

## **CRIMINOLOGICAL SIGNIFICANCE AND CHARACTERISTICS OF WAYS OF CRIME IN THE FIELD OF RESIDENTIAL REAL ESTATE IN UKRAINE**

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### **INTRODUCTION**

The process of building a democratic rule of law in Ukrainian society is under the conditions of legal, economic and political reforms that cover all spheres of life. The real estate turnover, which is one of the most important segments of the modern economy, is no exception. The development of housing turnover in Ukraine began after the declaration of independence and took place in the context of transformational transformations of state property in the process of its privatization and privatization. In these circumstances, real estate has acquired the properties of goods and capital<sup>1</sup>. It will be no secret that the processes that take place in this field affect not only the economic but also the social development of society and the state, as this sector of economy closely interacts with other segments of the financial market, namely: capital markets, investment resources, securities and others.

In turn, the process of becoming a residential real estate market is affected by a number of factors, both positive and negative. The latter include criminal encroachments on real estate and rights related to real estate, or the monetary equivalent of its value. Analysis of the criminological situation in the real estate market has alarming symptoms, which are primarily manifested in the rapid criminalization of the real estate market itself, which is a consequence of both the lack of legal certainty of the object of criminal protection and the imperfection of the criminal law itself, which can be considered one of the most effective measures to protect the legal rights of homeowners.

A large number of single crimes and systemic criminal activity form a separate type of crime, which affects the various spheres of society and other types of crime that are generated by it. As a particular system,

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<sup>1</sup> Гриценко О. А., Гриценко Л. В., Дарнопих Г. Ю. Основи економічної теорії : підручник / за заг. ред. О. О. Мамулая. Київ: Юрінком Інтер, 2005. 480 с.

residential real estate crime is divided into two major subsystems: rental housing crime and crime in the case of ownership of residential real estate property in the case of other types of civil law transactions (eg sale and purchase), mine, gifts, etc.).

The criminological characterization of the crime of the means of committing crimes in the sphere of turnover of residential real estate will be made on the basis of 240 investigated sentences in criminal cases (criminal proceedings) during the committing of frauds or claiming the ownership of the residential real estate objects, or the proceeds from their sale, or advance payments, etc., which were approved from 2004 to 2015 on the territory of Ukraine. These materials are freely available on the official website of the Unified State Register of Judgments. During the study of 240 convictions in criminal cases (criminal proceedings), 670 episodes of crimes were identified and 433 persons were convicted. The volumes of the processed material testify to the representativeness of the sample survey. Given that the statistics of the Ministry of Internal Affairs of Ukraine are limited in nature, contain only general indicators of fraud and extortion and, as a consequence, do not provide comprehensive information regarding the criminological characteristics of these crimes, we will continue to use the data obtained from our research.

### **1. Description of the Main Ways of Committing Crimes in the Field of Residential Real Estate**

An important role in the study of crime in the field of turnover of residential real estate is played by the study of the crime. In criminological science, the problem remains one of the least researched, although the method of committing a crime is of great practical importance not only in the investigation of crimes of the specified category, but also during preventive activities.

To clarify the meaning of any concept, it is advisable to first refer to the explanatory dictionary. According to the Ukrainian language dictionary, a crime is recognized as a certain action, technique or technique that enables one to do, accomplish something, achieve something<sup>2</sup>.

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<sup>2</sup> Словник української мови: в 11 тт. / АН УРСР. Інститут мовознавства; за ред. І. К. Білодіда. Київ : Наукова думка, 1970–1980. Т. 9, 1978. С. 578.

Criminologists note that the method of committing a crime is a system of actions for the preparation, commission and concealment of a crime, determined by environmental conditions and psychological qualities of the person associated with the selective use of appropriate means and conditions of the place and time (Yu.V. Gavrilin, M.G. Shurukhnov<sup>3</sup>, G.G. Zuikov<sup>4</sup>, V.V. Tishchenko<sup>5</sup>). We consider this statement to be fully substantiated and consistent with the substantive essence of this phenomenon.

