legal order.”¹²

It means that the coerced person can completely request the person who commits the forced transaction to be prosecuted at any time (especially not exercising the right of revocation after the scheduled period or giving up exercising the right of revocation), so that he can establish a crime and accept the penalty, thus the coerced person not only obtains the benefits, but does not have to bear the liability for breach of contract. The theory of illegal pluralism advocates the judgment of substantive illegality, which holds that the purpose and effect of law in various fields are different, so the evaluation of the illegality of law in various departments is also different. The evaluation of the illegality of criminal law must be based on whether it has the substantive illegality that is worthy of punishment,¹³ rather than being controlled by civil law.

	Strict monism of the illegality	Moderate monism of the illegality	The relativity of illegal	The pluralism of illegal
Civil legal, criminal legal	√	√	× (unnecessarily)	√
Civil legal, Criminal illegality	×	× (unnecessarily)	√	√

Therefore, the author supports the pluralism of illegal and should take the substantive illegality as the criterion of judgment. First of all, it must be clarified that the illegal pluralism is not a violation of the unity of the legal order. It advocates that the classification of

departmental law is based on its different normative purposes. From the selection of legal means, the determination of the adjustment object to the specific operation of each departmental law can't be separated from the guidance of the normative purpose.

¹⁰ Yamaguchi: General Introduction to Criminal Law. Third edition. Translated by Fu Li-qing. Beijing : China Renmin University Press, 2018. P. 187.

¹¹ Chen Xi-zhen. Illegality from the perspective of the unity of legal order — taking the criminal and civil cross cases as the starting point // Legal Forum. 2022 (6). P. 103.

¹² Chen Shao-qing. The solution to the cross-substantive problem of civil and criminal law — the development of “legal effect theory” // Law Research. 2020 (4). P. 79.

¹³ Maeda Yaying. [Japan] Lecture Notes on the General Theory of Criminal Law. Sixth edition. Translated by Zeng Wen-ke. Beijing : Beijing University Press, 2017. P. 25.

The normative purposes of civil law and criminal law are naturally different. There is no logical and systematic contradiction between criminal illegality and civil illegality, which is only a false contradiction to the unity of the legal order rather than a substantive contradiction. Therefore, the judgment of the civil law on the illegality of the forced transaction behavior is only a denial that the behavior does not conform to the civil law to protect the perpetrator's right to freedom of will, and there is no preemptive constraint condition on whether the criminal law will regulate it. If the forced transaction has the validity of civil law because the coerced person gives up the right of revocation or has not yet decided to exercise the right of revocation, the non-violation of civil law does not prevent the criminal law from judging the substantive illegality of the act. As long as the forced transaction violates the legal interests protected by the crime of forced transaction and has serious social harmfulness, the criminal law can regulate it, civil legality is not equal to criminal legality.

2.2. Without violation of the modesty of criminal law

The modesty of criminal law, also known as the complementarity of criminal law, means that the criminal law should control the scope and degree of punishment according to certain rules, that is, where the application of other laws is sufficient to suppress a certain illegal act and protect the legitimate rights and interests, it should not be stipulated as a crime; where the application of lighter sanctions is sufficient to curb a certain criminal act and protect the legitimate rights and interests, heavier sanctions should not be prescribed.¹⁴

The traditional view holds that civil juristic acts committed under duress are entitled to cancellation under civil law. As a result, once the actor exercises this right, his rights can be restored, and since civil law establishes a system for compensating damages, the loss of the coerced party can be fully covered by civil law. The compelled party may still get the corresponding consideration in accordance with the contract, even if they decide to carry out the terms of the initial forced transaction without using their right of revocation. This will prevent them from losing their ownership interest.

The crime of forced transaction is a crime set by the criminal law to punish the behavior that disturbs the market order and to protect the personal and property of the counterpart. Therefore, if the rights of

the parties have been compensated, it cannot be said that it will cause the disorder of the market trading order and damage to the person and property of the counterpart. Otherwise, if the perpetrator has to bear criminal responsibility after compensating for the loss, the scope of the regulation of the criminal law is obviously expanded, which violates the modesty of the criminal law.

