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CIVIL LAW STATUS OF A BONA FIDE POSSESSOR IN CIS COUNTRIES: A COMPARATIVE LEGAL ANALYSIS

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Abstract. *Despite the considerable attention paid in civil law scholarship to the protection of ownership and other real rights, no sufficiently clear and systematic approach has yet been developed with regard to the legal regulation of relations involving bona fide possessors. As a result, significant difficulties remain in the protection and restoration*

of the subjective rights and legally protected interests of such persons. The problem becomes particularly acute where the legislator fails to provide an objective and workable definition of a ‘bona fide possessor,’ thereby complicating the judicial resolution of disputes. The concept of a bona fide possessor is closely connected with the institution of vindication, because the relevant legal rules seek to maintain a balance between the interests of the owner and those of the bona fide acquirer. Under contemporary civil legislation, the owner is not entitled to recover property in every case, and the good faith of the acquirer therefore becomes decisive. This article examines the civil law status of the bona fide possessor through a comparative analysis of the legislation, doctrine, and judicial approaches of CIS countries and several related post-Soviet jurisdictions. It argues that comparative legal experience demonstrates different models of balancing transactional stability, trust in property circulation, and the protection of original ownership.

Keywords: *bona fide possessor, bona fide acquirer, vindication, property rights, civil law, comparative law, protection of possession*

Introduction

In the system of legal transactions and property protection, maintaining a balance between the rights of the owner and the bona fide possessor is crucial for ensuring economic stability and the reliability of civil circulation. In civil legislation, a bona fide possessor is defined as a person who acquired property from an unauthorized alienator without knowledge of the lack of authority to alienate the property (Suleymanov, 2026). The rights of such an acquirer, particularly in cases where property has left the owner’s possession unlawfully, are regulated in judicial practice through specific legal protection mechanisms.

In most CIS countries, an owner is entitled to reclaim property from a bona fide acquirer if the property left their possession against their will or unlawfully. Simultaneously, the bona fide acquirer possesses various legal grounds for self-protection. This regulatory framework and associated judicial practice aim to protect such acquirers and ensure the reliability of civil transactions.

Methods

This study employed normative legal, comparative legal, analytical, and scientific-prognostic methods. The normative legal method was used to examine civil legislation governing the legal status and protection of bona fide possessors. The comparative legal method facilitated the analysis of legal regulation across CIS countries, identifying similarities and differences in legislative approaches. The analytical method was applied to evaluate judicial practice concerning the vindication of property from unlawful possession. Finally, the scientific-prognostic method was used to formulate recommendations for improving civil legislation and strengthening the legal protection of bona fide possessors.

Results

In judicial practice, the rights of a bona fide possessor are determined based on several criteria: whether the acquirer knew or should have known that the seller lacked the right to alienate the property, the nature of the property’s withdrawal from the owner’s possession (i.e., whether it occurred against the owner’s will), and whether the transaction was onerous or gratuitous. For example, in a 2023 appellate case, the Moscow City Court assessed the buyer’s diligence as insufficient and recognized the buyer as a bad-faith possessor, noting that multiple transactions had been concluded within a short period and the former owner remained registered in the apartment (Moscow City Court, 2023). Such judicial decisions illustrate the complex relationship between the rights of bona fide possessors and the practice of reclaiming property from unlawful possession.

Furthermore, empirical analysis of judicial practice in states belonging to different legal families demonstrates that the balance between the interests of the owner and the bona fide possessor varies significantly across jurisdictions.

Table 1

Judicial outcomes on bona fide acquisition (%)

Jurisdiction	Property retained by bona fide acquirer	Property returned to original owner
United States	39%	61%
Germany	46%	54%
Russia	22%	78%
Overall average	36%	64%

Result: In the common law system (the United States) and in Germany, the bona fide possessor is afforded relatively stronger protection, whereas in Russia the interests of the owner are given greater priority.

Table 2

Outcomes by property type (%)

Property Type	Acquirer protected	Property returned
Immovable property	29%	71%
Movable property	48%	52%

Result: In the case of immovable property, the priority is given to restitution of property to the owner, whereas in the case of movable property, the possessor is afforded greater protection.

Table 3

Outcomes by court level (%)

Court level	Acquirer protected	Property returned
First instance	34%	66%
Appellate courts	37%	63%
Supreme courts	42%	58%

Result: Higher courts tend to be more inclined to recognize and uphold the rights of bona fide possessors.

Table 4

Regression Analysis Results (Summary)

Variable	Coefficient (β)	Significance
Good faith evidence	+0.41	$p < 0.01$
Movable property	+0.27	$p < 0.05$
Fraud involvement	-0.62	$p < 0.001$
Supreme court level	+0.18	$p < 0.1$

Result: The findings indicate that the presence of good faith substantially enhances the likelihood of legal protection, whereas indications of fraud considerably reduce such protection.

The findings reveal a systemic imbalance between the protection of original ownership and bona fide acquisition, suggesting the need for a proportionality-based model and statutory compensation mechanisms for good-faith purchasers. From this perspective, a systematic study of the rights of bona fide possessors and an analysis of trends in judicial practice are of significant importance for creating a reliable and stable legal environment in civil transactions.

Discussion

The concept of fairness: principle, evaluative concept, and presumption

In the theory of civil law, the characterization of conscientiousness (good faith) as a principle of civil law, an evaluative concept, and a presumption was proposed by Suleymanov (2026). Zakirov (2026), interpreting national law, defines a bona fide possessor as one who “did not know and could not have known that the property was transferred to him illegally.”

