Interactions between civil and criminal liability for cybercrimes under Swiss law

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June 21, 2018 | Geneva Cybersecurity Law & Policy Conference

A (not too) unlikely event...

Consequence 1: pecuniary damage
Consequence 2: personal injury (death)

Los Angeles hospital paid $17,000 in bitcoin to ransomware hackers

Hollywood Presbyterian Medical Center had lost access to its computer systems since 5 February after hackers installed a virus that encrypted their files

A (not too) unlikely event...

(1) Civil liability
(2) Criminal liability

Civil and criminal law interactions: the two extremes

- Cost- and time-efficiency
- No contradictory rulings

Procedural identity

Material identity

Procedural independence

Material independence

Taking into account the different
- purposes and interests
- rights and duties
- parties
Material interactions (1|2)
E.g. hospital directors’ liability:

**Mismanagement** (art. 158 Swiss Penal Code):
(i) management of assets
(ii) breach of duty
(iii) damage
(iv) causal link
(v) intent

**Directors’ liability** (art. 754 Swiss Code of Obligations):
(i) director
(ii) breach of duty
(iii) damage
(iv) causal link
(v) fault

Material interactions (2|2)

**Criminal law dependent on civil law perspective**

Interpretation of normative constituent elements of a crime explicitly or implicitly referring to civil law

- Limiting function of civil law:
  «Any person who acts as required or permitted by the law acts lawfully even if the act carries a penalty under this Code or another Act» (art. 14 Swiss Penal Code)

  Civil law violation necessary, yet not always sufficient

**Civil law dependent on criminal law perspective**

Recourse to criminal law

- **Wrongfulness** in tort law (art. 41 Swiss Code of Obligations)

  - In case of pecuniary damages, case law requires the breach of a specific asset protection provision often found in criminal law (e.g. computer fraud, money laundering)
**Procedural interactions**

<table>
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<tr>
<th>Criminal proceedings</th>
<th>Civil proceedings</th>
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In general independent proceedings, each with its own procedural rights, obligations and principles.

Nevertheless certain interactions:

- **Aggrieved person as a party to the criminal proceedings**
  - Access to files → May be used in parallel or subsequent civil proceedings
  - May assert claims for damages caused by the criminal offence → To be decided by the criminal judge as part of the criminal trial

- **Binding effect of a criminal conviction on parallel or subsequent civil proceedings?**
  - Often factually binding, though not a legal principle (cf. art. 53 Swiss Code of Obligations)

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Thank you for your attention.

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