According to this view, the application of civil law norms should be considered first when dealing with all criminal and civil cross-cases. Only when there are no relevant provisions in civil legal norms can the relevant provisions of criminal law be applied, otherwise it is contrary to the principle of modesty of criminal law. However, this is not the case. The essence of the modesty of criminal law is that if the basic legal norms such as civil law can be effectively regulated and achieve better legal effects, then the application of criminal legal norms has no meaning, and will only increase the burden of the courts and parties.¹⁵ They are not equivalent. The fact that the application of civil law can effectively regulate and achieve better legal effect does not mean that the absolute priority of application of civil law.

Therefore, when the application of civil law and other relevant legal norms still fails to achieve the expected legal effects and cannot effectively protect the infringed legal interests, it is necessary to regulate with criminal law in order to provide comprehensive protection for the infringed legal interests, which will realize the purpose of the criminal law. The core value orientation of civil law is the individual standard, centering on the protection of individual rights; the core value of the criminal law is the social standard, with the protection of social order as the center.¹⁶

The so-called revocable in civil law is relative to the coerced person. The personal interests of the coerced person can certainly be compensated based on the revocation system, but the person who commits coercive acts also seriously undermines the normal and fair trading order of the market because of the transaction against the will of others at the social level. In practice, many coerced people often choose to carry out the coerced transaction or behavior because they may suffer greater loss of interests or cannot effectively revoke, but it is difficult to say that the order of the trading market is really not damaged.

When a certain degree of seriousness is reached, the simple civil revocation system is not enough to

¹⁴ *Zhang Ming-kai*. On the Modesty of Criminal Law // *Studies in Law and Business-Journal of Economics Law*. 1995 (4). P. 55.

¹⁵ *Zhang Hong-chang*. Research on the Modesty of Civil and Criminal Cross Cases under the Integration of System and Problems // *Journal of People's Public Security University of China (Social Science Edition)*. 2023 (4). P. 18.

¹⁶ *Chen Zhi-jun*. The Resolution of the Conflict between Civil Legitimacy and Criminal Illegitimacy — Taking the Effectiveness of Fraud and Coercion as a Perspective // *Journal of the Chinese People's Public Security University (Social Science Edition)*. 2014 (2). P. 128.

make up for the losses suffered by the parties and the damage to the social order. Therefore, if it is not regulated by the crime of forced transaction, it is to a certain extent that the person who commits coercive acts will escape the sanctions of the law and damages the authority and dignity of the law. Civil revocation and civil compensation cannot fill the “guarantee” in the sense of criminal law.

2.3. Conform to the reform of the judicial procedure principle of criminal proceedings prior to civil proceedings.

There has always been a dispute over the choice of litigation procedure between “criminal procedure prior to civil procedure” or “civil procedure prior to criminal procedure” in criminal and civil cross cases. Initially, in the field of economic crime and contract disputes, the principle of “criminal proceed prior to civil procedure” has been given priority to avoid the omission of the punishment of criminal acts that damage the interests of the state or unspecified majority. In the case of Tian Yongxin housing sale contract dispute, Tian Yongxin and Xixiakou company signed a housing sale contract first, Tian Yongxin timely processed the property ownership certificate and decoration after the delivery of the purchase amount.

However, in order to obtain greater benefits, Tian Wenke, an employee of Xixiakou Company, adopted violence and threats such as issuing announcements and committing scolding and harassment, forcing the victim Tian Yongxin to surrender the ownership of the house he had already purchased at a very low transaction price, and sold the house to the unwitting Tian Berlin at a market price. After the incident, the People's Procuratorate of Rongcheng first initiated criminal proceedings against Tian Wenke on the grounds that he may constitutes the crime of forced trading.

After reviewing the facts of the case and relevant evidence, the court determined that the defendant Tian Wenke constituted the crime of forced trading and imposed a penalty on him. After reviewing the facts of the case and relevant evidence, the court determined that the defendant Tian Wenke constituted the crime of forced trading and imposed a penalty on him. Then in the subsequent civil proceedings, based on the trial result of the criminal judgment, the court determined that the fact of forced trading existed in Xixiakou Company, which was a "coercive act" within the scope of civil law regulation and could apply the voidable system of "coerced civil juristic acts", and the plaintiff Tian Yongxin recovers the house loss from the defendant Xixiakou Company.¹⁷

It can be seen that in judicial practice, the court believes that the exercise of the right to revoke coercive acts and the establishment of the crime of forced trading are issues that belong to two different jurisdictions. The commitment of criminal responsibility and civil liability can coexist and it is not contrary, but it is necessary to follow the trial principle of “criminal procedure prior to civil procedure”, otherwise it is not enough to determine the existence of forced trading facts.