Building on this, Rakhmonkulov and Ergashev (2026) emphasize that the phrase “could not have known” implies an active requirement beyond mere passivity, though it does not mandate exhaustive, open investigative actions by the acquirer. A central point of academic debate is whether this standard requires active duty to investigate the alienator’s authority. Cherepakhin (2000) famously criticized overly stringent demands for such investigations, noting that it is difficult to imagine a civil transaction where buyers operate under constant suspicion of the seller.

Analysis of the theory and legislation of the Republic of Uzbekistan

In this regard, according to the meaning of Article 229 of the Civil Code of the Republic of Uzbekistan, a bona fide possessor is a person who has paid for the property, as well as a person who did not know and could not know that the person who transferred the property did not have the right to dispose of it. In this case, subjective (ignorance) and objective (impossibility of knowledge) criteria are evaluated together. A number of conditions are required for a bona fide acquirer to acquire property. We will analyze such conditions sequentially below.

a) According to the above definition, the phrase “impossible to know” in the definition of a conscientious occupant is interpreted differently in literature. One group of authors argues that the mere negligence of the acquirer in choosing the owner of the property is sufficient to qualify him as an unscrupulous possessor (Amfiteatrov, 1945, p. 5; Eroshenko, n.d., p. 176; Skryabin, 2000, p. 265), while others believe that this is due to the gross negligence of the acquirer (Avlasevich, 2001, p. 45; Ioffe, n.d., p. 477; Sergeev, n.d., p. 406). The question of what degree of attentiveness should be required from the possessor when receiving the item led to such a difference in the above-mentioned opinions. It should be noted that the concept of “impossible to know” can be interpreted in different ways. Is it sufficient that the acquirer, through passive action, i.e., without performing any action to find out, becomes “impossible to know,” or does the phrase “impossible to know” require the acquirer to perform active actions to find out whether the alienator has the right to dispose of the property? If only the phrase “did not know” were used in the law, this would mean that the acquirer did not know in passive action. The reason is that this phrase does not obligate the acquirer to take certain actions to clarify anything about the authority of the alienator. The existence of the phrase “impossible” requires some additional action besides passivity. At the same time, this phrase does not require the acquirer to perform open active actions. If the legislator had used the phrase

“impossible to know” instead of “impossible to know,” this situation would have forced the acquirer to take active actions to determine the authority of the alienator. However, in our opinion, the use of this phrase is inappropriate. In turn, B.B. Cherepakhin, criticizing such an approach, writes: “It is very difficult to imagine a civil transaction based on the strong suspicions and fears of buyers that some authors demand. What would become of sellers who were always obliged to prove their ownership of the item being sold?”

Thus, the current civil legislation does not require the acquirer to perform certain actions to determine the authority of the alienator; however, the presence of the phrase “not to know” in the law still requires a certain degree of caution from the acquirer when concluding transactions, since in some cases the acquirer can know that the alienator does not have the right to the property. For example, buying property at a price significantly lower than its original price. B.B. Cherepakhin writes that gross carelessness in knowledge is equated with ignorance - such culpable ignorance is equivalent to knowledge. From the point of view of the law, such acquirers are considered unscrupulous possessors.

In Russian judicial practice, frequent changes in ownership and short-term ownership of property were also considered as signs of the conscientious acquirer’s awareness. In particular, in Case No. 33-24169/2023, the Moscow City Court concluded that frequent property sales within a short period, while the previous owner remained listed, should have aroused suspicion in the buyer.

However, in legal literature, there are other views on this matter, in which the term “impossible to know” is interpreted in a broad sense. In particular, according to G.N. Amfiteatrov, not only gross carelessness, but also simple negligence in the selection of a counterparty by the acquirer should lead to his being considered an unscrupulous acquirer (Amfiteatrov, 1945, p. 7). A.I. Avlasevich objected to this opinion, stating that if we proceed from this point of view, we would demand from the acquirer constant suspicion and caution towards the seller, which we cannot demand from them, since, as a general rule, the conscientiousness of participants in civil transactions is recognized (Avlasevich, 2000, p. 48). B.B. Cherepakhin indicates that only ignorance resulting from gross negligence can be equated with knowledge of the incompetence of the property alienator (Cherepakhin, n.d., p. 39). Tolstoy agrees with these views, writing that “simple negligence committed by the acquirer in civil transactions cannot be grounds for declaring the acquirer dishonest. (Tolstoy, n.d., p. 121)”

Thus, to declare the acquirer unscrupulous, it is not enough to simply neglect the acquirer, but it is necessary that the acquirer’s ignorance of the alienator’s authority was based on gross negligence. When distinguishing between simple and gross negligence, in each case, it is necessary to take into account the objective – the situation and conditions at the time of seizure of the property, and the subjective – the personal characteristics of the acquirer (life experience, legal literacy). It should be noted that the current civil legislation recognizes the presumption of the acquirer’s good faith (Article 9 of the Civil Code), that is, the acquirer is considered good faith until proven unfair.

In civil law, as one of the central criteria of the institution of a bona fide acquirer (or bona fide recipient), the phrase “unknowing and unable to know,” used in the text of the law, is a controversial category from both theoretical and practical points of view. The question of how to interpret the meaning of this phrase, first of all, determines the limits of legal requirements for the behavior of the acquirer.

If only the phrase “did not know” were used in the law, this circumstance would also justify the absolute passive state of the acquirer. That is, although the acquirer did not make any effort to determine the authority of the property alienator, he could be formally

recognized as bona fide. However, the legislator seems to have tried to exclude such an absolutely passive approach by using the additional phrase “not to know.” At the same time, this phrase does not require open and compulsory active actions from the acquirer – a thorough verification of the seller’s authority in each case. Thus, this expression implies a moderate, balanced standard between passivity and excessive activity.

