

Study on the Protection of Victims in Criminal Recovery of Reparations

Haomin Lu

Graduate School, People's Public Security University of China, Beijing, China

Abstract: *With the progress of society and economic development, crimes against property rights are increasing year by year. In our country, in recent years to property rights as the only violation of the object of the crime has accounted for 85% of the total number of criminal cases, the vast majority of cases will lead to the victim's property rights are violated. At present, there are mainly three ways to remedy the property rights of criminal victims in criminal proceedings, namely, civil litigation incidental to criminal proceedings, the recovery of money, ordered to pay back compensation, and the way to file a separate civil lawsuit. China's criminal procedure law focuses too much on the state's function of punishing and combating criminal behavior, and lacks a scientific and reasonable system construction for the protection of victims' rights, resulting in the violation of victims' property rights can not get effective relief. In addition, in China's criminal procedure theory research traditionally focuses mainly on the protection of the rights of the prosecuted person and the protection of the rights of the victim, focusing mostly on personal rights and procedural rights, and paying insufficient attention to the protection of the property rights of the victim, resulting in a lack of relevant systems and procedures. This paper examines and analyzes the current situation of safeguarding the property rights of victims in criminal proceedings in China, summarizes the outstanding problems in criminal recovery and compensation in China, extracts the universal concepts, principles and systems of safeguarding the property rights of victims in criminal proceedings in foreign countries, draws on the experience of foreign countries in the light of China's basic conditions, and thus proposes that China can improve the existing criminal incidental civil litigation, reform the system of recovery and compensation, as well as build a system of compensation for criminal victims from the aspects of a more complete, scientific and reasonable system of criminal property protection and a matching system. State compensation system and other aspects, and gradually establish a more complete scientific and reasonable criminal victim property protection system and matching system, in order to play a role in adding bricks and mortar to the study of the theoretical issue of victim property protection.*

Keywords: *criminal proceedings; victims; recovery; ordered restitution*

With regard to compensation for victims' losses, article 64 of the Criminal Law of China provides for "recovery" and "ordering restitution" as two measures for dealing with the illegal proceeds of criminals, and the main text of criminal decisions therefore contains items on recovery and ordering restitution. Recovery is the recovery of the proceeds of crime, and can only be applied to the proceeds of crime themselves; restitution is the determination of the liability of the criminal, and is applied to the legitimate property of the criminal. Legislators have paid a certain degree of attention to the handling of property involved in criminal offenses, and have promulgated a series of relevant laws and judicial interpretations. The Supreme People's Court has successively issued the Provisions on the Execution of Property-Related Parts of Criminal Judgments (hereinafter referred to as the Provisions on the Execution of Property-Related Parts) and the Opinions on the Coordinated Operation of the People's Courts in the Filing, Trial and Execution of Cases, with a view to advancing the execution of property-related parts of criminal judgments. As a result of the sparse legislative provisions on criminal recovery and restitution, there is no effective remedy for the property rights of victims. In practice, in terms of compensation for victims' losses, there is not only a disconnect between criminal and enforcement procedures, but also between criminal and civil procedures, which is even more insufficient when dealing with "criminal-civilian crossover" economic crimes involving the masses.

1. Empirical examination of the recovery and refund of property involved in the case

In a search on China Judicial Instruments Website: date of decision "2015-present", keywords "recovery", "refund", type of instrument "execution instrument" A total of 1,055 results were obtained,

of which 7 were from the High Court, 153 from the Intermediate Court and 895 from the Basic Court. Among the 153 judgments of the intermediate courts, the 7 duplicated uploads were removed, and the remaining 146 were taken as the sample judgments of this paper, and the sample judgments were examined. The research focus and object of this paper on the recovery and disgorgement of proceeds of crime are mainly in the following areas.

First, the basic situation of the main text of the judgement on the disposition of property in the case. Statistically, 87 per cent of the sample had property-related judgements, while the remaining 13 per cent had no property-related judgements. The latter were analyzed one by one, and the main factor for the absence of property-related sentences was "joint crime, the existence of another case to deal with", accounting for 64% of the total; the secondary factors were "all or most of the victim's losses have been refunded" and "incidental civil litigation has been initiated". The secondary factors are "all or most of the victim's damages have been refunded" and "the filing of an incidental civil lawsuit". Of the judgments involving the disposal of property, 8 per cent dealt only with the property under investigation, while the remaining 92 per cent involved the recovery of the property or the ordering of restitution.

