

UDC 340

**THE FUTURE of THE IMPLEMENTATION of CONFISCATIONS IN REM  
IN THE LEGISLATION of THE REPUBLIC of BELARUS**

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*This article analyzes the future for the implementation of the institution of property confiscation in rem in Belarusian civil legislation. It is considered as one of the methods to combat corruption crimes. Based on the research data, the scheme of the in rem confiscation procedure and the principles of its application are determined here.*

Corruption has become so widespread. It is a problem that affects all spheres of human life. It is a characteristic of all countries, regardless of their political structure, the level of economic development, the education, or the geographical location.

The Republic of Belarus is not an exception. Despite the measures taken, the statistics of persons convicted of corruption-related crimes indicates its growth. For example, in 2016, only 569 persons were convicted for committing corruption-related crimes, in 2017 the number of people who were charged with such crimes grew to 694 people, in 2018 this number was 1005, and 1007 people were convicted of this crime in 2019 [1].

Due to the fact that this type of a crime takes on new forms very quickly, it is important to make appropriate measures in order to prevent it. One of these measures is to introduce the institution of the confiscation of property similar to in rem principle into the country's legislation. Such type of confiscation obliges the suspect to independently prove in court the legal way of acquiring the property.

The consideration of the possibility to use such a measure by the State would be a step towards fighting against the corruption.

Here it should be pointed out that certain signs of in rem confiscation have already been introduced into the legislation of the Republic of Belarus.

For example, in the Article 36 "On the fight against the corruption" of Belarussian Law, it is stated that "after having revealed the fact of a clear excess of the property value and other expenses belonging to the persons, specified in the part 1 of this Article, over their income received from legal sources, the head of the state body, or of another organization, or an official to whom the income and property declarations are submitted, or an official of a tax authority, should receive the written explanations from such persons about the sources of income, due to which the property has been acquired, the value of which clearly exceeds the persons' income. If the persons specified in the part 1 of this Article refuse or cannot explain the sources of such income, or the unreliability of their explanations has been established, within ten days from the receipt of the explanations or refusal of the persons specified in the part 1 of this Article, to give the explanations, the head of a state body, or of another organization, or an official to whom the income and property declarations are submitted, or a tax official authority invites these persons in order to organize the voluntarily transfer of this revealed property to the State, in an amount clearly exceeding the confirmed income, or to pay its cost and the amount of other expenses clearly exceeding the confirmed income".

If the persons specified in the part 1 of this Article refuse within one month from the date of the request to voluntarily transfer the property to the State in the amount that clearly exceeds the confirmed income, or pay its value and other expenses in the amount that clearly exceeds the confirmed income, the prosecutor's office applies to the court with a claim for the gratuitous seizure of this property or for raising the value of other expenses in the amount clearly exceeding the confirmed income [ 2].

According to the part 2 of the Article 236 of the Civil Code of the Republic of Belarus, forcible seizure of the property is not allowed, except for the cases when this is done on the grounds that are provided by law, or in accordance with the court order. Among such grounds is "the gratuitous confiscation of the property in cases that are stipulated by the legislative acts in fighting against the corruption" [3].

It is worth mentioning that these legislative norms apply only to certain categories of governmental officials:

- who have the position of responsibility;
- who enroll into civil service after the elections.

In addition, if there is an absence of the explanations of the sources of income, the property may also be seized from the spouses of these governmental officials, their minor children, including adopted ones; close relatives who live together with the officials and are adult, and who are sharing common households.

With regard to other persons, if the above facts are confirmed, one applies the requirements that are established by the Law of the Republic of Belarus dated from January 4th, 2003 No. 174-3 "On the declaration of income and property by individuals on the request of tax authorities", where in the part 6 of the Article 11 it is indicated that "if the tax authority, when exercising the control over the compliance of expenses with the income of an individual, has established that the expenses of an individual exceed his or her income, specified in the income and property declaration, or the fact of receipt of income is not confirmed, the tax authority shall send a request to the individual to provide the explanations of the income sources "[4].

If the explanations are not provided or they do not allow to establish the source of income (in order to exclude the fact of incurring expenses), the income of an individual which has been regarded as "excess of expenses over income" will be a subject to the taxation in accordance with the legislative acts.

Considering the above, there is a reason to believe that there are prerequisites for the introduction of in rem confiscation into the legislation of the Republic of Belarus, and it seems that civil proceedings can become a legal field for it.

This approach will avoid conflicts that may arise when it is necessary to prove the legality of the property origin in the framework of criminal proceedings.

Firstly, this approach will exclude contradictions with the Article 26 of the Constitution of the Republic of Belarus, which states that "no one can be found guilty of a crime if his or her guilt is not proven and is not established by the court verdict in the manner described in the law. The accused is not obliged to prove his or her innocence" [5, p. 8].

Secondly, since the seizure of the property will not be the criminal procedure, it will not affect and violate the Article 16 of the Criminal Procedure Code of the Republic of Belarus, which states that "a person, accused of committing a crime, is presumed innocent as long as his or her guilt in committing this crime will not be proven in the manner described by the Code and will not be established by the court verdict that has the legal force. The accused is not obliged to prove his or her innocence. The criminal prosecution body and the court does not have the right to shift the burden of proof to the accused ..." [6].

Thirdly, it will not be necessary to comply with the norms and guarantees which are determined by the provisions of the Articles 9, 24, 45 of the above Code, which determine that the justice in criminal cases in the Republic of Belarus is carried out only by the court and no one can be found guilty, as well as subjected to the criminal punishment other than by the court verdict; and in accordance with the law; the justice is carried out on the basis of adversarial nature and equality of the parties of the prosecution and defense; in the proceedings and during the criminal case the participation of a defense lawyer is mandatory.