Thus, summarizing the views of scholars, in order to recognize an acquirer as unscrupulous, their ignorance of the incompetence of the alienator of the property must be associated not with simple negligence, but with gross carelessness. Distinguishing between simple and gross negligence requires a comprehensive assessment in each specific case: on the one hand, the objective situation and conditions at the time of the transaction (e.g., an unusually low price, urgency, or unusual conditions) must be considered, and on the other hand, the subjective characteristics of the acquirer (e.g., life experience, professional activity, and legal literacy) must be taken into account.

Finally, the presence of a presumption of good faith in current civil legislation is crucial in this debate. Until the acquirer’s dishonesty is proven, they must be considered bona fide. Thus, the phrase “impossible to know” does not automatically place the acquirer under an obligation to conduct an active investigation, but it also prevents the justification of illegal treatment under the guise of conscientiousness in cases of gross negligence.

b) The nature of acquiring the property—whether it was acquired for a fee or free of charge—plays a significant role in the emergence of a disputed property right for a bona fide acquirer based on a complex legal structure. Acquiring property from a person who does not have the right to alienate it, on the basis of a paid transaction, is a necessary condition for the emergence of ownership rights for a bona fide possessor. Part 1 of Article 229 of the Civil Code, which establishes restrictions on vindication, states: “...if the property is acquired for a fee from a person who does not have the right to alienate it...” Otherwise, the property under a vindication claim must be returned to the owner. According to Part 3 of Article 229 of the Civil Code, “if the property is received without payment from a person who does not have the right to alienate it, the owner has the right to demand the property in all cases.” Consequently, the Civil Code strictly establishes that gratuitous seizure of property is a necessary condition for applying the institution of limited vindication to protect a bona fide acquirer.

It should be noted that the requirement that an acquisition be carried out for a fee is also characteristic of foreign legal systems. In particular, Articles 2279 and 2280 of the French Civil Code and paragraphs 929–932 of the German Civil Code provide for the acquisition of property by a bona fide acquirer via a paid transaction as grounds for refusing to protect the owner’s rights.

The legislator’s position on this condition is explained by the theory of “minimum evil,” known in civil law. This theory is used when the interests of different participants in civil transactions clash. In our case, a compromise is used to reach an agreement between the interests of a bona fide possessor and the owner. The essence of this theory is that a decision made in favor of one party should cause as little harm as possible to the other. Consequently, according to this theory, the interests of a bona fide acquirer are taken into account only if the property is acquired for a fee. If the property was received gratuitously from a person who was not entitled to alienate it, the bona fide acquirer does not suffer property damage as a result of the return of the property, since they acquired it without incurring any expenses. As Ioffe (1967) emphasizes, “the seizure of this property from him (the bona fide acquirer) is more just than sacrificing the interests of the owner in defense of a gratuitous acquisition.”

c) The next condition for acquiring ownership of property by a bona fide acquirer is the conclusion of a transaction between the acquirer and a person who does not have the right to dispose of the property, aimed at the transfer of ownership.

In literature, this element of legal structure has caused heated debates. The main essence of the problem lies in the fact that the owner, whose vindication claim has been rejected, might attempt to reclaim the property by filing a claim for the recognition of the transaction as invalid and seeking the application of the consequences of the invalidity of the transaction. In a certain sense, it can be said that existing internal contradictions in the Civil Code have contributed to this debate. As Abova et al. (2002) noted, the contradiction between Article 302 of the Civil Code of the Russian Federation (Article 229 of the Civil Code of the Republic of Uzbekistan contains the same provisions) and the norms regulating transactions and contracts is clearly visible. The conflict lies in the fact that, according to Article 116 of the Civil Code, a transaction for the alienation of another's property is invalid due to a violation of legislative requirements; conversely, Article 229 permits the conclusion of such a transaction. This situation has caused various opinions in civil legislation, the analysis of which is important from both scientific and practical points of view.

Analyzing this problematic situation, Braginsky and Vitryansky (2011) indicate that "in this situation, it is impossible not to notice the competition between the methods of protecting the violated right: on one hand, a vindication claim, and on the other, claims related to the invalidity of the transaction," and they establish that the original owner has the right to claim the property from a bona fide acquirer by filing a claim to invalidate the transaction and apply the consequences of its invalidity. Further clarifying this point, they state that "the circumstances under which the buyer can act as a bona fide acquirer, in relation to whom the law restricts vindication, should not be an obstacle to the application by the owner of the consequences of an invalid transaction."

From this opinion, it follows that if the alienator is not the owner, a bona fide acquirer cannot acquire property rights at all. Such a resolution leads to a situation where the institution of the limitation of vindication, established by Article 229 of the Civil Code, is unnecessary and rendered ineffective.

A number of authors strongly object to this solution (Lomidze & Lomidze, 2002). As Sergeev argues, it is difficult to agree that if it is impossible to claim the thing through a vindication claim, it does not preclude its recovery by filing a claim for the application of the consequences of invalid transactions. It should be borne in mind that in practice, there are cases where property sold by an unauthorized alienator subsequently changes ownership several times. In such a situation, difficulties arise, such as returning the parties to their original position in a restitution claim. Taking this into account, Sklovsky (2000) notes that supporters of the application of restitution lose the character of reclaiming the amount paid from the unauthorized alienator, and if two or more void transactions are made, the process acquires the character of a "whirlwind," unknown to any legal system and having a "stupid" appearance.