Second, the types of expressions for criminal recovery and disgorgement judgments. Among the judgments that included a recovery or restitution award, the types of expression of the recovery or restitution award included: (1) recovery; (2) recovery + restitution; (3) restitution; and (4) recovery + restitution. When examining whether the recovery and restitution subparagraphs specified the names of the victims and the amount of each victim's loss, 6 per cent of the judgments specified the names of the victims and the amount of their loss directly in the main text, 12 per cent of the judgments specified them in a list attached to the main text, and the remaining 82 per cent of the judgments specified them neither in the main text nor in a list attached to the main text.

Third, the relationship between criminal decisions and civil decisions in force. Out of the 120 sample judgments, only 15 referred to civil decisions. Examining these 15 judgments, most of them refer to the civil judgment as evidence of the facts of the case.

In the recovery of the proceeds of crime and reimbursement of judicial practice, the phenomenon of "the death of the case is canceled" is more common. The proceeds of crime generated by criminals through criminal behavior are sometimes difficult to recover, while the rights and interests of victims, third parties and other subjects are seriously damaged and difficult to compensate. According to interview data, in some cases of illegal fund-raising, the primary concern of the victims is the refund of money, rather than the trial of the suspects. Some empirical studies show that the current overall recovery rate is low, which is not conducive to the realization of the purpose of the penalty and is difficult to effectively curb this type of bribery crime. This phenomenon is mainly due to the unclear concept and boundaries of recovery and refund, and the imperfect recovery procedures, etc. Targeted measures must be taken to ensure the legality, accuracy, inevitability and comprehensiveness of recovery and to effectively curb this type of crime.

2. Protection of victims in the recovery and restitution of property involved in crime

2.1. Confusion over the application of recovery and disgorgement

The nature of the recovery and restitution provided for in the Criminal Law of China is not clear in the legislative provisions and has given rise to extensive controversy. As a result, the boundaries between the two are blurred in their specific application. Although the Supreme People's Court promulgated on October 27, 1999, the Minutes of the National Court Seminar on Maintaining Rural Stability in Criminal Trials (hereinafter referred to as the "Minutes"), which made a preliminary distinction between the two: "If the stolen money or property is still in existence, it shall be recovered; and if it has been used up, destroyed, or squandered, it shall be ordered to be paid back in damages." However, in practice, many cases due to the inability to find out where the stolen money and property, in fact, can not accurately define its belong to be used up, destroyed, squandered or temporarily failed to recover in which case. In this regard, the judicial application of the two has a certain degree of arbitrariness. If strictly in accordance with the "Summary" of the literal understanding, as long as the stolen money and goods are still in, even if not clear its whereabouts, should also be applied to recovery, which in fact requires the investigating authorities to continue to investigate and deal with the case, but in the law in the rationale is not feasible: on the one hand, the court requires the investigating authorities to continue to investigate and deal with the stolen money and goods have no legal basis, on

the other hand, the investigating authorities will be the case of the transfer of the procuratorate that is to say that the end of investigation, and it is not possible to continue to check the The court requested the investigating authorities to continue to investigate and dispose of the stolen funds and property. Considering the ambiguity of recovery and restitution, many scholars do not advocate the juxtaposition of recovery and restitution, and even believe that restitution is a means of the recovery system.

According to a survey of courts at all levels in Zhejiang Province, in cases involving illegal proceeds, 90% of criminal judgments applied recovery; in cases where recovery was applied in the judgment, 68% of the cases cited recovery expressions in the main text of the judgment, and the other 32% stated that the stolen money and goods were recovered and returned to the victims in the part of the identification and determination of the facts, or in the part of the reasoning; and in the cases in which the main text of the judgment cited the statement of recovery, the proceeds of crime had already been seized prior to the sentencing, some of them were stated as having been recovered, handed over to the State treasury, or returned to the victims, while some of them stated that the stolen goods had been returned to the victims, and a few other ways of stating the situation were also cited; In addition, individual cases in the absence of recovery of stolen money and property, also in the main text of the judgment to apply the expression ordered to refund. This shows that we must refine the application of recovery and restitution in order to maintain the uniformity of the law and improve the relief of the civil rights and interests of victims.

