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IN REM LAWSUIT IN THE LEGAL SYSTEM OF RA

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Non-conviction based asset forfeiture, being an effective mechanism for freezing and confiscation of illegally obtained assets, is an exceptional measure in international practice which is aimed at fighting against crimes with a particularly high public danger and has become quite widespread in a number of countries in recent years.

Due to the lack of effective measures for the confiscation of property directly or indirectly obtained as a result of the commission of a crime, non-conviction-based confiscation was implemented in the RA legal system.[1] The mentioned institute is regulated in RA legislation by the recently adopted RA Law on "Confiscation of Property of Illegal Origin" (hereinafter also the Law)[2], which has not yet become the subject of scientific research not only comprehensively, but also in terms of individual issues and has not been fully applied in practice.

It is worth mentioning the fact that the implementation of the mentioned institute is related to the fundamental right to property, guaranteed by the RA Constitution[3] because it relates with the confiscation of the property in favor of the state. The scientific research will be carried out in the context of analyzing different models of non-conviction-based confiscation. The model implemented in the Republic of Armenia is a combination of different models. Thus, the outcome that the study seeks to achieve is to find the best practice of different models and implement the regulations in the domestic legislation.

Non-conviction-based confiscation or civil forfeiture is an action against the property (hence, in rem), not against the person, and is the mechanism by which, in the absence of criminal proceedings, the proceeds of criminal activity can be confiscated so as to deprive a person of illicit gains. Forfeiture laws address the ownership of property. Although the regulations vary, the typical forfeiture provides that when an asset is possessed or used in violation of specified legal restrictions, private ownership of the item ceases and title vests in the government by operation of the Law.

Prior to the adoption of the Law, confiscation of assets of illegal origin was possible only in the presence of a guilty verdict, and in case of causing damage to the state, within the framework of filing a claim for the protection of the state's interests.

At the stage of adoption of the Law, the principle of initiating a claim against the property *(in rem)* was discussed, therefore, in order to understand the features of the procedure for confiscation of property of illegal origin in the context of relations regulated by the Law, first of all, it is necessary to study the nature of the *in rem* claim and the forms of its manifestation.

In rem[4] (translated from Latin: against the property) lawsuit aims to determine the

[1] See Justifications of the Law of "Confiscation of Property of Illegal Origin", available at http://www.parliament.am/draft_docs7/K-438-438-14_Himnavorum.pdf
[2] See RA Law on "Confiscation of Property of Illegal Origin", 2020.05.13/50(1605)
[3] Constitution of the Republic of Armenia, adopted 06.12.2015
[4] According to Black's Law Dictionary (7th ed., 1999), on the basis of an *in rem* action, the court has the power to establish the legal status of property, thereby predetermining the rights of third parties to that property.

legal status of the property, including the right to property, regardless of the claims of the persons interested in the property. Of course, the legal status of the property can also be established on the basis of a classic *in personam*[1] (against a person) lawsuit, but the main distinguishing feature is that *in personam* lawsuit is conducted against a person for the purpose of determining the latter's rights and obligations, while the conclusions regarding the legal status of the property in that proceeding are indirect.[2]

In international practice, an *in rem* claim is filed against illegally imported goods, against products containing harmful substances or with a false brand [3], but especially the *in rem* claim has gained wide applicability within the framework of property confiscation proceedings without a guilty verdict (in other words, *in rem* confiscation or Non- Conviction Based Asset Forfeiture).

The institute of Non-conviction based asset forfeiture dates back to the Anglo-Saxon **(Common Law)** legal system, although it has also been used by countries with a Romano-Germanic legal **(Civilian Law)** system.

