Study on Bona Fide Acquisition of Illicit Money

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Abstract: The applicability of the bona fide acquisition doctrine to the ownership and recovery of illicit funds involving third parties unrelated to the case is a frequent issue in judicial practice. However, the Civil Code lacks explicit provisions on illicit funds and property, leading to theoretical disputes. In criminal matters, the recovery of illicit funds must trace the entire flow of the assets; whereas in civil matters, the bona fide acquisition doctrine can block the right of recovery, allowing a bona fide third party to acquire ownership of property disposed of without authority under certain conditions. This doctrine aims to protect the reliance interests and transactional security in commerce, serving as a fundamental legal principle indispensable in the era of market economy. When criminal recovery and bona fide acquisition intersect, each should govern its own domain without encroachment. When a third party claims bona fide acquisition over illicit funds, the dispute falls into the civil sphere. Therefore, conditionally recognizing the applicability of bona fide acquisition to illicit funds—discussing its rationality, legitimacy, required constitutive elements, and exclusionary scenarios—holds profound significance for safeguarding the interests of legitimate rights holders, maintaining transactional security and order, and regulating and constraining public power.

Keywords: Illicit Money; Bona Fide Acquisition; Criminal Asset Recovery; Possession is Ownership

1. Introduction

In recent years, with the vigorous development of China's market economy, the issue of recovering stolen money and property has gradually become prominent and a focus of public attention. In judicial practice, there has been extensive discussion on how to reasonably and properly recover stolen money and property, as well as whether the application of the bona fide acquisition system should be excluded in this process. Clarifying relevant regulations is crucial for protecting the rights and interests of the original owner and ensuring transaction security. It is necessary to stipulate this in law and explicitly exclude situations where bona fide acquisition applies, thereby balancing the protection of the original owner and the maintenance of transaction security [1]. Today, as the issue of applying bona fide acquisition to stolen money and property becomes increasingly prominent in China's legislation, the Civil Code still avoids giving clear guidance on this issue and does not make explicit provisions, which is clearly no longer suitable for the current social development.

When the ownership and recovery of stolen money and property involve a third party, the application of the bona fide acquisition system is reasonable and legitimate. Civil law in modern civil law countries generally recognizes that stolen property can be subject to the bona fide acquisition system, while China's judicial practice has gone through a process from excluding its application to exceptionally applying it, and then to recognizing that stolen property can be subject to the bona fide acquisition system [2]. From the perspective of protecting transaction security and maintaining transaction order, it is necessary to recognize that stolen property can, in principle, be subject to the bona fide acquisition system, but it is necessary to strictly grasp the constituent elements of bona fide acquisition. As a special type of stolen property, stolen money, despite its special nature as currency, should also, in principle, be subject to the bona fide acquisition system as a type of stolen property. Furthermore, it is more detailed and reasonable to discuss stolen money and stolen property separately and explore whether they are subject to the bona fide acquisition system separately. Mixing the two often tends to blur the focus, increase the complexity of discussion and decision-making, and may even lead to unnecessary disputes.

Separate research is needed to gradually improve and optimize the relevant systems. In civil law, physical currency or cash currency is, in principle, subject to the rules of movable property rights, and the principle of "possession is ownership" should only play a limited presumption role. The high substitutability of money is its basic characteristic as a medium of exchange and means of payment. However, under certain circumstances, money may have specific identities or attributes due to its specific use, source, or transaction background. The circulation rule of "possession is ownership" does indeed effectively guarantee the convenience and security of transactions in most cases. However, when it comes to money with illegal sources such as stolen money, strictly applying this rule can lead to undue protection of the creditor of the possessor, thereby harming the rights and interests of the original owner. Its circulation protection function can be replaced by the bona fide acquisition system. The theory of "possession and ownership" of money should not be taken as a matter of course to conclude that the perpetrator who possesses money by illegal means obtains ownership of the stolen money, and their subsequent actions are authorized dispositions, thus conflicting with one of the constituent elements of bona fide acquisition in Article 311 of the Civil Code, which requires that the perpetrator must be a person without the right to dispose, leading to the conclusion that stolen money is not subject to the bona fide acquisition system. This view is too one-sided and fragmented, and the unrestrained application of the "possession is ownership" theory is outdated and inappropriate.