2.2. Ambiguity in the mechanism of sharing of enforcement by the parties to the proceedings

Although the judgment expressly states that the defendant's proceeds of crime should be "continued to be recovered" or that the defendant should be ordered to "pay restitution", it does not contain any specific provisions as to how the "continued recovery" or "restitution" is to be carried out. The judgment does not contain any specific provisions on how to "continue to recover" or "reimburse" the proceeds of crime. Different scholars have different understanding of the nature of "(continue to) recover" and "order to refund" in the criminal judgment,^[1]and even there is a big controversy on whether it should be contained in the criminal judgment,^[2]but it is undeniable that the current law has no specific provisions on how to implement the "recovery" in the criminal judgment. However, it is undeniable that the current law has no specific provisions on how to enforce the contents of "recover" and "order to refund" in the criminal judgment, and in practice, it is really difficult to find any court executive body to enforce the contents of "recover" and "order to refund" in the criminal judgment. In practice, it is also difficult to find any court executive body that enforces "recoveries" and "ordered refunds" in criminal judgments,^[3]so that there is currently no safeguard for the enforcement of recoveries and ordered refunds in criminal judgments by whom they are to be enforced.

Moreover, the cost of appraisal and preservation of stolen property is too high and the economic pressure is great; the cost of appraisal and preservation in the public prosecutor and legal system is included in the funds for handling cases, and there are no special expenditures in the financial expenditures, so it is difficult to support the funds for the handling of cases by the judicial organs. Custodial authorities have not taken reasonable custodial measures and treatment measures, the criminal procedure cycle is too long resulting in the difficulty of keeping stolen goods and the value of stolen goods depreciation or even the value of the disappearance of the government does not have a special place to keep the stolen goods, each unit can only store the stolen goods in their own units. Not only do cases involving stolen goods account for a large proportion of criminal cases, but more importantly, it takes a long time for a criminal case to go from investigation to final judgment, which results in a large backlog of stolen goods. All of these reasons lead to the fact that no unit is willing to bear the cost of enforcing the recovery of restitution.

2.3. Ambiguous procedures for securing the rights of recipients

According to the current legal provisions, although victims of property-infringing crimes cannot bring an incidental civil action, they may still bring a separate civil action after the criminal judgment. Article 5, paragraph 2, of the Provisions stipulates that: "If, after recovery or reimbursement, the victim is unable to make up for the loss, and the victim brings a separate civil action before the civil court of the people's court, the people's court may accept it." However, in practice, there are certain difficulties for the victim to file a separate civil lawsuit, and it is also difficult to recover the loss after filing the lawsuit.^[4]

After the entry into force of a criminal judgment, the defendant is usually sent to serve his sentence

in an off-site prison, and the victim brings a civil action against him either in the place where the defendant's sentence was executed or in the court in which the criminal judgment was passed, with the former increasing the cost of the victim's prosecution, and the latter having to consider how to get the defendant to appear in court to face the trial. In fact both programs have certain difficulties. Criminal defendants are mostly due to their own poor economic conditions and the commission of crimes, even if the judgment of its civil liability for reparations, its enforceable property is also difficult to trace, or even no ability to implement, there is a difficult problem of implementation; and the victims to file a separate civil lawsuit need to pre-pay a certain amount of case processing fees, property preservation fees, such as the cost of implementation, if not implemented, the victims will inevitably face the risk of losses to further expand. If the lawsuit cannot be enforced, the victim is bound to face the risk of further expansion of his or her losses. Although theoretically these costs borne by the losing party, but in practice, many courts do not refund to the plaintiff these prepaid fees, but ordered by the defendant to pay the plaintiff.