In the science of criminal law, the method of committing a crime is understood to mean a certain order, method, sequence of motions applied by a person during the commission of a crime and which are combined with the selective use of the means of committing it<sup>6</sup>. In this concept distinguish objective and subjective features: objective and substantive conditions under which the crime is committed (object and object of crime, time, place, situation and means of its commission); human mental activity (intellectual, emotional, volitional, evaluative)<sup>7</sup>. The Legal Encyclopedia draws attention to the fact that the method of committing a crime is a mandatory feature of the objective side of the crime, only when it is clearly defined in the law<sup>8</sup>, which is a prerequisite for the proper qualification of the actions of the person who committed the crime.

Investigating how crime is committed in criminological science reveals the motives, goals, life settings, needs of the person committing the crime, and other phenomena that allow us to uncover the problems of determining not only an individual crime but also crime in the sphere of

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<sup>3</sup> Гаврилин Ю. В., Шурухнов Н. Г. Криминалистика: методика расследования отдельных видов преступлений : Курс лекций. Москва: Книжный мир, 2004. С. 52.

<sup>4</sup> Зуиков Г. Г. Криминалистическое учение о способе совершения преступления: дис. докт. юрид. наук: 12.00.09. Москва, 1970. С. 205.

<sup>5</sup> Тищенко В. В. Подготовка преступления как объект криминалистического исследования. *Актуальні проблеми криміналістики* : матеріали міжнар. наук.-практ. конференції, м. Харків, 25–26 верес. 2003 р. Харків : Гриф, 2003. С. 96; Тищенко В. В. Корыстно–насильственные преступления: криминалистический анализ : монография. Одесса: Юрид. літ-ра, 2002. 360 с.

<sup>6</sup> Панов Н. И. Основные проблемы способа совершения преступления в советском уголовном праве : дис. ... доктора юрид. наук. Харьков, 1987. С. 68.

<sup>7</sup> Зейдьяев А. У. Классификация способов совершения преступлений. *Юристъ–правоведъ*. 2006. № 4. С. 94–95.

<sup>8</sup> Юридична енциклопедія: В 6 т. / відп. ред. Ю. С. Шемшученко. Київ: «Укр. енцикл.», 2003. Т. 5: П-С. 736 с.

residential real estate turnover, and, as a consequence, more effectively prevent it.

The way a crime is committed is an element of criminal behavior and is a system of sequential acts of behavior. It should be noted that the method of committing a crime consists of interrelated and interdependent actions aimed directly at the preparation, commission and concealment of the crime. As S.M. Wilt, these acts of behavior – actions, operations, techniques – are combined in a certain hierarchy and subordination as part of purposeful willful activity. The author is of the opinion that in criminal activity, as any, the performer has his own system of generalized ways of actions aimed at achieving the desired result, and the actual way of committing the crime is directly related to the physical and functional capabilities of the person, due in many ways to the very nature of the crime and the external conditions under which it is committed<sup>9</sup>.

The study of criminal cases (criminal proceedings) under Articles 189 and 190 of the Criminal Code of Ukraine showed that the manner of committing crimes in the sphere of residential real estate turnover is repeated. This allowed them to be classified and to determine the typical techniques, means, methods, as well as the procedure for committing crimes and hiding the consequences of its commission. In the future, this will allow the use of the information obtained to develop criminological recommendations for the prevention and prevention of crimes in the field, as discussed in the last section.

As noted earlier, ownership of a residential property is only possible if you acquire the right to property. Based on the provisions of the current Criminal Code of Ukraine, this is possible when committing one of the three offenses provided for in Article 189 (extortion), 190 (fraud) or 192 (causing significant property damage by fraud or abuse of trust in the absence of fraud). However, the hypothesis that in the sphere of residential real estate turnover crimes are committed, which are provided by Article 192 of the Criminal Code of Ukraine, has not been confirmed during the study of the practice of applying this rule. Of course, the acts contemplated in this crime are committed, and the fact that they are not

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<sup>9</sup> Зав'ялов С. М. Спосіб вчинення злочину: сучасні проблеми вивчення та використання у боротьбі зі злочинністю : автореф. дис. канд. юрид. наук: 12.00.09 ; Нац. акад. внутр. справ України. Київ, 2005. 19 с.

recorded in official statistics indicates that their numbers are small or they are hyperlatent, making it impossible to carry out qualitative research. Therefore, it is in the future that the crimes set out in Articles 189 and 190 will be given the highest priority, since they are the main ones according to the classification, ie those aimed at taking possession of the property or the right to property of the victim.