In addition to the influence of the “heavy sentence thoughts”, the practice community's support for the judicial principle of “criminal proceed before civil proceed” is based more on the difference in the standard of review between the criminal and the civil and on the *res judicata* of the effective judgement. In the civil review procedure, the standard of probative force of evidence adopts a high probability standard, which only needs to make the judge form an inner conviction that a certain fact is highly likely to have occurred. However, the standard of proof in criminal proceedings is “the facts of the case are clear, the evidence is irrefutable and sufficient, and all reasonable doubts are excluded.”

Therefore, there is a misunderstanding in the practice community: as long as the facts of the case determined by criminal proceedings must be unquestionable facts, which can be directly used as the basis for civil trials in civil litigation without wasting litigation resources to prove again. However, the normative purposes of criminal law and civil law are different. In the case of criminal and civil cross, the trial stage mainly judges whether it belongs to the same fact or the same legal relationship.¹⁸

“The same fact” is not equal to “the same legal fact” or “the same legal relationship”, the same fact refers to the specific factual behavior carried out by the same party, which is not different from the different evaluation subjects. The same legal facts and the same legal relations refer to the facts and relations which are extracted from the same facts and adjusted by civil law, criminal law and other legal fields because of their different normative purposes, different jurisdictions are concerned with different legal facts.

Specific to the case of forced transaction, that is, civil law and criminal law are concerned with the basic fact that the perpetrator has committed a forced trading behavior, but civil law evaluates the coercive act that destroys the free will of the individual and judges whether the act is applicable to the system of coerced civil juristic acts in civil law; the main evaluation of the criminal law is whether the behavior meets the requirements of the crime of forced

¹⁷ Tian Yong-xin v. Tian Bo-lin house sale contract dispute appeal case, Weihai Intermediate People's Court of Shandong Province (2022) Lu 10 civil and final judgment No. 2944.

¹⁸ Li Zhao-yong. A Normative Approach to the Execution of Civil Cases under Under the Cross Between Criminal and Civilian Conditions // People's Judicature. 2023 (25). P. 93.

transaction to damage the fair competition order of the market and to the extent of seriousness of the circumstances, and whether it meets the constitution of the crime.

Therefore, there is no trial based on the same legal fact or the same legal relationship in the case of criminal and civil cross. If we want to ensure the freedom of the will of the counterpart and maintain the fair competition order of the market, so as to achieve the balance protection of national interests and personal rights and interests, we should adopt the trial principle of “civil and criminal parallel”, civil trial and criminal trial do not interfere with each other and are independent of each other.

As for the claim that civil trial should follow the *res judicata* of criminal judgment, it is even more nonsense, because their jurisdictions are different, the facts and legal relations examined are different, and the legal interests protected are different, which does not meet the preemptive constraint conditions for the application of *res judicata*. In addition, “The Summaries of the National Conference for Work of Courts on the Trial of Civil and Commercial Cases” issued in 2019 has proposed that civil and commercial cases and criminal cases should be considered separately. The trial principle has changed from “criminal proceed prior to civil proceed” to “criminal and civil parallel”, and has gradually become a new guiding principle for the trial of criminal and civil cross-cases. Therefore, the revocation of coercion in the field of civil law and the determination of the crime of forced transaction in the field of criminal law can be carried out at the same time, and they are not contradictory.

3. Exercise of the right of revocation does not affect the establishment of the crime of forced transaction

Taking the time of whether the right of rescission is eliminated as the node, it is divided into the civil juristic acts under duress after the elimination of the right of rescission and the civil juristic acts under duress that is still in the revocable state. The former refers to the party exercise of the statutory right of rescission, does not exercise the right of rescission during the statutory scheduled period, or abandons the exercise of the right of rescission based on various factors after being coerced; the latter means that

the party has not exercised the right of revocation or chosen to perform the coerced contract after the implementation of the coercive behavior and within the statutory scheduled period, so that the coercive behavior is in a revocable state. At this time, the final effect of the civil juristic act under duress is in a state of uncertainty. However, no matter what state the coerced civil juristic acts is in, it does not affect the establishment of the crime of forced transaction.