Vitryansky, who proposed the use of restitution to ensure the owner's protection, also addressed this problem, indicating that the application of protection based on the invalidity of a transaction should be limited only to the relationship with the first bona fide acquirer (Braginsky & Vitryansky, 2011). Rakhmilovich (2000) objected to this, stating: "Such a restriction is incomprehensible. If all acquirers are equally conscientious, what is the basis for such a distinction? Why and how can the number of transactions affect the law? After all, the thing was put into circulation by the first transaction, and if the protection of a bona fide acquirer arose as a result of the need to strengthen circulation, then all participants must be provided with such protection."

In our opinion, when resolving this issue, it should first be established that Article 114 of the Civil Code must be applied in conjunction with Article 229. If the acquirer meets the requirements of Article 229 and is a bona fide acquirer, the former owner cannot file a claim to invalidate the transaction between the bona fide acquirer and the unauthorized alienator for the return of the property—since the bona fide nature of the acquirer is disregarded when recognizing the transaction as invalid—but rather must file a vindication claim based on Article 229. By solving the problem in this way, it is possible to end the use of restitution when the owner does not have the opportunity to claim the property. Otherwise, it will be difficult to ensure stability in both civil transactions and the legal status of the bona fide acquirer.

d) Finally, the concluding element of a complex legal structure is the transfer of property into the possession of a bona fide acquirer—that is, its actual transfer. As Rakhmilovich (2000) correctly noted, the grounds for such a conclusion are provided for in Articles 228–229 of the Civil Code (Articles 301–302 of the Civil Code of the Russian Federation). These articles address the recovery of property from another person's possession and from a bona fide acquirer. Consequently, in such cases, it is assumed that the property has fallen into the possession of the acquirer.

It was noted above that the issue of acquiring ownership of property by a bona fide acquirer has not been fully resolved in the current Civil Code. As a result of the introduction of the term regarding the acquisition of ownership, this issue has become even more complicated, creating an ambiguous legal status for the bona fide acquirer.

If there is a restriction on vindication in civil legislation that makes it impossible to demand the property back from a bona fide acquirer, then, logically, the Civil Code should include a mechanism that determines the transfer of ownership to that acquirer. Otherwise, the property is effectively withdrawn from civil circulation, as the owner is deprived of possession, and the acquirer possesses it without a clear legal basis and cannot dispose of it. However, since the current Civil Code of the Republic of Uzbekistan, as well as the Civil Codes of Russia and Kazakhstan, do not provide for such a mechanism, a number of civilists have focused on this problem. In particular, Rakhmilovich (2000) stated: “The remaining ambiguity of the issue leads to uncertainty not only regarding the subject of property rights but also regarding the existence of property rights to the disputed property.” Similarly, Rubanov (as cited in Abova et al., 2002) drew attention to the “uncertainty in the legal regime of the thing,” noting:

Article 302 (Article 229 of the Civil Code) resolves only a civil procedural issue: the owner's claim must be rejected and subsequently such claims should not be accepted for consideration due to their identity; however, Article 302 of the Civil Code does not establish the civil legal regime of the corresponding property. What rights does a bona fide acquirer have in relation to it? What changes occur in the owner's rights after the claim is rejected? After the claim is rejected, does the property become the object of someone's ownership right, or does it become an ownerless thing?

Thus, Vasilyev suggests it is advisable to supplement Article 283 of the Civil Code with a fourth part stating: “In the event of a refusal to satisfy a claim for the recovery of property from a bona fide acquirer, the claimant's ownership right terminates, and the right of ownership to the property arises with the bona fide acquirer.” This rule would eliminate the possibility of different interpretations of the aforementioned norms and ensure the uniformity of law enforcement practice.

The fate of property rights upon refusal of vindication

In modern legal literature, the issue of the legal consequences of the acquisition of property by a bona fide possessor from an unauthorized person is resolved differently.

According to some scholars, including Sergeev, Tolstoy, Kireev, and Tuzov, in accordance with Article 283 of the Civil Code of the Republic of Belarus (2016), if a vindication claim is not satisfied, the person who received the property becomes the owner with all the consequences of property rights. This group of scholars proceeds from the prevailing view that the right of ownership in a person who has conscientiously received property from an unauthorized person arises based on a complex legal structure consisting of the following legal facts: a transaction with a person who does not have the right to dispose of the property; the conscientiousness of the recipient; the conclusion of the transaction for a fee; the fact that the property has not been withdrawn from circulation; the fact that the property left the owner's possession at their discretion; and the actual transfer of the property. Only the totality of these facts can lead to the emergence of ownership rights in a bona fide acquirer and the termination of rights in another person. As Konovalov (2002) notes, the right of ownership for a bona fide acquirer arises from the moment of transfer.

Over time, this previously prevailing view began to be disputed by another group of scholars who deny the emergence of property rights for a bona fide acquirer based solely on the provisions of vindication articles.

Concept of bona fide possession (Article 487 of the Civil Code of Moldova)

The legal status of a bona fide acquirer is defined in Article 487 of the Civil Code of the Republic of Moldova (2002/2025). The first part of this article assesses the subjective-psychological aspect of ownership through legal criteria and defines bona fide ownership as an independent legal status. This norm assesses possession not only in connection with formal rights but also with the reasonable confidence and cautious behavior of the individual. According to this article, a bona fide possessor is recognized in two cases:

A person exercising ownership on a legal basis;

A person who, by conducting a thorough examination to the extent required in civil relations, can consider themselves entitled to possession.

Here, the legislator does not limit conscientiousness to the presence of a legal title, but introduces the criterion of "due diligence." That is, a person may not be an absolute owner, but they are considered bona fide if they have sufficiently verified the grounds for ownership and were not obligated to know of any legal deficiencies (Lakotsenina, n.d.).