Article 11 of the "Several Provisions of the Supreme People's Court on the Enforcement of Property-Related Parts of Criminal Judgments" clearly states that if the person subject to enforcement uses the property involved in the case, which is identified as illicit money or goods in the criminal judgment, for debt repayment, transfer, or the creation of other encumbrances, and falls under any of the following circumstances, the people's court shall pursue the recovery of such property... If a third party acquires the property involved in the case in good faith, it shall not be recovered in the enforcement process. Illicit money specifically refers to illegal gains in monetary form, while illicit goods encompass other forms of property. Considering the universality and substitutability of illicit money as currency, it is regarded as a typical res. This provision juxtaposes illicit money and illicit goods, making it clear that the recovery of illicit money is subject to the bona fide acquisition system. Furthermore, through extensive judicial practice and case studies, it can be found that illicit money that meets certain conditions is subject to the bona fide acquisition system.

Therefore, establishing a system for the bona fide acquisition of stolen money in China holds significant practical importance. With the development of social economy and the increasing frequency of transaction activities, disputes involving stolen money and goods have also exhibited complex and diverse characteristics. It is necessary to deeply analyze the legislative examples of various countries and draw on their successful experiences to construct a system for the bona fide acquisition of stolen money and goods that aligns with China's national development, in order to better respond to and resolve related disputes, protect the interests of legitimate rights holders, maintain the safety and order of transactions, and promote the healthy development of the social economy.

2. Theoretical Controversy over the Application of the Bona Fide Acquisition System to Illicit Funds

Firstly, we need to clearly define the concept of "stolen money and property". In ancient China, there were definitions for stolen money and property. For example, in the "Tang Law", there was the concept of "six types of theft", which proposed the viewpoint that "stolen property refers to what criminals have taken". In the current "Xinhua Dictionary", stolen money and property are explained as: "property illegally obtained through corruption, bribery, theft, etc." Broadly speaking, stolen money and property can be collectively referred to as all property obtained through illegal means. Narrowly speaking, stolen money and property specifically refer to the illegal income obtained by criminals through illegal and criminal activities, which has been investigated and identified by judicial authorities in accordance with the law, and is the direct product or proceeds of criminal activities. When discussing issues related to stolen money and property, we focus on the legal nature, status, and handling methods of these properties. Therefore, when discussing legal issues involving stolen money and property, we first need to clarify whether the concept of "stolen money and property" used is broad or narrow, to ensure the accuracy and relevance of the discussion. This article discusses stolen money in a narrow sense.

In addition, this article distinguishes and discusses illicit funds separately from stolen goods. The main reason is that, compared to stolen goods, illicit funds have their own uniqueness due to their monetary nature. The combination of the monetary nature of money and its illegality gives rise to related issues. Distinguishing between the two helps to clarify these issues more clearly. Due to the lack of clear legislative provisions, there is considerable controversy in theory over whether the bona fide acquisition system applies to illicit funds.

2.1 Theoretical Logic of the Inapplicability of the Bona Fide Acquisition System to Illicit Funds

The first viewpoint is to deny the application of the bona fide acquisition system to stolen money, based on the principle of "judging the lesser by the greater" when criminalizing. According to Article 312 of the Civil Code, the bona fide acquisition system is not applicable to lost property in principle. Stolen money obtained by illegal means such as theft or robbery, like lost property, belongs to objects separated from possession. According to the rule of necessary interpretation, when the law does not explicitly provide otherwise, similar legal norms should be applied. Furthermore, due to the illegal elements present in stolen money, it should be subject to more legal restrictions compared to other items.

Possession of a separated object refers to an object that has been deprived of possession without the will of the owner. Specifically, this loss of possession is not caused by the intentional or negligent behavior of the owner, but by some external factors such as theft, robbery, or loss. The loss of possession based on a separated object is not based on the will of the owner, and the owner usually does not have fault for the unauthorized disposal of the object. From the perspective of fairness and justice, it is clearly unreasonable to let the owner bear the risks and adverse consequences arising from this. Therefore, in law, the application of the bona fide acquisition system is excluded. In the case of possession of a separated object, since the owner is not at fault and the loss of possession of the object is not based on their will, excluding the application of the bona fide acquisition system can better balance the interests of all parties.

The second viewpoint is that it is currently difficult to deduce from the provisions of the Civil Code whether the bona fide acquisition system applies to stolen money. The Civil Code should have stipulated the issue of bona fide acquisition of stolen money and goods. The legislator had analyzed, studied, and discussed this issue during the formulation process, but ultimately did not stipulate it, indicating that the legislator may have considered the complexity and sensitivity of this issue when formulating the law. Therefore, they chose a relatively vague or blank approach, which has caused difficulties in legal application and constitutes a known legal loophole. This known legal loophole needs to be remedied through the improvement of legal norms. It is not possible to directly deduce the implicit value judgments from the norms of the Civil Code and thereby directly apply stolen money to the bona fide acquisition system.