In addition, the Summary clearly stipulates that: "If it is impossible to return stolen goods, it shall be taken into consideration as a discretionary aggravating circumstance in determining the penalty The civil compensation of the defendant may be taken into consideration as a discretionary circumstance in determining the penalty", and Article 5(1) of the Provisions contains a similar provision: "The situation of being recovered or refunded may be considered by the people's court as a sentencing circumstance." These provisions of the defendant to return stolen goods and compensation as sentencing considerations, to a certain extent, to encourage the defendant before the verdict actively return stolen goods and compensation, to protect the civil rights and interests of the victim has a certain effect, so if the defendant has the ability and willingness to return stolen goods or compensation, he or she is bound to take the initiative to return the stolen goods or compensation, or even by his or her relatives on behalf of the return of compensation, to strive for lighter penalties. If the criminal judgment once entered into force, the defendant's criminal liability has been determined, the defendant, including relatives generally lost the motivation to continue to return the stolen goods or compensation, even if a separate civil lawsuit, in practice, is not very valuable, so many victims take the initiative to give up the right to file a separate civil lawsuit.^[5]

3. Theoretical reflections on the protection of victims in the recovery and restitution system

3.1. Inadequate interface between criminal recovery and disgorgement and civil proceedings

The modes of handling criminal-civilian cross-border cases include "criminal before civil", "civil before criminal" and "criminal-civilian separation".^[6] Each of these three models has its own conditions of application. In the case of property crimes in criminal proceedings, the "criminal before civil" model applies, i.e., Article 5 of the Supreme People's Court's Provisions on the Scope of Civil Litigation Incidental to Criminal Proceedings of December 2000¹⁶³ provides that: "If the criminal illegally possesses or disposes of the victim's property, thereby causing him or her to suffer material loss, the people's court shall, in accordance with the law, take appropriate measures to ensure that the victim's property is not destroyed or damaged. If the criminal unlawfully appropriates or disposes of the victim's property, causing him to suffer material losses, the people's court shall, in accordance with the law, recover or order the refund of the losses. The people's court may take into account the recovery or reimbursement as a sentencing circumstance. If, after the recovery or refund of compensation, the victim still cannot make up for the loss, and the victim files a separate civil lawsuit with the civil trial division of the people's court, the people's court may accept the case." This judicial interpretation solves the problem of whether and how to bring a civil lawsuit against a victim in a property crime case in which recovery and restitution have failed.

Because the provision is too principle, judicial practice for the victim to file a separate civil lawsuit there are still a lot of controversy.

The "criminal before civil" model cannot completely circumvent the coexistence of criminal and civil proceedings in "criminal-civil" cases. For example, in the case of the crime of illegally absorbing public deposits, in practice, there are more cases in which civil judgments have been made in such cases as civil lending and borrowing. Due to the requirement of "public nature" as a constituent element of the crime of illegal absorption of public deposits, it is not possible to determine whether there is a suspicion of the crime of illegal absorption of public deposits by a single private lending dispute unless the private lending disputes appear in large numbers in the form of a series of cases. Paragraph 1 of Article 13 of the Provisions of the Supreme People's Court on Several Issues Concerning the

Application of Law in the Trial of Private Lending Cases (hereinafter referred to as the "Judicial Interpretation of Private Lending") stipulates that a private lending contract shall not be invalidated due to the suspicion of a crime on the part of the borrower. Therefore, it is inappropriate and difficult to overturn a civil judgment that has entered into force through trial supervision procedures. Article 13, paragraph 2, of the Judicial Interpretations on Private Lending and Borrowing provides that after a criminal judgment has been rendered, the victim may still claim civil liability from the guarantor.

When criminal and civil procedures coexist, due to the different evaluation objects, evidence determination standards, adjudication concepts and ideas of criminal and civil, and even contradictions in the adjudication results, it is necessary to clarify the handling of criminal and civil procedures when they coexist.

3.2. Roughness of the recovery and reimbursement system leads to lack of evidence of implementation

1) Unclear responsibilities and criteria for the identification and control of proceeds of crime. The proceeds of crime that can be investigated and controlled at the investigation stage will have a direct bearing on what proceeds of crime can be identified at the trial stage and the amount of property that can be used to reimburse victims at the execution stage. Although the investigation and control of the proceeds of crime is a proper part of the duties of the investigating authorities, the legislation neither specifies the duties of the investigating authorities nor the criteria for investigation and control. Although China's Criminal Procedure Law provides that investigating authorities may "seize", "detain", "inquire" and "freeze", the purpose of the system is to ensure that the property of the victim is not subject to seizure. Although the Criminal Procedure Law of China provides that investigating authorities may "seize", "seize", "inquire" and "freeze", the purpose of the system is to collect evidence, not to recover losses for the victims. If the investigation and control of the proceeds of crime are based entirely on the self-requirements of the investigating authorities, it will inevitably lead to a great difference in the investigation and control of different cases. When the stolen money, stolen goods transfer, such as the lack of clearer standards of investigation and control, the investigating authorities may face the risk of state compensation, the dilemma to the results of the investigation and control of the unsatisfactory criminal decision, the legislation does not make clear the investigation and control of criminal proceeds of the responsibility borne by whom. In practice, it is generally the implementation of the property-related part of the criminal judgment, as well as the responsibility to continue to investigate, control and recover stolen funds and property to the executive branch of the trial authority to complete, but this responsibility is clearly inconsistent with the positioning and powers of the executive branch.