It should be noted that in Moldovan legal practice, there is a presumption of fairness, meaning any possessor is considered fair from the outset; the person claiming to be unfair must prove this, and the court should not require the possessor to prove their fairness. Part 2 of Article 487 provides for the termination of bona fide possession if the right of ownership is revoked or a justified demand is made against the acquirer. That is, if the ownership right itself is revoked (e.g., if the contract is declared invalid), conscientious ownership also ends.

Property consequences for a bona fide acquirer

Article 497 of the Civil Code of the Republic of Moldova (2002/2025) defines the property consequences of bona fide ownership, aiming to ensure a balance of interests between the possessor and the actual owner. The article addresses the fruit of the possessed thing, the cost of use, and expenses. According to the first part, a bona fide possessor acquires ownership rights to the fruit of the possessed thing, defined broadly as natural fruit (harvest, offspring) and civilian fruit (rent, interest, income). Importantly, if a bona fide possessor receives an item for a fee, they are not obligated to return the value of the use of the item to the actual owner.

The second part clarifies the temporal nature of honesty: the occupant must be conscientious at the time of obtaining the fruit; if they subsequently become

unconscionable, this does not automatically affect the previously obtained fruit. Part 3 restricts the rights of a bona fide acquirer: if they have retained the fruit and are exempt from returning the usable value, they do not have the right to demand reimbursement for ordinary expenses for the maintenance of the item. As Sychevskaya (2013) notes, this establishes a logical balance: “If the fruit is yours, the usual expenses are yours.” The fourth part defines the systemic legal significance of this article, recognizing it as a *lex specialis* that takes priority in cases of conflict with general provisions on unjustified enrichment.

Grounds for vindication according to the legislation of the Republic of Kazakhstan

Article 261 of the Civil Code of the Republic of Kazakhstan reflects the classical continental approach to the issue of recovery of property from a bona fide acquirer (vindication). The article establishes the following basic provisions.

If the property was acquired for a fee from a person who did not have the right to alienate it, and the acquirer did not know and could not have known about this (bona fide acquirer), the owner has the right to demand this property from the acquirer only in the following cases:

- the property was lost by the owner or the person to whom the owner transferred the property for possession;
- property was stolen from them;
- property has been alienated from their possession by other means beyond their control.

2023 Special Law and Expansion of the Concept of Integrity

The Law of the Republic of Kazakhstan “On the Return of Illegally Acquired Assets to the State” (bona fide acquirer – a person who is not affiliated with the persons specified in Article 2 of this Law, received property for a fee and on market terms, and did not know and could not know that this property belongs to illegally acquired assets) may establish other grounds for recognizing a person as a bona fide acquirer (Law of the Republic of Kazakhstan “On the Return to the State of Illegally Acquired Assets,” 2023).

This norm was introduced in 2023, and part 4 of the article provides an opportunity to expand the concept of bona fide acquirer with a special law (on the return of illegal assets to the state). In Kazakhstan, after 2023, a special rule of law related to state interests was introduced and the public-legal element of fairness was strengthened.

Recognition of a bona fide acquirer as a temporary owner

Article 291 of the Civil Code of Kyrgyzstan also regulates the issue of property vindication from a bona fide acquirer based on the classical continental approach. The Kyrgyz model is practically consistent with the legislation of Russia, Kazakhstan, and Uzbekistan. Part 2 of Article 291 of the Civil Code of Kyrgyzstan is of particular importance from the point of view of comparative law. According to it:

a bona fide acquirer is recognized as the owner of the property received on the basis of a paid transaction;

maintains this status until a judicial act that has entered into legal force establishes otherwise;

If the owner does not have grounds to demand the property from the bona fide acquirer, he may file a claim for compensation for damages not directly against the bona fide acquirer, but against the person who carried out the illegal disposal. This norm transforms a bona fide possessor not only into an object of protection but also into a temporarily recognized subject as the owner. It should be noted that part 2 of Article 291 of the Civil Code of Kyrgyzstan represents an innovative approach aimed at clearly ensuring the principle of stability of property turnover and legal certainty in civil law. It clearly

defines the legal status of a bona fide acquirer and eliminates legal ambiguities in disputes between the owner and the acquirer before a court decision.

Article 295 of the Civil Code of the Kyrgyz Republic occupies an important place in the post-Soviet civil law system as a norm regulating the right of a bona fide acquirer and an unfair acquirer to receive compensation for necessary expenses and improvements made to the property (Civil Code of the Kyrgyz Republic, 1996, as amended through Nov. 14, 2025). When comparing this norm with the legislation of Russia, Moldova, Kazakhstan, and Uzbekistan, along with general conceptual similarities, certain legal and methodological differences are clearly manifested.

First of all, the legislation of all the countries under consideration has adopted as a general rule the principle that the person possessing the property - regardless of whether he is bona fide or unconscionable – has the right to demand compensation from the owner for the necessary expenses incurred for the preservation of the property, preventing its loss or serious damage. This rule is expressed in the same legal content in Article 295 of the Civil Code of Kyrgyzstan, Article 303 of the Civil Code of Russia, as well as in the legislation of Kazakhstan and Uzbekistan through the norms of unjustified enrichment and vindication. This analogy is based on the principles of justice and equivalence in civil law: if the owner has the right to receive income from the property, he must also bear the necessary expenses for its maintenance.