In order to effectively implement the fight against corruption, economic crimes and international organized crimes, the institute was first introduced in the USA and Italy, and later spread widely in the United Kingdom, the Netherlands, the Philippines, Australia, Canada and Colombia.[4] According to some experts, the introduction of the institution of confiscation of property without a guilty verdict is practically interpreted as not a substantive, but a procedural change in the matter of the disclosure and seizure of illegally acquired assets.[5]

In rem confiscation proceedings do not proceed with the examination of the material legal claim filed against the defendant, but with the establishment of the legal status of certain property, and enable the confiscation of assets acquired through criminal actions. In other words, the illegality is related to the property, and the acquirer, based on his own interests, must protect and prove his rights and title ownership over the property.

The main advantage of the procedure is that in order to confiscate the property, it is not necessary to bring criminal charges against the owner of the property and have a guilty verdict, therefore, the confiscation can be carried out in a civil procedure. As Justice Stevens pointed out, the use of in rem proceedings against illicitly gained assets seems to have become the innovation of our time.[6]

In the context of the mentioned approach, we consider that in the event that the proof of the property being obtained by legal income lacks, it is still not proven that the property was acquired illegally. In other words, in the event that the link between the criminal activity and the acquisition of assets is not required for confiscation of property, at least the acquisition of property identifying as illegal, remains controversial.

The practice of *in rem* confiscation is not identical in all countries. The procedure

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[1] The peculiarity of an *in personam* claim is not the initiation of proceedings against a person, but the fact that the disputed legal relationship has arisen between persons.

[2] See **George B. Fraser Jr.,** Actions in Rem, 34 Cornell L. Rev. 29, 1948, p. 30.

[3] See U.S. v. 2,116 Boxes of Boned Beef, Weighing Approximately 154,121 Pounds, and 541 Boxes of Offal Weighing Approximately 17,732 Pounds, United States Court of Appeals, 23. 01. 1984.

[4] See Impact Study of Civil Forfeiture, Council of Europe, 2013, Belgrade, p. 16.

[5] See **Arvinder Sanbei**, "European Court on Human Rights jurisprudence and civil recovery of illicitly obtained assets (confiscation in rem)", tehnical paper, 2012, Project on Criminal Assets Recovery in Serbia CAR SERBIA, ECU/CAR-02/2012, p. 4, available at https://rm.coe.int/16806ebc98

[6] See United States v. 92 Buena Vista Ave., 507 U.S., 1993, paras. 111, 121-22, 125.

of lawsuit differs depending on the model that the country has adopted. Thus, as a result of the study of the international experience of proceedings on confiscation of illegally obtained assets, we can distinguish the following four models:[1]

In the first case, confiscation of property is carried out under the conditions of already initiated criminal proceedings, but the further prosecution is impossible due to some respectful circumstances (the offender cannot be brought before a court or convicted due to a lack of evidence or the latter died, enjoys judicial immunity, etc.).

The second model refers to extended confiscation. Confiscation of property is carried out according to a guilty verdict, but the link between the criminal act and the acquisition of assets is not confirmed by the guilty verdict. The property is confiscated if the court finds that the property was obtained through similar unlawful action of the person convicted.

As we can see the confiscation is carried out within the framework of criminal proceedings, whereas in the next two models, the confiscation of property is carried out in civil proceedings.

The third model can be designated as standard civil forfeiture or confiscation, which applies to civil proceedings in which courts conclude that property has been obtained through unlawful conduct without establishing the connection between the criminal activity and the acquisition of assets through criminal proceedings, although an indirect connection with the criminal activity is established. In the event that the claimant presents sufficient grounds about the illegal origin of the property, the property acquirer must prove the legality of its acquisition.

The fourth model refers to confiscation based on **"unexplained wealth"**. This system is applied solely within civil proceedings, where the assets gained by a person do not correspond to his legal income, and an indirect connection with a criminal act is not required. The application of the mentioned model is problematic and has been criticized in practice, because in order to confiscate assets in civil proceedings, it is at least necessary for the court to form a belief that there is a reasonable suspicion that the illegal acquisition of property is an indirect consequence of a crime.