2) Lack of specialized procedures for the recovery of the proceeds of crime. In addition to the special confiscation procedures for specific types of cases, such as the flight and death of suspects and defendants, there are no special procedures for the recovery of the proceeds of crime for general criminal cases, and the recovery of the proceeds of crime is dealt with in the criminal procedure in practice. When the property involved in a criminal case is relatively simple, such as a simple theft case, it is required that the proceeds of crime be investigated and prosecuted in the investigative process, and there is no major problem in convicting and sentencing the defendant and recognizing the stolen money and property together. However, crowd-related economic crimes often involve huge sums of money, the investigation and control work is difficult to one-time, short-term completion of the original proceeds of crime in a variety of forms of transformation and a large number of stakeholders, the investigation and control of the proceeds of crime and the determination of the complexity of the interests of outsiders. The existing criminal procedure system is faced with the following issues: first, if the investigation process fails to detect and control all proceeds of crime, how to proceed with subsequent detection and control and how to identify new proceeds of crime that have been detected and controlled; secondly, on what basis is the procedure for identifying and controlling proceeds of crime that are on file at the trial stage; and thirdly, whether interested parties are permitted to take part in the process of identifying and controlling the proceeds of crime, and whether they are accorded the right to appeal.

3.3. Lack of safeguards and assessment mechanisms for criminal recovery and restitution orders

The transfer of stolen funds and property in economic crimes is rapid, and it is difficult to investigate and control the proceeds of crime; when the responsibility for investigating and controlling the proceeds of crime is not clear enough and there is a lack of specific safeguards for people and property and an appraisal mechanism, in the face of the appraisal task and workload, it is very difficult

for investigators to take the initiative to undertake this work, which in turn affects the subsequent trial process.

4. Comparative methodology

4.1 Common law jurisdictions

1) United States

The criminal forfeiture system in the United States began in the 1970s. There were no provisions for criminal forfeiture in the early criminal laws of the United States, and in 1970 the United States Congress introduced criminal forfeiture measures, which had been set aside earlier, into law at the federal level, bringing them back into judicial practice.

Criminal forfeiture has been expanded in recent years to cover most federal crimes, and the USA PATRIOT Act of 2001 authorizes federal law enforcement agencies to forfeit all property of anyone involved in terrorism, any property derived from or used in the commission of a terrorist act, and property made available for the benefit of a terrorist organization. Forfeiture has also been used to target white-collar crimes and has resulted in significant forfeiture of assets. The scope of confiscation under the current law is extremely broad. With respect to the transfer of assets, if the property is the proceeds of a crime, any transactions made with the property after the offense was committed are void.^[7]

2) United Kingdom

In order to strengthen the recovery of the proceeds of crime, the United Kingdom enacted a specific law in 2002, the Proceeds of Crime Recovery Act 2002. The Act establishes two new recovery mechanisms, namely a criminal forfeiture regime for the proceeds of crime and a civil recovery regime for the proceeds of crime. In the criminal forfeiture, the conditions and objects of criminal forfeiture, procedures for making forfeiture decisions, evidentiary requirements for forfeiture decisions, enforcement, variation and revocation of forfeiture orders, appeals and related preservation measures are set out in detail.^[8] At the same time, under the Act, the Asset Recovery Agency (ARA), a specialized agency responsible for recovering the proceeds of crime, has been established in the United Kingdom, which can recover assets through either criminal or civil means, and can also use civil means of recovery to confiscate the assets of the subject of the forfeiture, even if the subject of the forfeiture has not been held criminally liable.