Although the aforementioned theory seems reasonable, it cannot theoretically address the real issues that society needs to resolve and is somewhat unrealistic. With the rapid development of China's social economy, the importance of transaction security has become increasingly prominent. However, when faced with complex situations such as stolen money, mechanically applying legal provisions or simply determining the ownership of rights based on the true state of rights has gradually revealed numerous difficulties. The complexity and diversity of modern transactional activities make traditional methods of determining the ownership of rights difficult to cope with. Transactions often involve multiple links and multiple parties, making the determination of rights ownership more complex. Simply determining the ownership of rights based on the true state of rights often fails to fully consider the actual situation of the transaction and the interests of all parties. Secondly, when dealing with illegal property such as stolen money, mechanically applying the law may neglect the protection of transaction security. In some cases, if the handling of stolen money is too strictly in accordance with legal provisions, it may harm the legitimate rights and interests of innocent third parties and undermine the security and stability of transactions. Therefore, a balance needs to be struck between protecting transaction security and combating crime. Furthermore, the absence of legal provisions does not necessarily mean that the law is opposed to it. The Civil Code only regulates lost property

The provision is specific, yet it does not stipulate regarding illicit funds and stolen goods. This presumably takes into account the fact that this situation pertains to public law norms. When it comes to issues involving public law, it may not be appropriate for civil law to make separate provisions. However, this does not mean that its application is excluded.

By blocking criminal confiscation through bona fide acquisition, absorbing the theory of the bona fide acquisition system in civil law, and aligning the ownership and enforcement of stolen funds with the bona fide acquisition system in civil law, criminal law can handle property involved in cases in a more diversified and reasonable manner, fully safeguarding the legitimate rights and interests of bona fide third parties, balancing the interests of all parties, and being more pragmatic.

2.2 Theoretical Logic of Applying the Bona Fide Acquisition System to Illicit Funds

2.2.1 The application of bona fide acquisition to illicit funds does not harm public sentiment

In accordance with the principle of "what is not expressly prohibited by law is permitted" in private law, China's Civil Code does not explicitly prohibit the application of the bona fide acquisition system to stolen money. Therefore, based on the principle of presumption of rights, an opposite interpretation should be made, that is, it should be interpreted as applicable. Moreover, the negation theory rejects the application of bona fide acquisition to stolen money based on a naive legal sense, fearing that if stolen money can be acquired bona fide, it will hurt public sentiment and contradict traditional moral and justice concepts. However, this is not the case. After analyzing with the "Prospect Theory" proposed by American scholars Kahneman and Tversky, it can be seen that if stolen property is not subject to bona fide acquisition, it will cause greater harm to public sentiment. Similarly, the application of the bona fide acquisition system to stolen money will not hurt public sentiment [3]. From a practical perspective, in most cases, stolen money is a generic item. When it is not a specific currency, it generally does not have specificity and does not carry the emotions of the original rights holder. At this time, people are more concerned about whether their losses can be compensated, rather than requiring or caring about whether it is the original item. For generic monetary items, insisting on tracing back to the original currency for return is unrealistic and increases unnecessary costs, wasting excessive resources.

In society, there exist intricate entanglements of interests. Both the victim and the bona fide third party, as conflicting parties with opposing interests, may not be at fault. Therefore, they cannot be required to bear any unintended detriment beyond their own. The application of the bona fide acquisition system to stolen funds balances the interests of the victim and the third party. The application of bona fide acquisition to stolen funds does not mean exemption of the perpetrator from liability. While protecting the bona fide third party, it retains the victim's remedy. This is in line with the concept of social fairness and justice. The rights of the parties involved are also safeguarded, without harming the feelings of the general public.

2.2.2 Maintain market transaction security and order

The application of the bona fide acquisition system to illicit funds can better and more comprehensively achieve the purpose of establishing bona fide acquisition, protect bona fide third parties, and maintain the safety and order of transactions. In China's criminal law, the definition of stolen goods adopts a broad concept, considering that anything obtained by criminals through illegal criminal activities can be regarded as stolen goods, and illicit funds are no exception. After entering the transaction field, the external form of illicit funds does not have any particularity. Compared with other currencies in normal circulation, it is only involved in criminal disputes, making it difficult for the bona fide counterparties in the transaction to identify whether they are illicit funds. If the responsibility of identification is imposed on the bona fide counterparties, it is tantamount to imposing a difficult task on them, increasing the cost and difficulty of their transactions, and is therefore not justified. In today's increasingly frequent economic exchanges, whether it is the scale, quantity, or frequency of transactions, it is unmatched by previous markets. Illicit funds may be invested in production and business activities in subsequent transactions. After multiple transfers, if illicit funds are completely excluded from the scope of bona fide acquisition and pursued to the end, it will greatly damage the reasonable trust of transaction counterparties, seriously hinder normal production and business activities, increase transaction costs, and endanger normal transaction safety and order.