3.1. Elimination of the right of revocation does not affect the establishment of the crime of forced transaction

The key to solve the problem of criminal and civil cross of forced transaction behavior lies in the evaluation of its criminal illegality and the judgment of its civil validity. Civil legal relationship is based on equality and voluntariness, focusing on the autonomy of will and the protection of the interests of the parties. And what it maintain is more a kind of distributive justice, which only requires the balance of the interests of the parties. Therefore, the civil illegality is only judged in form rather than in substance at a certain extent.¹⁹ It is legal and effective as long as the civil juristic acts carried out by the perpetrator does not violate the mandatory provisions of the law. However, the mandatory provisions of effectiveness are different from the mandatory provisions of management.

For example, Article 15 of the “Guiding Opinions on the Relevant Issues concerning the Trial of Contract Dispute Cases in Civil and Commercial Matters under the Current Situation” issued by the Supreme People’s Court stipulates that violation of the mandatory provisions of management does not affect the effectiveness of the contract, no does it mean that it is an obstacle to its substantive illegality.²⁰

It can be seen that the law still holds a negative evaluation of forced transaction behavior, but it stipulates such behavior as effective under the balance of interests, and the syllogistic logical reasoning method of “elimination of the right of revocation-validity of the contract-legality of forced transaction behavior” confuses the relationship between the validity of the contract and the legality of the behavior, which can easily lead to a major misunderstanding of “effective is legal, legal is effective”, and bring reverse fluctuations to the market economy.

It can be seen that civil validity is not equal to civil legality, civil legality is not equal to criminal

¹⁹ Wang Zhi-xiang. On the Relationship between the Exercise of the Right to Cancel Civil Legal Acts under Duress and the Establishment of the Crime of Forced Transaction // Journal of Law Application. 2023 (3). P. 60.

²⁰ Article 15 of the Guiding Opinions on the Relevant Issues concerning the Trial of Contract Dispute Cases in Civil and Commercial Matters under the Current Situation: The people’s court shall pay attention to the distinction between effective compulsory provisions and managerial compulsory provisions in accordance with the provisions of Article 14 of the Interpretation of Contract Law (II).” If a compulsory provision of validity is violated, the people’s court shall determine that the contract is invalid; If a compulsory administrative provision is violated, the people’s court shall, taking into account the intent of laws and regulations, determine its effectiveness in light of the specific circumstances.”

legality, and the validity of coerced civil juristic acts in civil law is not directly related to its illegality in criminal law. Therefore, when the revocation right is eliminated, the forced transaction behavior has the validity of the civil law and the parties should perform the contractual obligations in accordance with the relevant provisions, but the validity it presents is only a formal legitimacy, neither criminal law nor civil law acknowledge its substantive legitimacy.

The forced transaction behavior is fundamentally an illegal act that violates the will of the parties and disrupts the market order, so the effectiveness in the civil law does not hinder the illegality of the criminal law, which can be regulated by the crime of forced transaction. Article 12 of the Supreme People's Court Provisions on the Law Application in the Trial of Private Lending Cases provides that "A private loan contract does not be certainly null and void if the borrower or lender's lending behavior is suspected to be a crime, or if a judgment has already taken effect determines that it constitutes a crime, and the parties bring a civil lawsuit." Therefore, there is no contradiction between the validity of the contract caused by forced transaction and the crime of the act, and the elimination of the right of revocation does not affect the establishment of the crime of forced transaction.

This not only means that the legal effect should not be used as the criterion for judging the illegality of an act, but also that the application of one of the two laws should not be sacrificed when the criminal law and civil law appear to be in conflict.²¹ If only the revocable system of civil law is applied without the application of criminal law, the person who carries out the coercive act will be lucky thinking that even if the party claims the right to the court, the court will only revoke the act and return the interests obtained to the party, and there is no room for the perpetrator to damage the interests, which may lead to the proliferation of coercive acts in practice.

If only the criminal law is applied for regulation, the perpetrator is only punished by fixed-term imprisonment or criminal detention and fined when the criminal norms are involved in forced transactions, and the loss of the interests of the coerced person is not filled, which is not conducive to the protection of the victim's property rights and interests. Applying civil law and criminal law to remedy at the same time is not only conducive to the general preventive purpose of deterring ordinary people from implementing forced transactions and the special preventive purpose of punishing criminals, but also can effectively safeguard the legitimate

property interests of the parties and carry out civil secondary remedy on a criminal basis.