The civil recovery system in the Proceeds of Crime Recovery Act 2002, on the other hand, is different from general civil proceedings in that it is a type of legal proceeding initiated by the UK law enforcement agencies and directed at specific property, and its main features are manifested in the following aspects: Firstly, the civil recovery process is essentially a proceeding in rem. Secondly, civil recovery has no direct connection with criminal proceedings, regardless of whether criminal proceedings have been instituted for crimes related to the proceeds of crime, civil recovery of proceeds of crime can be carried out independently. Third, the object of civil recovery may not only be the proceeds or gains of the offense, but also the property intended to be used for the offense. Fourth, the standard of proof is relatively loose.

4.2 Civil law country

In countries and regions with civil law systems, the criminal law codes generally provide for a system of handling criminal property, to a greater or lesser extent, and some also provide for procedures for handling criminal property in the criminal procedure codes. Among them, Germany, Japan and other countries have a typical system for handling criminal property.

1) Germany

The system of recovery and confiscation under German criminal law enables the perpetrator of an offense to deprive the perpetrator (and, under certain preconditions, a third person) of property or an interest that is closely connected with his or her criminal act. Property in this context includes things used by the perpetrator to commit the criminal act, things obtained as a result of the criminal act or property interests acquired by the perpetrator as a result of his criminal act. In German criminal law, the recovery and confiscation are two kinds of disposal measures side by side, the object and the conditions of application of the two are not the same. First, the recovery. Its object is the perpetrator for its

criminal behavior of the benefits directly, but also includes the perpetrator for the implementation of criminal behavior from a third party to obtain the remuneration. In other words, the task of recovery is to deprive the perpetrator of the proceeds of criminal property and return his property status to the original state before the act.^[9]Second, confiscation. Its object is the perpetrator by the criminal act of manufacturing (produced) or used in the crime, the preparation for the crime or decided to be used in the crime of the thing, in order to protect the public from the danger of dangerous goods. The object of recovery is the growth of property obtained from the act, while the object of confiscation involves "things obtained from the crime" which are actually the things produced by the criminal act.

In Germany, in order to achieve the deprivation of proceeds of crime in the field of "organized crime", the legislator in 1992 extended the possibility of recovery, subject to certain preconditions, to proceeds of crime other than the offence in question. The extension of recovery applies mainly in cases where property is found at the offender's premises and, in view of his or her small legal income, there are sufficient grounds for believing that it derives from the offence, or, if the perpetrator also meets the special elements of the offence of professional or gang criminal conduct, the recovery may be extended to all the property found. The purpose of extended recovery is to deprive all property value derived from organized crime. Obviously, the difference between extended recovery and general recovery is mainly reflected in the lower standard of proof and the different conditions of application. In general recovery, it must be possible to prove a close connection between the perpetrator's criminal conduct and the property benefit obtained, whereas in expanded recovery only the "circumstances suggest" level is required. Extended recovery can only be applied to offences expressly designated as applicable under the criminal law provisions, mainly to members of organized criminal groups or habitual criminals. General recovery, on the other hand, is possible for any crime under criminal law.

2) Japan

Chapter II, "Penalties", of the Penal Code of Japan provides for two methods of handling property involved in a crime, namely, "confiscation" and "requisition". Article 19 provides for four types of forfeitable property: property constituting a criminal act; property used or to be used in the commission of a criminal act; property produced by or obtained as a result of a criminal act and property acquired as a reward for the commission of a criminal act; and property acquired as consideration for the property listed in the preceding paragraph. Among these, "things constituting a criminal act" is a unique provision in Japanese criminal law. Article 19 (2) of the Japanese Penal Code, "Recovery", states: "If all or part of the property involved in a case cannot be confiscated, the price thereof may be recovered." The term "levy" refers to the order to pay a certain amount of money to the national treasury in lieu of confiscation when the judge is unable to confiscate the property that should be confiscated de facto or de jure at the time of confiscation. The factual impossibility of confiscation generally means that the original object has lost its identity due to consumption, loss, destruction, processing, etc., by the perpetrator of the offense, and objectively no longer exists. The legal inability to confiscate means that although the original object objectively exists, it cannot be confiscated due to legal reasons.^[10]