As it can be seen, the unexplained wealth concept is implemented in the legal system of Armenia as well. The Law on "Confiscation of Property of Illegal Origin" of the Republic of Armenia provides for the forfeiture of assets of which legal origin cannot be established. According to the Law, the General Prosecution of RA can bring a claim to the court based on the conclusion about the results of the examination. The property of illegal origin is subject to confiscation, if, according to the appraisal of presented evidence, the court concludes that the market value of such property at the time of bringing an action exceeds 50.000.000 (fifty million) AMD.

The study of the forms of *in rem* claim indicates that the claim for confiscation of property of illegal origin implemented in the legal system of the Republic of Armenia is not the same as the *in rem* claim, but nevertheless it has some features typical of *in rem* claim. In particular:

1. the claim has a monetary nature, as it is aimed at judicial confiscation of property, the acquisition of which is not substantiated by legal income, as well as the amount received from its use or the market value of that property,
2. the request to the court is aimed at determining the legal status of the property in case the illegal origin of the property is established,
3. confiscation proceedings initiated on the basis of a claim are autonomous and relatively independent proceedings, as they can be initiated without the existence of a

[1] See, Eurojust, Report on non-conviction-based confiscation (General Case 751/NMSK - 2012), 02. 04. 2013, pp. 9-10.

guilty verdict on the given case.

By combining the abovementioned characteristics, we conclude that the claim for confiscation of property of illegal origin meets the characteristics of an *In rem* claim, but we believe that it cannot be considered as a classic *in rem* claim, as there are some key differences.

Initially, the classic *in rem* lawsuit[1] is filed when the disputed legal relationship concerns the determination of ownership rights to the property. Moreover, in proceedings initiated on the basis of an *in rem* claim, a defendant is not involved, as there is no dispute, and the substantive claim is directed to the court to establish the legal status of the property. Of course, the abovementioned does not preclude the interested persons' right to be heard during the investigation of the case.

As we can see from conditions prescribed by law for filing a lawsuit, the civil procedure for confiscation of property can be carried out simultaneously with the criminal proceedings, as well as apart from that (Article 5, Part 1 of the Law). However, as a result of analyzing the experience of different countries regarding the grounds for *In rem* confiscation, it is considered an exceptional measure and is used in cases where a person avoids criminal prosecution or due to other respectful circumstances it is not possible to seize the assets in criminal proceedings. Moreover, the historical development of the mentioned institution in the USA also shows that *in rem* proceedings are effective when it is not possible to conduct *in personam* proceedings.[2] At the same time, there can be cases where it is not possible to establish the link between the assets acquired by a person and criminal activities due to insufficient evidence, but even in that case, we believe that the competent authority should not have a reasonable alternative to proceed with the civil procedure with a lower standard of proof instead of criminal proceedings when it is also possible to confirm the direct or indirect connection of criminal activity with the acquisition of assets through criminal prosecution.

The mentioned approach is based on the Article 54, Clause 1, subparagraph "c" of the UN Convention against Corruption, which suggests the following: "the member state in order to provide mutual legal assistance shall Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other similar cases ".[3]

To sum up, the purpose of the seizure of assets in civil proceedings was initially not aimed at converting criminal proceedings into civil proceedings, but examining the issue of illegality of property acquisition in civil proceedings if it is impossible to carry out criminal proceedings due to certain respective reasons.

The most fundamental argument that has been advanced against the constitutionality of civil forfeiture is that many of them purport to use civil process to achieve "criminal law objectives". As it can be seen the law authorizes the state to seize the property belonging to person for violations of the law, but without the special safeguards that the Constitution requires for criminal prosecutions. According to many commentators, courts should not permit this end run around criminal procedure.[4]

However, in the context of national regulations, the investigation of the grounds for filing a lawsuit by the competent authority can be started not only in the case of criminal prosecution or the impossibility of investigating a criminal case, but also in

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[1] See **Ernest Metzger**, 'Actions˝, University of Aberdeen, 1998, Roman Law Resources (www.IusCivile.com), p. 13.

[2] See **Caleb Nelson**, The Constitutionality of Civil Forfeiture, 125 Yale L.J., 2016.