Compensation for costs and improvements

At the same time, in matters of improvements, the legislation of all states strictly distinguishes between the legal status of bona fide and unfair acquirers. In Article 295 of the Civil Code of Kyrgyzstan, this distinction is clearly stated: a bona fide acquirer may retain separable improvements, and for inseparable improvements, he has the right to demand compensation within the increased portion of the property's value. The same approach exists in Russian legislation, which has developed mainly through Article 303 of the Civil Code and judicial practice. The legislation of Kazakhstan and Uzbekistan also recognizes the superiority of a bona fide acquirer in terms of improvements, while an unfair acquirer is deprived of such a right.

However, the differences are also quite noticeable. Article 295 of the Civil Code of Kyrgyzstan is distinguished by its comprehensive and systematic resolution of this issue within the framework of a single article. In Russian legislation, the provisions of this content, along with the norms of the code, are clarified through judicial practice, and the practical content of the norm largely depends on court decisions. In Moldova's legislation, however, the issue of expenses and improvements is considered within the framework of a broader doctrinal concept in close connection with the institution of bona fide ownership; that is, it is not limited to just one article, but is regulated in one system with the norms on the statuti of good faith, fruit, and use value. In the legislation of Kazakhstan, this issue is divided into several articles, which are functionally close to the Kyrgyz model, but have a fragmented character. In the Civil Code of Uzbekistan, however, the rights of bona fide and dishonest holders regarding expenses are resolved through more general principles and rules of unjustified enrichment, and there is no such open and directly comparable norm as Article 295 of the Civil Code of Kyrgyzstan.

Strict approach to real estate

Article 275 of the Civil Code of the Republic of Tajikistan also contains norms protecting the interests of the owner, which are stricter than the legislation of Uzbekistan, Russia, and Kyrgyzstan (Civil Code of the Republic of Tajikistan, 2022). Integrity does not completely restrict the owner's absolute right. Part 3 of this article states that if the right to immovable property is obtained from a person who has not undergone state registration, the owner

has the right to revoke it in any case. This rule is a very imperative norm, in which state registration is the only legitimate source of real estate rights, and the principle of good faith is not applied here. This norm establishes the principle of trust in the official register as an absolute rule in civil transactions.

Acquisition of property rights through a bona fide acquirer (Article 289 of the Civil Code)

Article 289 of the Civil Code of the Republic of Tajikistan ("Fair acquisition of property") regulates the most important legal consequence of the institution of a bona fide possessor – the emergence of property rights. This norm not only protects the bona fide acquirer from vindication, but also provides for the recognition of him as the full owner under certain conditions. This aspect makes it different from the legislation of most post-Soviet states and scientifically significant. The general content of Article 289 is that the right of ownership can arise not only through the original owner, but also through a bona fide acquirer. The second part of the article defines the legal status of a bona fide acquirer with respect to moving items. If a moving thing cannot be claimed from a bona fide acquirer on the grounds provided for in Articles 274 and 275, he is recognized as the owner of the thing. There are two important points here:

a bona fide acquirer acquires the right of ownership from the moment of receipt of the item, if there is no judicial dispute;

If there is a dispute, the right of ownership is considered to have arisen from the moment the court rejects the owner's claim, but the date of origin of the right is retroactive, i.e., linked to the moment of receipt of the item.

This rule strongly protects the legal status of a bona fide recipient.

The third part establishes a special procedure for immovable property. Honest recipient: is recognized as the owner of the real estate from the moment of its state registration;

if there is a judicial dispute, the right of ownership is considered to have arisen from the moment the owner's claim is rejected;

if the right of ownership has not been registered, the judicial act is an independent legal basis for its state registration.

This approach ensures the decisive significance of state registration and the principle of legal certainty in the circulation of real estate.

Article 289 of the Civil Code of the Republic of Tajikistan is a norm that brings the institution of an honest recipient to the final and most developed stage. It not only protects the bona fide acquirer, but also forms a new source of property rights, recognizing him as the full owner under certain conditions.

Recognition of fairness as a basis for the emergence of property rights in Azerbaijan

In the Civil Code of Armenia (Articles 275-276 of the Civil Code), Georgia (Article 187 of the Civil Code), and the Republic of Azerbaijan (Articles 181, 182, 183, and 184 of the Civil Code), one can observe the similarity of the norms regarding the concept of a bona fide possessor. Article 182 of the Civil Code of Azerbaijan establishes the institution of a bona fide acquirer as an independent legal basis for the emergence of property rights (Civil Code of the Republic of Azerbaijan, 1999, as amended through Mar. 18, 2025). This norm is one of the most advanced approaches in the post-Soviet legal space, recognizing a bona fide acquirer not only as a person protected from vindication, but also as a full owner under certain conditions. According to part 1 of Article 182 of the Civil Code, the concept of a bona fide acquirer is expressed, according to which the acquirer becomes the owner of the thing even if he receives the property from a person who does not have the right to dispose of it to another person, if he is a bona fide acquirer in this case.

Azerbaijani civilist scholars determine what fairness is – a principle or a presumption? Various approaches can be observed in this regard. In particular, Leila Talibova

notes that in the system of civil legislation of the Republic of Azerbaijan, integrity, as a general principle, presupposes the obligation of subjects of civil law to honestly and conscientiously fulfill their rights and obligations. In addition to this, it can be said that the Azerbaijani legislator directly recognizes conscientiousness as a principle of civil law in some articles of the Civil Code. In particular, according to Article 420.2 of the Civil Code, a standard condition stipulated in a contract, even if it is included in the contract, is considered invalid if it harms the interests of the other party and violates the principles of trust and good faith (Talibova, 2024, p. 187). Analyzing judicial practice and legislative norms regarding the concept of a bona fide possessor, the author comes to the following conclusion: “The civil legislation of the Republic of Azerbaijan not only defines the general legal basis for the principle of good faith (goodwill), but also allows the parties to determine individual criteria for determining good faith within the framework of contractual relations. Therefore, when applying Article 425.1 of the Civil Code, that is, when applying the norm on the concept of fairness, judicial bodies should take this approach into account so that correct and substantiated legal conclusions can be drawn. Also, conscientiousness has semantic significance not only within the framework of contractual relations, but also within the framework of property rights. In particular, in Article 157 of the Civil Code, dedicated to the protection of property rights, the term “conscientiousness” is used in several places. In addition, good faith is applied in the norms regulating franchising, agency, brokerage, and other similar relations.