Meanwhile, the Supreme People's Court issued the "Guiding Opinions of the Supreme People's Court on Optimizing the Legal Environment to Promote the Development and Expansion of the Private Economy" (Fa Fa [2023] No. 15). The opinion also requires a strict distinction between economic disputes and illegal crimes, strictly regulates criminal coercive measures and legal procedures for asset recovery, strengthens the protection of the legitimate rights and interests of parties and third parties, balances the legitimate interests of all parties, facilitates channels and ways for third parties to express their demands in the criminal asset recovery and confiscation procedures, and minimizes the adverse impact of judicial activities such as criminal asset recovery and confiscation on relevant third parties.

2.2.3 Causality of property right change

Broadly speaking, illicit funds are a type of illicit property and constitute a special type of movable property. The mainstream view in China is that the change of property rights in movable and immovable properties requires causation [4]. Regardless of whether the perpetrator has the right to dispose of the illicit funds or not, whether it is original acquisition or derivative acquisition, as long as there is a legal and valid contract between the perpetrator and the third party that satisfies causation, if it is believed that the perpetrator has the right to dispose of the illicit funds and the money is delivered upon public notice, property rights change occurs. At this point, according to the creditor's rights formalism model of property rights change, the third party acquires property rights over the illicit funds; if it is believed that the perpetrator has no right to dispose of the illicit funds, and the third party simultaneously meets the constituent elements of acquisition in good faith, the third party can still acquire property rights over the illicit funds.

Therefore, regardless of the circumstances under which a third party acquires property rights, it must satisfy the prerequisite of causation. As the other party to the transaction, an external third party has legitimate rights and interests in the stolen money based on a legal and valid contract and delivery act. If the stolen money is pursued to the end at this time, especially in the absence of sufficient evidence to prove that the transaction is illegal or invalid, such pursuit may indeed seriously infringe upon the legitimate interests of the external third party, even if it is pursued for another legitimate interest. The principle of equality is an important principle in both the criminal and civil fields, and it may be unjust to violate the principle of equality in this case. The causation of property rights changes is the premise and foundation of bona fide acquisition. Because bona fide acquisition, as a special method of property rights changes, must also satisfy the general principles of property rights changes, that is, there must be a legal and valid reason. At the same time, bona fide acquisition is also a supplement and exception to the causation of property rights changes. In the case of unauthorized disposal, if the general principle of causation is followed, the transferee may not be able to acquire property rights. However, in order to protect the security and stability of transactions, the law specifically stipulates the bona fide acquisition system, allowing the transferee to acquire property rights under certain conditions.

2.2.4 It is conducive to regulating and constraining public power

We need to be clear that public power is merely one means of protecting citizens' interests, while citizens' private rights should be the goal pursued by society. The famous French bourgeois enlightenment thinker John Locke believed that the law exists to protect citizens' freedom, rather than to blindly restrict it for the sake of social order. Everyone should be able to exercise their rights freely within certain bounds. When exercising public power through criminal law to punish crimes, it must not infringe upon citizens' freedom, civil interests, or affect transaction security and order. In the process of normal transaction activities, the counterpart to the transaction should be able to predict their own behavior and have reasonable trust in the other party. If the application of bona fide acquisition to stolen money is denied, the predictability of the counterpart to the transaction will be shaken, and the perpetrator will be unable to make reasonable arrangements for their subsequent actions. To some extent, this will restrict or even deprive their freedom to engage in other behaviors. Establishing the application of bona fide acquisition to stolen money is not only a protection of transaction freedom but also limits the authority of public power to be used reasonably. It prevents public power from excessively pursuing stolen money and infringing upon the legitimate interests and freedom of action of third parties.

Everyone is equal before the law, and the exercise of public power to protect the legitimate rights and interests of one party while infringing upon the legitimate rights of another should not be allowed.