[3] See The United Nations Convention Against Corruption, New York, 2004.

[4] https://core.ac.uk/download/pdf/216739777.pdf

parallel with the implementation of criminal proceedings or without the implementation of proceedings (for example, on the basis of data revealed as a result of operative-investigative measures). Moreover, the reason for starting an investigation is the sufficient grounds to suspect the existence of property of illegal origin, which means that the legal status of the property is directly determined by the civil procedure without referring to the criminal legal qualification of the actions taken by the owner of the property to acquire the property. In other words, neither the impossibility of determining the issue of confiscation of property within the framework of criminal proceedings, nor confirmation of an indirect link between the property and the criminal act is required. It is sufficient to confirm the significant disproportionality of the legal income of the person and the value of the property owned by him.

According to the justifications for the adoption of the draft law, the concept introduced in the legal system of RA was borrowed from the fourth model of asset confiscation, which is unexplained wealth, but we consider that the national model also borrowed elements of the third model of in rem confiscation, because ongoing criminal prosecution is also one of the grounds for starting an investigation to initiate a lawsuit. This means that the indirect connection between the acquisition of property and the illegal act may be established as a result of the examination of the claim.

We emphasize that the study of the countries' practice applying the fourth model also indicates that the confiscation procedure is also based on features borrowed from other models, and the grounds for starting the confiscation procedure are defined clearly enough. As an example, civil confiscation proceedings can be initiated in Bulgaria in the event that a criminal or administrative case has been initiated against a person and there are reasonable suspicions that the person has illegally acquired property.[1]

We believe that in order to effectively regulate the confiscation proceedings in the RA legal system, it is necessary to combine regulations with successful applicability of different models. In some countries, the model of confiscation of property is mixed with some features of in rem confiscation and unexplained wealth. As an example, one of the best practices of civil confiscation is introduced in Italy. As an original manifestation of the first, second and fourth models, it was considered quite successful during comparative analysis.[2] In order to confiscate property under the mentioned model, it is required to prove "the public danger" of a person, on the basis of his regular involvement in criminal activities or the regular circulation of assets resulting from such activities (for example, involvement in mafia). Meanwhile, in order to prove the public danger of a person, it is not necessary to prove the link between criminal actions and the acquisition of property not justified by his legal income. As a result, the European Court of Human Rights considered that it is consistent with the procedural guarantees defined by Article 6 of the European Convention on Human Rights.[3]

However, at a national level, the Law does not systematically regulate the scope of all issues concerning the judicial proceedings, and in the case of regulating the process by the general rules of the Civil Procedure Code, all the peculiarities of the given institution will not be taken into account. In practice, problems may arise when the special rules regulated by the Law cannot be implemented by the courts due to the

[1] See Commission Staff Working Document, Analysis of non-conviction based confiscation measures in the European Union, Brussels, 12.4.2019 SWD (2019), p. 12.
[2] See Commission Staff Working Document, Impact Assessment Accompanying the Proposal for a Regulation on the Mutual Recognition of Freezing and Confiscation Orders, SWD (2016), p. 27.
[3] See M. v. Italy N°12386/86 and Arcuri and three others v. Italy, ECHR, N°54024/99.

lack of appropriate procedural tools, which may lead to the violation of the rights of the persons involved in the proceedings and the international convention guarantees. As a result, there will be a high probability that the European Court of Human Rights renders the decisions against RA.

The forfeiture of assets constitutes interference with the right to peaceful enjoyment of possessions protected by Article 1 of Protocol number 1 to The European Court of Human Rights. The ECHR has stated that in order to be compatible with the European Convention on Human Rights, such measure must be lawful, it must serve a legitimate public interest and it should be proportionate to the aim sought to be realized. [1] In other words, a fair balance must be reached between the demands of the public interest and the requirements of the protection of the individual's fundamental rights, including a right of property.[2]

The question of the constitutionality of the procedure for the confiscation of property of illegal origin and the protection of the fundamental rights of individuals has been addressed by the domestic courts of various countries, as well as by international courts, but the institution operating in RA, along with its regulations, is currently receiving professional discussions and criticism.