At the same time, it is possible that a certain kind of contradiction may arise in the application of confiscation in rem and within the framework of civil legislation.

Thus, according to the Article 232 of the Civil Procedure Code of the Republic of Belarus, the evidence is collected and presented to the court by persons who are interested in the outcome of the case. In this case, the principle specified in the Article 2 of the Civil Code of the Republic of Belarus and the Article 13 of the Civil Procedure Code of the Republic of Belarus state that any participant of the civil proceedings is presumed to be in good faith, until proven otherwise. But in the case of the confiscation in rem where a person must prove the legal origin of his or her property (that it has nothing to do with any crime), there has always been some idea that this person has bad intentions, and that may conflict with the above articles.

In addition, the provisions of the in rem institute which oblige a citizen to prove in the court that his or her property has been acquired legally, may result in non-compliance with the Article 27 of the Constitution of the Republic of Belarus, according to which "no one should be forced to give evidence and explanations against himself or herself, his or her family members, and close relatives" [5, p.8].

However, since the confiscation in rem presupposes a claim not against a person, but against a property, "there is a presumption of the illegality of the thing's origin, which (the presumption) must be refuted by the owner". There is no legal reproach to the owner: you stole, so return the stolen. There is a different algorithm that works here in the following way: most likely, you are an honest person, therefore, as a law-abiding and honest citizen, tell us where you have got your property from, if you do not do this, you will remain "most likely a law-abiding citizen", but will stay without this property" [7]. Consequently, the above contradictions lose their right to exist.

Undoubtedly, the application of in rem confiscation will require certain amendments to the legislation, but they will be not so essential, since the procedure itself is quite simple to use:

- 1) the prosecutor applies to the court with the statement of claim for the property confiscation, substantiating the need for it;
- 2) the obligation to prove the property origin rests on the owner;
- 3) the owner presents the facts that will confirm the source and the legitimacy of the property origin;
- 4) the court decides on the property confiscation depending on an individual's income, if the owner does not confirm the legality of the property's origin, or refuses to satisfy the prosecutor's claims.

In this case, it is important to legislatively work out the scheme to introduce the procedure into the legal system of the country. And the primary task is to determine the application principles in order to institute in rem confiscation in Belarusian civil legislation.

In our opinion, their essence should be as follows:

– the confiscation in rem should not be a substitute for a criminal prosecution, i.e. it cannot be viewed as an alternative to a criminal prosecution in cases where it is possible to get a criminal conviction for the offender. It is unacceptable for a criminal to be able to escape the punishment with the help of civil confiscation as the way to punish for the crimes committed;

– the legislation should clearly define under what circumstances it is allowed to start the confiscation procedure within the criminal trial, namely, it should be considered whether the civil confiscation will be possible and legal in the case when the prosecution and the confiscation of the property in a criminal procedure itself is impossible (due to the death of the offender or the flee from the country, whether the offender has immunity from the prosecution, or the accused is acquitted, etc.), or the civil confiscation and the criminal proceedings may take place simultaneously;

– the assets of the person who is going to be under the control by the relevant state authorities must be defined, meaning that the amount of excess must be clearly examined and only this amount will be under the confiscation in rem (movable property, immovable property, cash, securities, art objects, precious metals, antiques, etc.);

– when framing the legislation on confiscation whining the criminal proceedings, it should be determined whether the existing procedural rules can be used in this area. If it is necessary to develop new norms, it is advisable to consider the possibility to adopt special regulatory legal acts that would strictly regulate the procedural behavior. This acts should be considered from the point of view of the specific content of this behavior, from the point of view of the logical sequence of actions, and from the point of view of the time and the place of the commission, as well as from the point of view of their documentary registration [8, p. 97].

This process should be transparent and accessible for the public and the media in order not to give the opportunity for corrupt officials with broad contacts in law enforcement agencies and courts to use legislation and judiciary to their advantage.

The established procedure for the application of in rem confiscation in the legislation of the Republic of Belarus would ensure the balance between public interests of fighting against the corruption and private interests of the owner who has acquired the property, since the law in no way will deprive such a person of his or her right to give the evidence of the legality when talking about the origin of the funds with the help of which the property was acquired.

This type of confiscation, due to a fairly simple mechanism of its application, can be carried out promptly without delaying the process.

However, it would be wrong to believe that the introduction of in rem confiscation can radically change the situation in the country associated with the growth of corruption crime.

Thus, it should be noted that a number of problems will still remain.

Firstly, we must not forget about the corruption component, since clear and exhaustive criteria for establishing the legality of property cannot be determined, which in its turn may give rise to the increase in bribes to officials of state bodies and court representatives.

Secondly, the expansion of opportunities for the gratuitous property confiscation of citizens can become an instrument of pressure, for example, on oppositional officials.

Thirdly, there is a great danger that even before the court makes a final decision on the confiscation (when a person proves the legality of the acquisition of the property), the public may form an opinion about the defendant as a person who is associated with illegal activities. That may entail an infringement of his or her honor and dignity and also lead to other negative consequences (like, loss of business reputation, loss of colleagues' trust, loss of business partners, etc.).

Nevertheless, the use of the institution of property confiscation in rem in a civil procedure can be an effective mechanism for preventing corruption in the country. It can become much more effective than the criminal punishment because the deprivation of material wealth acts as a tool for punishing a corrupt person. With

the reduction of imprisonment as a punishment for the corruption and economic crimes, the seizure of the property will be able to play an effective preventive role and a person will resist the temptation to get rich quickly. To our mind, only the risk of losing property can stop a corrupt official.

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