5. Conclusion

5.1 Improving the overall system design for criminal recovery and ordered restitution

1) Clarify the nature of the recovery and refund

First, the legal meaning of recovery is that the competent judicial authorities order the return of property related to the illegal proceeds of criminals. The act of recovery itself does not involve the final disposition of the property obtained in violation of the law, but can be carried out at the investigation and prosecution stages of a case, and is essentially both a mandatory disposition of the property involved in the case and a judicial disposition. The legal meaning of ordering the refund of compensation means that the competent authorities order the return of or compensation for the relevant property illegally obtained by the criminal, and its emphasis is on the compensation to be made to the original property right holders, which is for the disposal of the relevant property illegally obtained by the criminal when it does not exist, and belongs to the final disposal of the entity. There is no juxtaposition between recovery and recovery in terms of legal connotation.

Secondly, the object of recovery is the criminal's illegal proceeds of property or contraband to be confiscated and his own property used for the commission of the crime. The object of the enforcement of the order to pay compensation can only be the property of the criminal's illegal gains, and the property used to fulfill the refund in the order to pay compensation is the legal property of the criminal.

Thirdly, the recovery of property obtained by criminals in violation of the law shall be applied when such property still exists, and the order to pay restitution shall be applied when it has been used, destroyed or squandered. The circumstances in which restitution is ordered shall also include cases in which the original proceeds of crime have been transferred or destroyed as a result of infringement or destruction by an outsider.

2) Interface between adjudication and enforcement: ensuring smooth implementation of decisions

The enforcement procedure should be based on the functions and strengths of the public prosecutor and the law, so that "the different judicial organs can form a synergy in the process of searching for, controlling and realizing the value of executable property".^[11]

First, it is clear that the prosecution and police authorities are the main body for identifying property for execution. The current judicial interpretation of the criminal property disposal of the implementation of the initiation of the court ex officio transferred to the implementation of the way, the lack of the applicant to provide property clues and other means of identifying the property of the executor, but also the lack of applicants to the court supervision of the implementation of the behavior. The role of the applicant should be assumed by the procuratorate on behalf of the State in the execution procedure for the disposal of criminal-related property. 11 "bear the responsibility of identifying the property available for execution" in the execution procedure for the disposal of criminal-related property. 11 The procuratorate should submit the property status of the defendant to the court when filing the indictment, and should give appropriate advice on the disposition of criminal property. Once the public security authorities believe that a criminal suspect may be sentenced to confiscation of criminal property, they shall, at the investigative stage, order the criminal suspect to provide information on his or her personal property, conduct an investigation and verification of his or her property, and form a report that includes the name, quantity, quality, proof of ownership, location of the property, and the person who has custody of the property, etc., which is then transferred to the procuratorate when it is handed over to the prosecuting authorities for examination and prosecution. The report shall be forwarded to the procuratorial authorities at the time of its transfer for examination and prosecution.

Secondly, it is clear that the prosecution and police authorities are the main body for the preservation of property for execution. As the property for execution is most likely to be transferred and destroyed at the pre-trial stage, the defendant has no property to execute after the forfeiture judgment has been issued. Therefore, the most important need in the pre-trial on may be caused by the implementation of property devaluation behavior to regulate, may be destroyed, the transfer of property to take pre-trial implementation of preservation measures. According to the theory of civil execution, the subject of the decision to execute property preservation is the people's court. "At the stage of investigation and prosecution of a criminal case, the court is not yet involved in the criminal case, making it difficult to take timely and ex officio controlling enforcement measures, and requiring the procuratorate to apply to the court for control of property available for execution is likely to lead to the loss of the best possible time for preservation because of the cumbersome formalities involved", and thus should be assumed as the main body of the pre-trial preservation of property by public security organs and procuratorates first.

3) Establishment of a systematic implementation sharing mechanism

Existing legislation does not explicitly limit the subject matter of the implementation of recovery and restitution. First of all, it should clarify the subject of the implementation of "recovery and ordered refund", and at the same time establish a system of voluntary refund by criminal suspects. In order to avoid the practice of "last trial first judgment", the legislation should be clear that the implementation of the main body can only be the people's court, and the public security organs in the investigation stage, the procuratorial organs in the investigation or prosecution stage of the stolen goods can only be proposed.^[12]

It is necessary to clarify the powers and scope of the public prosecutors and law enforcement authorities in the recovery and return of property.^[13] The public security organs should, after filing a case, clarify the specific scope of the proceeds of crime and the property involved in the case, and unrelated property should be discharged and returned. The property involved in the case used as evidence should be disposed of in a specialized manner, and the corresponding supporting documents and materials should be transferred. Procuratorial organs and courts shall supervise and substantively review the proceeds of crime and property involved in the case, and clarify the property involved in the proceeds of crime and its rights and interests. Finally, explore attempts to establish a pre-trial return system.