Moreover, the Constitutional Court of RA currently is determining the issue of the compliance of the Law with the Constitution of RA, within the framework of which the Constitutional Court of RA referred to "democracy through the law to the European Commission" with the decision No. SDAO-115 in order to obtain an advisory opinion (amicus curiae).[3]

The prevailing view is that civil forfeiture is compatible with property protection and the right to own property contained in human rights law, the right to property, on the basis that the right is a restricted, not absolute right and is capable of being subject to interference only in the conditions provided by law and if such restriction pursues a legitimate aim[4].

Nevertheless, it should be noted that the institute implemented in the legal system of RA has not yet been evaluated in the European Court of Human Rights with the regard of compliance with the conventional guarantees, such as the provisions of the European Convention on Human Rights. From this point of view, the most important prerequisite is effective judicial control over all stages of the process, including the evaluation of the merits of the claim. In other words, the implemented model of the institute is problematic, and the approaches are very diverse. This model, implemented from international experience, has not yet been examined at the scientific level in Armenia, so the institute's complex study is more than up-to-date.

We consider that the claim for confiscation of property of illegal origin, aimed at establishing the legal status of the property, and not the subjective rights and responsibilities of a person, cannot be initiated against a person, because the latter does not fully enjoy the rights and responsibilities arising from the judicial status of the respondent. It is an interested person who has certain claims to that property and has the right to defend his rights in the proceedings. We conclude that the proceedings should be initiated against the property and the person who has certain interests in that property, including the owner, should be involved in the proceedings as a person interested in the outcome of the examination of the claim.

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[1] https://www.echr.coe.int/documents/convention_eng.pdf

[2] See ECtHR, G.I.E.M. S.R.L. and Others v. Italy [GC], nos. 1828/06 and 2 others, 28 June 2018, paras. 292-293.

[3] See the decision of The Constitutional Court of RA N SDAO-115. https://www.concourt.am/decision/decisions/62cc35679ab0f_sdav-115.pdf

[4] See EctHR award, Todorov and Others v. Bulgaria, para. 211.

In practice, problems may arise when the special rules established by the Law cannot be implemented by the Court due to the lack of appropriate procedural tools. As an example, the Law defines the grounds for filing a lawsuit, namely: being notified about the investigation, drafting a conclusion by the competent body on the results of the study, decision by the competent body to file a claim for the confiscation of property of illegal origin. However, the procedure for evaluating those grounds, including the additional grounds for returning the claim, has not been regulated by the Law. Although in practice the mentioned problem can be solved by referring to the general grounds for returning the claim, when the court returns the claim on the basis that it was signed by a person who does not have the authority to sign it. We believe that the prerequisites for filing a claim, including the special regulations for the examination of the grounds for filing a claim, should be provided by the Law. Moreover, the Law does not provide the procedural regulations for the assessment of the basis of the claim, as well as the procedural criteria for the assessment of the justification of the claim.

Based on the abovementioned, we propose considering the proceedings for confiscation of property of illegal origin as a differentiated form of civil proceedings and regulating the examination of the claim in accordance with the above-mentioned peculiarities.

Referring to **the standard of proof** in the proceedings, we should note that in the proceedings initiated on the basis of a classic in personam claim, the plaintiff bears the burden of proving the facts underlying his statements and the negative consequences of not properly performing this duty as well. This standard quietly differs from the burden of proof in civil forfeiture claims. The "beyond reasonable doubt" principle does not apply in the mentioned proceedings, but priority is given to the civil standard of proof of **"the balance of probabilities"**[1], which implies a lower threshold of proof. Under this principle the fact is considered credible if it is more likely to be true rather than not true.