3. In Principle, the System of Acquisition in Good Faith Applies to Illicit Funds

The theoretical justification for the application of the bona fide acquisition system to illicit funds demonstrates the legitimacy and rationality of its application. The bona fide acquisition system is a product of various interest trade-offs, and its emergence restricts the effectiveness of property pursuit, primarily to maintain the safety, order, and efficiency of transactions. When protecting the safety of property order, the law considers both static and dynamic security, as reflected in the bona fide acquisition system distinguishing whether the transferee is acting in good faith and protecting the interests of bona fide third parties. Based on the principle of fairness, it balances the two values of dynamic and static security, adapting to the requirements of economic and social development.

When currency enters the market for circulation, its circulation value is crucial for maintaining the smooth operation of the financial and economic system. In principle, illicit money (currency) should be subject to the bona fide acquisition system. The fundamental purpose of the provisions on bona fide acquisition in Article 311 of the Civil Code is to protect transaction security and order. It applies in principle to all movable and immovable property. Currency, as a special type of movable property, has its inherent specificity. Even in cases where illicit money is used for transactions, it is extremely difficult for the counterparty to identify the currency as illicit money, making the possibility of good faith relatively high. Their reasonable reliance interests should be protected by law. Therefore, in principle, illicit money should be subject to the bona fide acquisition system.

3.1 Adopt the Interpretation Scheme of "Separating Criminal and Civil law"

In the criminal field, in order to combat illegal activities and crimes, criminal confiscation should follow the trail of illicit funds to the end. The illegal proceeds of criminals should be confiscated or ordered to be returned and compensated. When criminal confiscation encounters bona fide acquisition, involving third parties who have acquired the property involved in the case in good faith, it shall not be pursued in enforcement. Bona fide acquisition is a system in civil law, involving the civil field. Criminal and civil law are separate and each has its own jurisdiction, without infringing upon each other [5]. After identifying the funds involved in the case, when illicit funds are the target of criminal confiscation, regardless of how the criminals conceal, transfer, or attempt to launder the funds through other means, the law can pursue them to the end. This is to maintain social fairness and justice, ensuring that criminals cannot acquire property through illegal means and benefit from it. However, when a third party claims bona fide acquisition of the illicit funds, if it is legitimate, the relevant dispute enters the civil field, requiring examination to determine whether the third party constitutes bona fide acquisition. If it does, the victim can claim compensation from the criminal; if it does not constitute bona fide acquisition, criminal confiscation should be carried out, and the confiscated funds should be returned to the victim. Meanwhile, the third party can claim the return of unjust enrichment from the criminal, balancing the interests of all parties. When dealing with disputes involving illicit funds and bona fide acquisition, it is necessary to clarify the boundaries between criminal law and civil law, adopt a layered interpretation scheme for criminal and civil law, and take corresponding legal measures according to specific circumstances. This can effectively resolve the issue of bona fide acquisition of illicit funds, while ensuring that criminals receive due punishment, protecting the legitimate rights and interests of third parties, achieving simplicity in theory and rules, and promoting social fairness and justice.

3.2 Illicit Funds Should Strictly Adhere to the Constituent Elements of the Bona Fide Acquisition System in Civil Law

According to Article 311 of the Civil Code, all constituent elements must be met simultaneously to constitute acquisition in good faith. Illicit funds involve a cross-disciplinary issue between criminal law and civil law, but the concept of acquisition in good faith does not exist in criminal law. Acquisition in good faith is a civil legal system. In a society governed by the rule of law, legal order must be unified. When criminal asset recovery involves acquisition in good faith by a third party, the applicable legal basis can only be Article 311 of the Civil Code. When the system of acquisition in good faith is applied to illicit funds, it is also necessary to strictly follow the constituent elements stipulated by law to examine whether acquisition in good faith is constituted.

3.2.1 The transferee must act in good faith when accepting the illicit funds

The law introduces the concept of "good faith" as one of the constituent elements of acquisition in good faith. The term "good faith" carries a strong subjective connotation, and requires value evaluation when applied to determine whether it is subjectively impugnable. "Good faith" aligns with the legal value orientation and pursuit, and the law naturally affords corresponding protection to bona fide third parties, which is also an inherent obligation.

Good faith should not only be a factual distinction between knowledge and ignorance, but also encompass an ethical evaluation of whether ignorance is due to negligence [6]. A person should fulfill the reasonable duty of care required by law. If one fails to fulfill this duty and merely uses ignorance, lack of understanding, or unawareness as an excuse when there is actually negligence, and in the general social perception, combined with specific circumstances and transactional experience, the corresponding facts should be known, then claiming good faith based on ignorance is difficult to support. Of course, in general social interactions, due to considerations such as the frequency and number of interactions, as well as the purpose of establishing good faith acquisition, if the transferee is overly harshly treated and imposed with excessive duty of care, the transferee's behavior will be greatly restricted, which in turn will make the good faith acquisition system somewhat useless. Therefore, excluding gross negligence and considering general negligence within the scope of good faith is in line with the spirit of the law.