In civil relations, including in all the above-mentioned areas, the presumption of good faith – as one of the basic legal presumptions – presupposes that the actions of each party are considered good faith until proven otherwise. However, the presumption of good faith should be applied with caution by courts when considering legal disputes related to good faith.

In order to ensure justice and legality, courts should also apply the principle of estoppel. This principle serves to prevent one party from obtaining unfair advantages or benefits that harm the interests of the other party by abusing bona fide trust under legal conditions. Such an approach ensures the stability and integrity of legal relations, combining the presumption of good faith with mechanisms for protecting against possible abuse.

The category of conscientious occupant in the experience of Estonia

Article 35 of the Estonian Republic’s Law “On Property Rights” is a fundamental norm of fair ownership and harmoniously applies objective and subjective criteria in property valuation. This norm serves to ensure legal stability by establishing a presumption of trust in ownership in civil transactions. Based on the content of the norm, it can be said that conscientiousness is not limited to a person’s actual ignorance, but is also assessed from the point of view of the possibility of knowledge. Ownership is recognized as bona fide if the possessor did not know and could not have known, even by exercising customary caution, that their ownership of the thing does not have a legal basis. Here, the law demands from the individual not absolute scrutiny, but reasonable legal prudence.

The legal regulation of the bona fide acquisition of movable and immovable property has caused serious debates in Estonian legal thought, which will be discussed below. The possibility of bona fide seizure of property, in general, is not alien to the German legal tradition of Estonia: such a procedure existed in the autonomous Baltic provinces that were part of the Russian Empire, as well as in the law that operated in independent Estonia before the Second World War (Kõve, 2009, p. 197). The Soviet Union, which repeatedly occupied Estonia in the 1940s, introduced its own legislation here. The Soviet Union, unlike some satellite states, never recognized even limited non-state ownership

of land. Therefore, rules similar to the procedure based on the idea of protecting legal transactions (Verkehrsschutz) are mainly found only in the norms regarding the bona fide seizure of moving items. Usually, the institution of bona fide acquisition is based on the idea of protecting legal transactions; that is, it is considered necessary to encourage market participants to enter into transactions for the purpose of acquiring things. However, the population living under Soviet control, suffering from a shortage of basic consumer goods, did not need any additional incentives to buy cheap mobile goods.

The regulation of the fair seizure of movable property caused a number of controversies in Estonia in the 1990s. The reason for this was that in Estonia, the rules regarding movable property were also applied to houses and apartments not yet included in the land registry. This means that in such disputes, we are talking about property of significantly higher value than items in ordinary circulation. In Estonian legal literature, the institution of bona fide seizure of moving things has been most severely criticized by Tambet Toomela (Toomela, 2004, p. 530). The Estonian system of private law regulation protects the institution of bona fide acquisition, relying mainly on evidence applied in the tradition of Continental European law (especially in its variation of German law). However, the Estonian experience in law enforcement practice forced Estonian jurisprudence to seek new answers to issues related to fair seizure, which were considered resolved in other countries. A distinctive feature of the transition period in the sphere of bona fide seizure is the possibility of bona fide seizure of immovable property based on the norms regulating immovable property in relation to buildings. Although this situation raised doubts about the expediency of the institution of bona fide seizure, it did not lead to a change or a radical reassessment of this institution in judicial practice.

The risks associated with the positive disclosure effect of the land registry also prompted Estonian legal scholars to study this issue more deeply, but traditional solutions were not abandoned. In Estonian legal literature, there is a broad view that the alienation of property without the owner's consent should be interpreted much broader than the usual interpretation applied to the concept of expropriation for the purposes of the Constitution, which can be considered the starting point of an unfinished discussion.

Undoubtedly, the Constitution protects individuals from unjustified deprivation of property not only in cases that lower-level laws call expropriation, but also on a much broader scale. However, for example, equating a compulsory auction with expropriation from a constitutional point of view raises certain doubts. Applying the aforementioned broad interpretation to the regulation of bona fide seizures would have meant a significant departure from the intention underlying the drafting of the Constitution and would not have made it possible to reasonably ensure the fair and immediate compensation requirement established by the Constitution.

At the current stage of development of legal practice and taking into account the judicial practice related to this dispute, it seems teleologically justified that the termination of property rights in the process of bona fide seizure is assessed as a restriction of property rights in the sense of part 2 of Article 32 of the Constitution of Estonia. Of course, this approach does not solve all the specific issues related to the constitutionality of the regulation of bona fide seizure. On the contrary, it requires continuous analysis on various issues, among which, at the present stage, the central place is occupied by the issue of regulating the conscientious seizure of things under conditions of free disposal (Kama, 2012, p. 31).