Therefore, when individual private rights and social welfare suffer damage at the same time, it is necessary to regulated with civil law and criminal law to deny the substantive legitimacy of civil juristic acts under duress at the legal level after the elimination of the right of revocation, and make it establish the crime of forced transaction, which is more conducive to the comprehensive protection of the legitimate rights and interests of the parties and social transaction order.

3.2. The right of revocation has not been eliminated does not influence the establishment of the crime of forced transactions

For the protection of personal interests, the civil law gives the party under duress the right of revocation to decide the effectiveness of the coercion. Since the needs of social and economic development make the coerced person unable to sleep on the power forever, so the right of revocation will be eliminated if the coerced person exercises the right of revocation, the validity or invalidity of the civil juristic act does not affect the establishment of the crime of forced transaction.

However, if the parties have not yet decided whether to exercise the right of revocation within the statutory scheduled period, the effect of the act is still unclear, but it does not mean that the civil juristic act is invalid, and the contract that forces the transaction at this time can be said to be "effective" to some extent. When in the revocable state, the civil illegality does not affect the determination of the criminal illegality, even if the contract is recognized as valid, which prevents is the illegal of the validity of the contract rather than the violation of the forced transaction itself.

Not exercising the right of revocation in the scheduled period is mistake to convert the factors that affect the validity of the contract into the criteria that affect the judgment of the illegality of the contract, that is, the scheduled period has retrospective effect on the evaluation of illegality. But the law does not have retroactivity is "the basic guarantee of the stability of the law and the people's trust interests, and therefore an indispensable and important connotation of the modern rule of law principle".²²

The judgment of the illegality of the forced transaction itself depends on whether the coerced person exercises the right of revocation during the exclusion period, which undoubtedly violates this legal principle. The forced transaction reaches severity

²¹ Wen Xing-jian. Research on the Way to Solve the Entity Problem of Criminal and Civil Cross — Based on the "Shuai Ying Fraud Insurance Case" // Criminal Law Review. 2019 (1). P. 656.

²² Yang Deng-feng. The retroactivity of Civil and Administrative Judicial Interpretations // Chinese Journal of Law. 2007 (2). P. 63.

so that it is regulated by criminal law has nothing to do with whether the act is in a revocable state.

And fundamentally, the civil juristic act in the revocable state and the civil juristic act eliminated by the revocable right are essentially the same, which is a state of validity that the law gives legal and effective status to the illegal act. Starting from the act of forced transaction itself, the civil law also holds a negative attitude towards it, giving the parties the right to choose the legal effect independently just in order to maintain the safety and order of the transaction, but prior to this, it is not invalid.

On the one hand, the crime of forced transaction in criminal law punishes the behavior of forced transaction in order to maintain the order of social transaction, and on the other hand, its to prevent the recurrence of such behavior. If only the forced transaction with the elimination of the right of revocation is regulated by criminal law, and believe that the illegality of the forced transaction itself is denied just because the parties have not yet chosen whether to exercise the cancellation right after the implementation of the forced transaction, it will undoubtedly seriously limit the scope of criminal law regulation, and make the premise of whether the criminal law punishes the criminal is based on the free will of the parties, which will make a result that more people can use this as an excuse to commit crimes and evade legal investigation.

What's more, since the maximum scheduled period of the coerced act is one year, it is impossible to carry out criminal investigation of the coerced act when the ultimate effect of the coerced act is in the state of "pending", which will lead to the failure of timely and effective investigation and prosecution of the case involving the crime of coerced transaction and resulting in the waste of judicial resources.²³

Even from the perspective of infringed legal interests, because the emphasis and purpose of civil law and criminal law is different, the abstract social legal interests should be maintained even if the specific interests damage are filled in, and there is no conflict in remedying it from two legal fields. As long as the actor implements the fact of coercing the counterpart to trade, whether the coerced person exercises the right of revocation through the civil legal system or not, it will not affect the illegality of the act, that is, it does not affect the establishment of the crime of forced transaction.

It is necessary to explain that the establishment of the crime of forced transaction does not mean the criminal responsibility of the perpetrator. Regardless of the current popular three-class crime constitution theory of German criminal law and Japanese criminal law or the traditional four-element crime constitution theory in China, there are other possibilities to cut off the criminal responsibility of the perpetrator even if the criminal behavior conforms to the form of crime constitution elements. There is a typical hierarchical relationship between illegality and responsibility. Illegality exists independently of responsibility. It only establishes the crime of forced transaction in the sense of criminal law regulation, which does not mean the exact criminal responsibility of the perpetrator.