The third party involved in the transaction should be acting in good faith at the time of delivery, and should be able to prove the legality of their acquisition of the stolen funds. The determination of good faith also focuses on the environment and location of the transaction, whether it was conducted in an open market; whether the other party's behavior during the transaction is suspicious, whether the transaction price is reasonable, and whether the transaction generally conforms to market prices. These factors also affect the determination of good faith. The determination of good faith involves value evaluation and should be comprehensively considered from multiple perspectives [7].

3.2.2 The assignee must pay reasonable consideration for the transaction

Specifically, the issue of bona fide acquisition arises when the transfer of property is based on a transaction. A transaction implies that the transfer of property rights is based on the mutual manifestation of will and the payment of corresponding consideration. In this scenario, if the transferee acquires the property without knowledge and fault, then under the bona fide acquisition system, they will be able to legally obtain ownership of the property. However, when the transfer of property is not through a transaction but in a gratuitous manner such as gift or inheritance, the bona fide acquisition system does not apply. This is because, in the context of gratuitous acquisition of property, the transferee has not paid corresponding consideration, and their acquisition of the property is not based on a transactional relationship with the transferor. Therefore, applying the bona fide acquisition system in this case may lead to an imbalance in the protection of interests among all parties, harm the interests of the original owner, and potentially encourage improper behavior.

Whether the transaction between the assignee and the assignor is for reasonable consideration is also an indicator of the assignee's good faith. However, some scholars believe that the constitutive requirements of the term overlap with those of "good faith", and that the price factor should be brought back into the framework of "good faith", thus advocating for the deletion of this constitutive requirement. In this regard, this article believes that it is still necessary to retain this constitutive element. Acquisition in good faith should be based on compensation. In today's rapidly developing socio-economic environment, the complexity of various issues in the transaction process is more evident. The transaction consideration not only emphasizes that acquisition in good faith should be based on a compensated transaction, but also serves as a reminder that when making a determination, specific circumstances such as the nature of the subject matter, payment method, and quantity should be considered. Factors such as transaction customs at the time of transfer and market price should be referenced to comprehensively determine whether the price is reasonable.

3.2.3 Strictly adhere to the specified delivery method

In the constituent element of delivery, after delivery, the right holder should be able to arbitrarily dispose of the stolen money, achieving stable possession and fully exercising various specific rights, including ownership. The delivery method should be strictly limited to direct delivery. Possessory change and public notice have the weakest effect, and although instruction delivery is a type of delivery method, in the case of applying the bona fide acquisition system to stolen money, these two conceptual delivery methods cannot be considered as completing the delivery [8]. The reason is that stolen money has particularity and illegality. In academic terms, instruction delivery is also known as "the assignment or subrogation of the right to claim restitution", which means assigning the right to claim restitution against a third party to the assignee in lieu of actual delivery. For stolen money obtained by criminals through illegal means, they do not have the right to claim restitution in civil law for the stolen money itself, and there is no so-called assignment of the right to claim restitution. If possessory change or instruction delivery is adopted, and the stolen money is mixed with the criminal's other money, direct delivery provides more legitimate protection for the assignee.

3.3 The Theory of Possession as Ownership of Illicit Money (Currency) Gives Way to the System of Acquisition in Good Faith

The prerequisite for the application of the bona fide acquisition system is that the actor is engaged in unauthorized disposition, meaning the actor does not possess ownership of the disposed property. This gives rise to a conflict between the original owner's right to claim the property and the reasonable reliance of the bona fide acquirer, as well as the efficiency, safety, and order of transactions. Illicit funds are currency, a special type of movable property. The ownership and circulation of currency are governed by the "possession is ownership" rule, which is currently the prevailing view in civil law academia. Based on this, applying the bona fide acquisition system to illicit funds encounters a major obstacle. If it is recognized that the perpetrator acquires ownership by possessing the illicit funds, their subsequent disposal of the funds becomes authorized disposition, conflicting with bona fide acquisition. Therefore, this paper questions the unconditional application of the "possession is ownership" theory, suggesting that it should give way to the bona fide acquisition system, and the circulation rules for illicit funds should be analyzed on a case-by-case basis [9].