5.2. Improvement of the path of criminal recovery and ordered refund of criminal, civil and law enforcement connections

Positioning of criminal and civil proceedings for the compensation of victims' losses

Under China's current system, the "criminal before civil" model and the "property-related part of the implementation of the regulations" to further clarify the implementation of the property-related part of the criminal judgment. Considering the current high incidence of crowd-related economic crimes, the victim loss compensation criminal and civil procedures in parallel will cause a great waste of judicial resources, the criminal procedure has the advantages of first investigation and control of stolen money, stolen goods and can be liquidated as a whole to avoid disorderly execution, in the victim's loss of compensation should be based on the main criminal procedures, civil procedures as a supplement.

Victims' civil rights of action and limitations

In order to conserve judicial resources and harmonize criminal-civil conflicts, the victim's civil rights of action shall be limited. Such as illegal absorption of public deposits criminal decision has been made on the victim's loss of principal, within the limits of the defendant's liability for reimbursement, the victim may not again to the defendant's burden of reimbursement of the defendant to file a civil lawsuit, at this time the victim's path to recovery of losses should be to strengthen the implementation of the procedures, rather than to file a civil lawsuit, and may not be based on the loss of interest for the purpose of filing a civil lawsuit.

5.3. Improving victim relief procedures

1) Restoration of the victim's right to bring an incidental civil action

As mentioned earlier, our current legislative provisions are not conducive to the timely and effective defense of the victim's legitimate rights and interests. The key to solving the problem is to amend the Supreme Court's interpretation of the scope of incidental civil litigation, and to include in the scope of incidental civil litigation the part of the criminal judgment ordering the return of property that has been illegally appropriated and disposed of by criminals. If the court during the trial found that the defendant has property can be recovered ex officio, recovered property should be returned to the victim, at the same time for the public security organs, the procuratorial organs can not be recovered property, the victim should be informed of the civil lawsuit, the plaintiff of the civil lawsuit by the application of the defendant's property preservation, to be effective after the judgment is implemented. This not only solves the confusion between the provisions of the law and in the criminal judgment written in the recovery of stolen goods in the implementation of the content of the implementation of the difficult problem, but also conducive to the better protection of the legitimate rights and interests of the victims.

2) Introducing a criminal reconciliation system in cases of misappropriation of property

The purpose of illegal profits from crimes against property determines the overall weak economic capacity of the defendants of such crimes, and if the relevant judicial authorities fail to effectively recover the stolen funds and goods before trial, the defendants generally do not have the ability to independently remedy the civil rights and interests of the victims. For crimes against property, to fully protect the rights and interests of victims, we need to find other ways to broaden the scope of the legitimate rights and interests of victims relief, to solve the practice of the implementation of the problem is not in place. The introduction of the criminal settlement system can maximize the savings of victims in the process of litigation costs, improve judicial efficiency, so as to achieve the full relief of the civil rights and interests of victims. □

The essence of criminal reconciliation lies in solving the problem of civil compensation for victims.^[14] In the case of property-encroaching crimes, it is necessary for the people's court to make a criminal judgment ordering the criminal to pay back the compensation and to introduce a criminal reconciliation system in the incidental civil lawsuit.

3) Establishment of a national system of assistance for victims of crime

Since the victim's economic loss was caused by the perpetrator of the crime, it should be compensated by the perpetrator of the crime. However, most of the perpetrators of criminal acts against property have limited ability to compensate themselves, and the proceeds of crime are often squandered within a short period of time. As mentioned earlier, whether in civil litigation or criminal judgment ordering restitution, are unable to meet the requirements of the victim's civil rights and interests of

adequate relief, which is also the establishment of criminal victims of the national rescue system of the real needs. For victims who have exhausted all means of redress but have not yet received adequate compensation and are in a humanitarian crisis, the State should establish a relief fund and fulfill its responsibility to provide relief.

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