Conclusion

The law gives the coerced parties the right of choice based on the need for balance of comprehensive interests. However, no matter the coerced civil juristic act eliminated by the right of revocation or a coerced civil juristic act in a revocable state, it is essentially a state of effectiveness in which the law gives legal and effective status to the illegal act. Although it is effective and legal in form, it does not mean that it is legal in nature. Forced transactions within the scope of criminal and civilian regulation violate the will freedom of the parties, destroy the fair market trading order and the personal rights and property rights of the parties, which is actually the embodiment of lawless law and the negative evaluation from the criminal law and civil law.

Therefore, the civil law entrusting the parties with the right to cancel and the criminal law establishing the crime of forced transaction for forced transaction do not violate the unity of legal order and the modesty of criminal law, but also reflect the reform of the judicial procedure trial principle of criminal procedure prior to civil procedure, and they can be parallel. Starting from the actual judicial practice of the crime of forced transaction and the revocable civil juristic act, it is more helpful to fundamentally understand the overlapping and competing relationship between them. The forced transaction behavior of the cross-competing parts in the scope of criminal and civil regulation can establish the crime of forced transaction while applying the revocable system.

²³ Wang Zhi-xiang. On the Relationship between the Exercise of the Right to Cancel Civil Legal Acts under Duress and the Establishment of the Crime of Forced Transaction // Journal of Law Application. 2023 (3). P. 63.

REFERENCE

1. *Carl Engisch*. [Germany] An Introduction to Legal Thinking. Translator: Zheng Yong-liu. Beijing : Law Press, 2004.
2. *Chen Hong-bing, An Wen-lu*. Study on Coercion-type Crimes — Analysis of the Crimes of Forced Transactions and Forced Labor of Employees // Journal of Shanxi Politics and Law Institute for Administrators. 2014 (4).
3. *Chen Shao-qing*. The solution to the cross-substantive problem of civil and criminal law — the development of "legal effect theory" // Law Research. 2020 (4).
4. *Chen Xi-zhen*. Illegality from the perspective of the unity of legal order — Taking the criminal and civil cross cases as the starting point // Legal Forum. 2022 (6).
5. *Chen Zhi-jun*. The Resolution of the Conflict between Civil Legitimacy and Criminal Illegitimacy — Taking the Effectiveness of Fraud and Coercion as a Perspective // Journal of the Chinese People's Public Security University (Social science edition). 2014 (2).
6. *Li Zhao-yong*. A Normative Approach to the Execution of Civil Cases under Under the Cross Between Criminal and Civilian Conditions // People's Judicature. 2023 (25).
7. *Maeda Yayoung*. [Japan] Lecture Notes on the General Theory of Criminal Law. Sixth edition. Translator : Zeng Wen-ke. Beijing : Beijing University Press, 2017.
8. *Wang Zhi-xiang*. On the Relationship between the Exercise of the Right to Cancel Civil Legal Acts under Duress and the Establishment of the Crime of Forced Transaction // Journal of Law Application. 2023 (3).
9. *Wen Xing-jian*. Research on the Way to Solve the Entity Problem of Criminal and Civil Cross — Based on the "Shuai Ying Fraud Insurance Case" // Criminal Law Review. 2019 (1).
10. Yamaguchi: General Introduction to Criminal Law. [Japan] Third edition. Translator: Fu Li-qing. Beijing : China Renmin University Press, 2018.
11. *Yang Deng-feng*. The retroactivity of Civil and Administrative Judicial Interpretations // Chinese Journal of Law. 2007 (2).
12. *Zhang Hong-chang*. Research on the Modesty of Civil and Criminal Cross Cases under the Integration of System and Problems // Journal of People 's Public Security University of China (Social science edition). 2023 (4).
13. *Zhang Ming-kai*. On the Modesty of Criminal Law // Studies in Law and Business-Journal of Economics Law. 1995 (4).
14. *Zhang Ming-kai*. Outline of Foreign Criminal Law. Third edition. Beijing : Law Press, 2020.
15. *Zhang Song-lun*. Economic Analysis of Coercion Regime-Centering on Illegality and Sanctions // Peking University Law Journal. 2018 (3).
16. *Zhou Hong-bo, Tian Kai*. Judicial Application of Crimes against Market Management Order. Beijing : Law Press, 2005.