3.3.1 Questioning the unconditional applicability of the theory of possession as ownership

Traditionally, the essence of currency is a general equivalent. However, the form of currency in circulation today has undergone changes. The currencies currently in circulation around the world have essentially transformed into the form of credit money, such as electronic money, deposit money, and fractional currency. Consequently, the essence of currency has also changed. The essence of credit money is the national credit backed by the coercive power of the state. The rules should not be completely rigidly applied to the "possession is ownership" principle due to the different circulation forms of currency. However, there is currently no explicit legal provision regarding the ownership of currency, and judicial practice has not been able to form a unified judgment. The unrestrained application of this rule will only lead to practical dilemmas.

In principle, the principles of chattel property rights apply to physical currency or cash currency under civil law, and the presumption of "possession is ownership" should only play a limited role. When dealing with the issue of ownership transfer of currency, it is not entirely reasonable to directly apply the principle of "possession is ownership". This principle simplifies the transaction process to some extent, but if the specific circumstances of currency transfer possession are not considered, such as the reason for transfer, the subjective intention of the actor, the legality of the transfer behavior, whether the third party is acting in good faith, etc., it may result in unfair outcomes. Due to its high liquidity, the ownership of currency is relatively complex [10]. Currency may undergo multiple transfers during its circulation process, and the background and conditions of each transfer may be different. If based on illegal acts such as theft or fraud, simply applying the principle of "possession is ownership" at this time may ignore the legitimate rights and interests of the original owner and condone criminal behavior. Determining who is the owner of currency solely based on possession status is biased in terms of interest balancing, and it may also have a negative impact on the safety and order of monetary circulation.

In comparative law, in 1758, Judge Mansfield refined the commercial customs related to money over the past sixty years, namely, "stolen money is fairly and honestly paid to those who have paid a fair consideration in good faith, and cannot be claimed to be restored," thus formally establishing the rule of bona fide acquisition of money [11]. In China, there is no explicit legal provision on whether bona fide acquisition applies to currency, and the rules governing the circulation and ownership of currency are not clearly defined. The "possession is ownership" rule is the prevailing theory in civil law circles. If this rule is applied, when a suspect acquires stolen money, they possess the stolen money and are directly identified as the owner of the money based on the presumption of rights. Their disposal of the stolen money is considered authorized, and there is no room for bona fide acquisition to apply. In this situation, regardless of the source of funds used by the perpetrator, it does not affect the fact that they are authorized to dispose of their own funds, which completely blocks the possibility for law enforcement agencies to recover the stolen funds. Instead, only orders for restitution can be applied. However, such recognition of ownership over stolen money is, to some extent, not conducive to curbing crime.

The criminal law academic community does not recognize the prevailing view in the civil law academic community, which holds that the infringement of the victim's lawful property by a suspect only temporarily deprives the victim of possession of their lawful property, rather than depriving them of ownership. Regarding the separation of possession and ownership of stolen money, the perpetrator establishes only a temporary and illegal possession relationship and cannot acquire ownership of the stolen money [12]. The two perspectives differ. Civil law, based on considerations of transaction security and efficiency, equates possession and ownership of money, while criminal law places greater emphasis on protecting the victim's property ownership. It is impossible to assert which viewpoint is correct, but subordinating the rule that possession is equivalent to ownership of money to the bona fide acquisition system can better maintain the order, security, and efficiency of transactions, which is in line with the general public's concepts and expectations. If a third party does not constitute bona fide acquisition, the victim still retains ownership, thus balancing the interests of all parties.

3.3.2 Specific analysis of the rules of money circulation in specific situations

When discussing the transfer of monetary rights, it is necessary to pay attention to the intention behind the transfer of ownership. Specifically, when the delivery of money is based on a legal act, the intention behind the delivery is crucial. If the intention of the delivery is to transfer the ownership of the money, then once the delivery is completed, the ownership of the money will also be transferred. However, if the delivery of money is not based on the intention to transfer ownership, for example, if the delivery is for the purpose of borrowing, depositing, or other purposes that do not involve the transfer of ownership, then the ownership of the money will not be transferred with the delivery. Even if the money is already under the control of the other party, its ownership still belongs to the original owner.

When the possessor possesses another person's money not based on a legal act, due to the lack of connection with the will of the original right holder, the rule of possession as ownership cannot be used to reduce the rights of the original right holder to creditor's rights. In cases of passive transfer of possession without corresponding disposition intention, such as embezzlement, theft, robbery, and loss, it is clearly unethical to acknowledge that the possessor has obtained ownership of the money through illegal means. In this situation, the suspect only possesses the stolen money. Since the victim does not have the intention to transfer the ownership of the money, the suspect does not enjoy ownership. His disposition of the stolen money remains unauthorized, and the bona fide acquisition system has room for application. In the process of transferring the ownership of the money, the intention at the level of disposition behavior is crucial. This "intention" must not only exist, meaning that the intention behind the delivery behavior is clear, but it should also be genuine, meaning that the intention is the true expression of the parties' will [13].