As we can see the Law does not provide special regulations regarding the applicability of the mentioned principle, whereas the Law establishes the presumption of illegal origin of the property, until the legality of the acquisition of the property is proven. In other words, differentiated rules of the burden of proof are applicable in the mentioned proceeding, and the general rules of civil procedure are applicable to the extent that the Law does not provide otherwise.

The execution of the presumption means that the competent authority should prove that the data on the sources of legitimate income do not correspond to the property acquired. Only if these conditions are fulfilled the burden of proof shifts to the owner. The latter may refute the presumption that the property is of illicit origin by producing evidence justifying the acquisition of the property by legitimate income.

We think that if the presumption of illegal origin of the property is applied, the court should be guided by the principle of balance of probabilities in assessing the evidence presented by the person from the point of the legality of the acquisition of the property. Therefore, we consider that the need to establish the mentioned principle and the criteria for legal evaluation of the evidence presented by the parties should be defined by the Law.

To sum up, as a result of the study of anti-corruption legislation, the existing approaches in international conventions, initiatives and documents, as well as the

[1] See An Act Respecting the Forfeiture, Administration and Appropriation of Proceeds and Instruments of Unlawful Activity (Quebec, Canada), Section 4; Prevention of Organised Crime Act (Am) 1998 (South Africa), Sections 50, 52, 54; Proceeds of Crime Act 2002 (Australia), Section 317; Proceeds of Crime Act 2002 (United Kingdom), Section 241(3).

experience of implementation of the institution by different countries, the case law of the European Court of Human Rights, the general conclusions can be drawn.

1. The institute of confiscation of property of illegal origin recently implemented in the legal system of RA is a unique manifestation of the *in rem* claim, but it is quite different from the classic *in rem* claim. Although the claim for the confiscation of property of illegal origin is addressed to the court and refers to establishing the legal status of the property, the confiscation proceedings are initiated against a person, and the latter is involved as a defendant in the case with the procedural consequences derived therefrom.

2. According to the current regulations, the established procedure for examination of claims for the confiscation of property of illegal origin is mostly regulated by the general rules of civil procedure, taking into account the special rules established by the Law. The specifics of the *in rem* claim and the special regulations for the examination of such claims in court do not sufficiently ensure the full application of the differentiated rules for the examination of claims. Therefore, it is crucial to consider the institute of confiscation of property of illegal origin as a differentiated form of civil proceedings and to specifically regulate a myriad of issues such as the procedure for assessing the admissibility of the claim, the basis of the claim, as well as the procedural criteria for evaluating the justification of the claim.

3. It is of key importance to highlight the goals of introducing the origins of the institute of confiscation of property of illegal origin, as a result of which the scope of participants and other procedural issues can be clarified. In the context of the above-mentioned, it is necessary to clarify the grounds for starting an investigation to identify the property of illegal origin, to the extent that reasonable assumptions regarding the illegality of property acquisition should be taken into account.

4. There is a prevailing opinion that the concept implemented in the RA legal system was derived from the fourth model of confiscation, which is unexplained enrichment, but it follows from the study that the mentioned institute also contains elements of the third model (in rem confiscation), as the grounds for starting an investigation to identify the property of illegal origin are also related to the reasonable suspicions of the presence of property of illegal origin in the context of criminal prosecution, on the basis of which the source of the property's origin can be revealed.

5. From the perspective of the effective application of the mentioned institute, the process of proving the illegality of the property should be examined in the comprehensive study. One of the distinguished rules of taking evidence in this proceedings is the presumption of illegal origin of the property, which is a novelty in the RA legal system and has been criticized recently. However, proving that the acquisition of the property was not justified by legal income still does not establish the fact that the property is of illegal origin, since confiscation of the property does not require establishing a link between criminal activity and the acquisition of assets. Therefore, on the basis of balancing public and private interests, it is necessary to establish the criteria of this presumption and the conditions of its practical applicability.