First, let's analyze the ways of committing crimes in the sphere of residential real estate turnover, which are provided for in Article 190 of the Criminal Code of Ukraine. From the case law, we can conclude that fraud can be committed in two separate forms: the seizure of someone else's property or the acquisition of the right to it. The first case is typical when the intent of the criminals is to seize money from the sale of property, etc. without encroaching on the ownership of the property. This is the case when the perpetrators, through fraud, are pushing the victim to sell the property due to him or her under the pretext of buying another at an additional cost and taking possession of the funds, or during the conclusion of the rental agreement. Otherwise, criminals, on the other hand, encourage the victim to transfer their property rights to them. This is possible due to legal ignorance and, in some cases, banal credibility of the victims.

In addition, it should be noted that the possession of the right to property is committed, mostly during the conclusion of different types of contracts: sale, gift, lease, etc. Such crimes are committed either by fraud or abuse of the victim's trust, which by criminal law is inherent in fraud. In addition, as explained in the resolution of the Plenum of the Supreme Court of Ukraine No. 10 of 06.11.2009 "On case law on crimes against property" a mandatory feature of fraud is the voluntary transfer of property or property rights. Deception in such a resolution recognizes the communication to the victim of false information or concealment of certain circumstances, abuse of trust – unfair use of the victim's trust used by the offender in order to give the victim confidence in the benefit or obligation to transfer property or rights to him. A.I. Boicov offers a four-way structure of methods of deception, and all varieties, depending on the situation, can be divided into the following groups:

- 1) deception in relation to the deceiving person or third parties – misleading about the existence, legal status, special properties and qualities of real estate;

2) deception about objects – misleading about their existence, equality, quality, quantity, size, value;

3) fraud in connection with different circumstances and events – if they serve as a basis for the transfer of property to the victim;

4) deception of intent – misleading the victim as to his actions and intentions (promised actions, commitments)<sup>10</sup>.

A study of practice material shows that deception, as a way of seizing property or the right to property in the sphere of residential real estate turnover, can relate to various circumstances in which the perpetrator is misled by the victim. All types of fraud used by offenders can be grouped as follows: 1) deception regarding the status of the subject. For example, when a person who does not have the right to enter into agreements with a residential property sells it; 2) deception regarding the characteristics of a residential property (status, location, presence of registered persons, etc.); 3) deception about actions (for example, when criminals, taking advantage of the legal illiteracy of the victims, enter into a donation contract instead of a lifetime detention agreement); 4) deception about the intent of the perpetrators (when the persons seize the right to a residential real estate subject to the obligation, but which they do not intend to fulfill).

Fraud in residential real estate turnover is characterized by a well-thought out, specific way of committing a crime, since fraud during real estate transactions requires considerable time to prepare related to the search for residential real estate, development of actions, production of counterfeit documents, selection accomplices and the like.

On the basis of the conducted research, we will consider the main ways of seizing someone else's property, by deception or abuse of trust, which are used when committing fraud in the sphere of turnover of residential real estate. In total, 240 sentences were investigated for crimes of the specified category, 82 of them in the field of residential real estate leasing and 158 in the course of concluding other civil contracts. Depending on the realm of fraud in residential real estate turnover, there are two major groups: rent fraud and rent fraud in other civil contracts. First, let's analyze a group of crimes that are committed when all civil contracts, except rent, are concluded. Eight such types can

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<sup>10</sup> Бойцов А. И. Преступления против собственности. Санкт-Петербург : Юрид. центр Пресс, 2002. С. 337–338.

be distinguished on the basis of the acts perpetrated by the perpetrators, as well as on the basis of the situation that influences the choice of the behavior of the perpetrators<sup>11</sup>.