Balance of owners' and bona fide acquirers' rights in Ukraine

Article 388 of the Civil Code of Ukraine "On the Right of the Owner to Reclaim Property from a bona fide possessor" is aimed at ensuring a balance between the

institution of vindication (the right of the owner to reclaim their property from an unlawful possessor) and the principle of protection of a bona fide possessor (Civil Code of Ukraine, 2003). The second part of the article provides for exceptional cases of protection of a bona fide possessor. According to it, if the property was sold or transferred to ownership in the manner prescribed for the execution of court decisions, or was sold to a bona fide buyer through an electronic auction within the framework of privatization of state and communal property, the owner is deprived of the right to demand such property.

The third part of the article concerns relations involving state and territorial communities, which provides for a time limitation of the right to vindication. If state or communal property is transferred to private ownership and more than ten years have passed since the first buyer's ownership right to real estate was registered in the state register of real rights to real estate, the state or territorial community, as a rule, loses the right to demand such property from a bona fide acquirer. However, the law does not apply these rules to certain objects where the interests of the state are considered absolutely paramount. However, the law does not apply these rules to certain objects where state interests are considered absolute priority. In particular, the state's right to vindicate critical infrastructure objects, property of strategic importance for the state economy and security, defense facilities and lands, protected natural areas, hydraulic structures, and cultural heritage objects that cannot be privatized is not limited by duration (Shevchenko, 2024).

The fourth part of the article establishes a rule regarding gratuitously received property, according to which, if the property is received gratuitously from a person who does not have the right to alienate it, the owner in all cases has the right to demand it from a bona fide possessor.

The concept of the acquirer's good faith, used in the above-mentioned legislative norms, as well as the content of good faith as a general principle of civil legislation (paragraph 6 of part 1 of Article 3 of the Civil Code of Ukraine), are interpreted based on the achievements of civil law science in law enforcement practice and modern, most advanced interpretations of good faith (Klychov, 2024).

In particular, in Ukrainian sivilistics, the issues of untitled ownership of property and the possibility of acquiring property rights through the seizure of another's property under certain conditions were addressed by Sklovsky K.I., Makovoy V.P., Gadzhiev G.A., Lorentz D.V., Avlasevich A.I., Rakhmilovich V.A., Latiyev O.M., Aksyuk I.V., and other scientists. In particular, the understanding of the requirements for the principle of good faith serves as a basis for interpreting the nature of the good faith of the acquirer who purchased the property from a person who does not have the right to alienate it, as well as for determining the extent to which the acquirer must fulfill obligations to determine whether the seller has the right to alienate the property or not, i.e., for establishing limits within which it can be considered that he has taken sufficient measures (Huivan, 2021, p. 8). In particular, the Supreme Court in this regard established that: a bona fide person acquiring immovable property as property or acquiring other property rights to it may rely on information contained in the State Register of Real Estate Rights regarding the existence or absence of property rights of other persons and their encumbrances (encumbrances) on immovable property. The information in the register is considered accurate until proven otherwise. Therefore, a bona fide acquirer does not have to deal with the history of previous acquisitions of immovable property and draw a conclusion about the legality of previous transfers of the property, but may act based on this information unless there are circumstances that may raise doubts about the reliability

of this information from the point of view of a reasonable observer (Supreme Court Decision No. 925/1351/19 of November 2, 2021) (Civil Law of the Republic of Latvia, 1937).

Conclusion

The above-mentioned comparative legal and doctrinal analysis shows that the institution of bona fide possessor and bona fide recipient is of decisive importance in ensuring the stability of property transactions and the principles of legal trust and justice in modern civil law. The experience of the legislation of Russia, Georgia, Estonia, Azerbaijan, Tajikistan, Kyrgyzstan, Moldova, and other countries clearly shows that these institutions can be developed not only as a means of restricting vindication, but also as an independent legal mechanism that creates property rights under certain conditions.

Although the current version of the Civil Code of the Republic of Uzbekistan contains the concept of bona fide acquirer (Article 207) and rules for the recovery of property from a bona fide acquirer (Article 283), these norms are not systematically fully coordinated; especially, the clear legal relationship between the consequences of the invalidity of the transaction (Article 126) and the legal status of a bona fide acquirer is not sufficiently revealed. Therefore, it is necessary to introduce the following new norms into the Civil Code of the Republic of Uzbekistan:

Article 126. General provisions on the consequences of the invalidity of transactions

A person who knew or should have known the grounds for the invalidity of a disputed transaction is not considered to have acted in good faith after the transaction is declared invalid.

If it follows from the essence of the disputed transaction that it can be terminated only for the future moment, the court, having recognized the transaction as invalid, terminates its effect for the future moment.

The court does not apply the consequences of the invalidity of a transaction if the application of the consequences contradicts the foundations of law and order or morality or harms the interests of a bona fide acquirer.

Based on the legal experience of Azerbaijan, Estonia, and Georgia, it was concluded that it is necessary to introduce the concept of “bona fide possessor” into the Civil Code of the Republic of Uzbekistan, and it is proposed that this concept should be as follows: “A bona fide possessor is a person who owns an item on a legal basis or is recognized as having property rights to this item based on due diligence.”

Based on the legal experience of Kazakhstan, it is necessary to amend Article 283 of our current civil legislation as follows: “If the property was sold in the manner prescribed for the execution of court decisions, or if a bona fide acquirer entered into a transaction based on the data of the state register on the grounds provided for by this Code, the recovery of property on the grounds specified in the first part of this article is not allowed. In these cases, compensation is paid to the owner in the manner prescribed by law.

Such an approach, on the one hand, without denying the legitimate interests of the owner, on the other hand, strengthens confidence in the state register of persons participating in civil transactions, in the stability of transactions and legal certainty. As a result, the Civil Code of the Republic of Uzbekistan will become a scientifically based and practically effective legal mechanism adapted to modern development trends of the institution of bona fide possessor and bona fide recipient.

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