Therefore, specific issues should be analyzed specifically when addressing the circulation and ownership of money. The "possession is ownership" rule plays a certain role in maintaining the safety and order of transactions, but when applying this principle to different types of currency disputes, it should be placed in specific social practices and economic life, and dialectical understanding and application should be made based on specific issues.

3.4 Excluded Applicable Types

3.4.1 Situations where the transferee accepts the money knowing or should have known that it is stolen property

When the transferee knows or should know that the funds involved are tainted, the transferee does not meet the constitutive requirements of bona fide acquisition, and naturally, the bona fide acquisition system should not apply. The funds should be recovered [14]. If it cannot be proven that the third party is aware, but based on the social life experience of the average person in society, it is highly likely that they are aware, or should be aware that the transaction funds are tainted, then the application of bona fide acquisition can also be excluded. That is, in the judgment of good faith, "should know" should also be included in the scope of good faith. Whether the transferee knows or should know that the funds are tainted will affect whether the transferee is acting in good faith, which in turn affects the constitution of bona fide acquisition. Therefore, when the transferee is not acting in good faith, the bona fide acquisition system does not apply. In the case discussed in this article, the third party, Guo, lent his mother's identity documents and other materials to Gao to establish a company and open a bank account. Based on the social life experience of the average person, it can be inferred that Guo is aware that Gao will use these for illegal and criminal activities, and the funds in the account are likely to be illegal proceeds. Common sense dictates that engaging in profit-making activities in one's own name is sufficient, while borrowing others' identity documents is mostly for engaging in illegal and criminal activities. Therefore, identifying Guo as having "should know" does not contradict the general social perception.

3.4.2 Situations where the transferee obtains illicit funds through illegal debt settlement or criminal activities

This point is clearly stated in Article 11, Paragraph 1, Items 3 and 4 of the "Provisions on the Enforcement of Criminal Judgments Regarding Property" and in the judicial opinions of existing reference cases. If a third party obtains illicit funds through illegal debt settlement or criminal activities, this constitutes a payment made for an illegal reason. The law emphasizes that no one should benefit from their own misconduct. Illegal claims and illegal activities are not protected by law, and the law cannot become a tool to protect those who make payments for illegal reasons. Therefore, the payer for an illegal reason does not enjoy the right to claim restitution under civil law, and the transferee cannot obtain illicit funds based on an illegal reason. In such cases, the illicit funds should be confiscated, reflecting a zero-tolerance attitude towards illegal and criminal activities. In this situation, there is no application of bona fide acquisition to safeguard transaction security and the reasonable reliance interests of third parties [15].

3.4.3 Situations where the illicit funds are in a specific currency

When money serves as a general equivalent, it lacks corresponding individuality due to its high degree of substitutability in the process of circulation and transaction. However, high substitutability does not necessarily exclude specificity. Generally, stolen money with only circulation function can be acquired by a third party through bona fide acquisition. However, when the currency is specific, such as collectible coins with collectible value or commemorative coins with special numbers, due to its specificity, it should be identified as stolen property and excluded from the application of bona fide acquisition, because it does not exist solely for the purpose of maintaining the payment transaction function as a means of payment in the usual sense. At this time, the currency has more identifiability and certainty. The original currency not only carries the specific value of the object but also carries a certain emotional value. At this time, it should be regarded as general movable property, which has the right to claim restitution as a right to claim restitution after the loss of possession of movable property. At this time, only restitution can fulfill the full claim of the right holder. Therefore, when the currency is specific, the application of the bona fide acquisition system should be excluded.

4. Conclusion

The purpose of the bona fide acquisition system is to maintain the safety and order of transactions. In principle, it applies to all properties that meet the constitutive requirements, and stolen money is no exception. Although stolen money has the particularity of currency, it does not exclude the application of bona fide acquisition. The application of the bona fide acquisition system to stolen money is reasonable and legitimate. When applying it, we should strictly grasp the corresponding constitutive requirements and exclude exceptional circumstances. Although the current law does not explicitly stipulate it, there is a practical need in judicial practice, which should be clarified by legal provisions. This has profound significance for protecting the relevant interests of legal right holders, maintaining the safety and order of transactions, regulating and restricting public power, and is conducive to providing suggestions for judicial judgments in the practical field and providing theoretical support.

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