6. The legal standard of the balance of probabilities is commonly used in such proceedings, on the basis of which the court evaluates the presented proofs. The mentioned standard does not have legal regulation, but in case of applying the presumption of illegal origin of the property, it is at least assumed. The application of the mentioned standard during a legal assessment of the facts and proofs submitted by the parties to the proceedings should be regulated by the Law. Hence, the research proposes to regulate the principle of balance of probabilities in order to ensure the equal treatment of the parties in the proceedings.

ГРАЖДАНСКО-ПРОЦЕССУАЛЬНОЕ ПРОЯВЛЕНИЕ IN REM ИСКА В ПРАВОВОЙ СИСТЕМЕ РА

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Недавно внедренное в правовую отечественную систему производство взыскания незаконно приобретенных активов, будучи особым проявлением in rem иска, при обеспечении основных прав и процессуальных гарантий лица может стать незаменимым инструментом для взыскания активов, приобретенных в результате преступной деятельности. Сочетая внутригосударственные регулирования с применяемыми моделями в международной практике относительно взыскания имущества без обвинительного приговора, были выявлены ряд вопросов. В статье рассматриваются особенности проявления иска in rem и его отличие от классического иска in rem. Предлагается производство взыскания незаконно приобретенного имущества урегулировать в качестве дифференцированной формы гражданского судопроизводства, учитывая особенности судопроизводственной формы процесса, что будет способствовать становлению данного института и формированию единой правоприменительной практики.

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Մերի Խաչատրյան
ԵՊՀ քաղաքացիական դատավարության ամբիոնի ասպիրանտ

ՀՀ իրավական համակարգ վերջերս ներդրված ապօրինի ծագում ունեցող գույքի բռնագանձման պահանջը հանդիսանում է In rem (գույքի դեմ) հայցի յուրահատուկ դրսևորում: Մարդու հիմնարար իրավունքների և ազատությունների երաշխավորման դեպքում այն կարող է դառնալ հանցագործության կատարման արդյունքում ուղղակի կամ անուղղակի առաջացած կամ ստացված գույքի բռնագանձման անփոխարինելի գործիք: Ներպետական օրենսդրության մեջ հանդիսանալով իրավական նորույթ՝ ապօրինի ծագում ունեցող գույքի բռնագանձման ինստիտուտը դեռևս ոչ միայն համակողմանիորեն, այլև առանձին հարցերի մասով չի դարձել գիտական հետազոտությունների առարկա և գործնականում չի ստացել ամբողջական կիրառում: Առաջարկվում է ապօրինի ծագում ունեցող գույքի բռնագանձման վարույթը կարգավորել որպես քաղաքացիական դատավարության տարբերակված ձև և առանձնահատուկ կերպով կարգավորել հայցի ընդունելիության, հայցի հիմքի գնահատման ընթացակարգը, ինչպես նաև հայցի հիմնավորվածության գնահատման դատավարական չափանիշները: Հակակոռուպցիոն օրենսդրության ուսումնասիրության արդյունքում աշխատանքում վեր են հանվել միջազգային կոնվենցիաներում և այլ միջազգային փաստաթղթերում առկա մոտեցումները, այնպես էլ առան-

ձին երկրների կողմից ինստիտուտի ներդրման փորձը: Աշխատանքում ներկայացված հիմնախնդիրները և դրանց լուծման վերաբերյալ առաջարկությունները կնպաստեն ինստիտուտի կայացմանը և միասնական իրավակիրառ պրակտիկայի ձևավորմանը:

Բանալի բառեր – *In rem հայց, ապօրինի ծագում ունեցող գույք, չբացատրվող հարստացում, In rem բռնագանձում, գույքի ապօրինի ծագում ունենալու կանխավարկած, հավանականությունների հավասարակշռում:*
Ключевые слова: *in rem иск, незаконно приобретенное имущество, необъяснимое обогащение, взыскание in rem, презумпция незаконного происхождения имущества, уравновешивание вероятностей.*
Key words: *In rem action, property of illicit origin, unexplained wealth, in rem confiscation, a presumption of the illicit origin of the assets, balance of probabilities.*