1. In 40 cases, it was found that the perpetrators were forcing the victim to sell the residential property under the pretext of buying a smaller area or in a high-value rural area. In addition, criminals are recommended by members of charities, representatives of real estate companies, and sometimes law enforcement. For the most part, the victims were heavily indebted for utility bills, often abusing alcohol, and quickly agreeing. In addition, victims are constantly brought in food, medicines, alcohol, and other ways of trusting potential victims for the sake of visibility of their rightful intentions. Victims are offered different options for housing that will be purchased for them in the future. The events can then unfold in two directions: the victims themselves enter into contracts for the purchase and sale of residential real estate, and transfer the funds to the perpetrators, or the victims issue a warrant for the perpetrators to sell the property on their behalf. After selling the housing to the victims, the criminals either do not buy any housing for the victims at all, rent the housing for several months, and the victims are informed that it is purchased for them, and they take possession of the money or buy housing, but that does not meet the sanitary requirements. For living, and seize the difference of funds. There are times when victims become aware of the intentions of criminals by the time their residential real estate is sold, such persons are deprived of their liberty by the time the residential real estate is sold.

2. In 31 cases, the crime is characterized by the fact that the perpetrator places an offer to sell the residential property in the media, but in fact has no intention of selling it. For the most part the offender is the owner of the residential property, although there are cases where the perpetrators rent out this home. Under the pretext of high demand for the said object, the offender induces the victim to transfer the funds as confirmation of the intention to purchase it (advance). After taking possession of the money, the undertaking is not fulfilled and the victim is not refunded. In addition, there are cases where the guilty person

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<sup>11</sup> Дикий О.В. Кримінологічні засади вивчення і попередження злочинів у сфері обороту житлової нерухомості в Україні : автореф. дис... канд. юрид. наук: 12.00.08, НУ ОЮА. Одеса, 2015. 20 с.

actually has no rights to sell, for example, residential real estate is secured, etc. It also often happens when people are not shown the apartments for sale, but only the photo, the facade of the house.

3. In 26 cases out of the total, the guilty person is the representative of the home seller (mostly the so-called realtors) when entering into various types of residential real estate contracts, as a rule, these are sales and purchase contracts. There are also cases where a person only impersonates such a representative but is not. The above-mentioned method of committing a crime is similar to method # 2 – the guilty person compels the victim to transfer funds as confirmation of intent to buy it, on the pretext of high demand for the specified object. After receiving the money, it does not return it to its principal, but uses it at its own discretion.

4. In 19 sentences, the manner of committing a crime was the seizure of the property right of the deceased's residential real estate and the legal heirs did not inherit. At the initial stage of committing a crime, the perpetrators forge documents: this may be a will, and both the perpetrators and other persons who are not aware of the criminal intentions act as heirs; purchase and sale contracts, power of attorney, other title documents for residential real estate. As a rule, such documents are certified a few days before the owner's death. The perpetrators then register the ownership of the residential property. In addition, it is not a single fact that criminals go to court to declare such contracts valid, and also present false witnesses in court. The residential property is then sold to others. There are occasional cases where the intent of the perpetrators is not to obtain profit in the form of funds but to actually acquire ownership of the residential real estate for personal use.

5. The following method was typical for 17 crime cases. Persons for possession of the right of ownership of a residential real estate object were stolen from the victim identification documents, as well as legal documents for a residential real estate object. After taking possession of these documents, the perpetrators forge them (for the most part, this is done by pasting a photo of another person, usually one of the members of the group). After falsifying the documents, the criminals enter into a contract of sale and purchase of residential real estate, in addition to presenting themselves as property owners. Wherever criminals complicate this mechanism – they steal documents, forge them, and then issue a power of attorney on behalf of the owner for the right to dispose



of all property to an accomplice of the criminal group, or at all to another person who will not know about the criminal intent. The following property is being sold.

6. In 15 cases, criminals forged identity documents as well as documents proving the ownership of residential real estate by persons who have not been living in their own dwelling for a long time for various reasons (have gone abroad for permanent residence, are serving sentences in prisons etc). After falsifying the documents, the perpetrators enter into a contract for the purchase and sale of residential real estate and are represented by the property owners. As in the methods described above, criminals can complicate this mechanism – they go to court to declare contracts valid (purchase and sale) or to establish the fact of cohabitation. The following property is being realized.

7. In 6 cases, the perpetrators suggested that the victims exchange the residential property, as a rule, with an additional payment and with payment of utility bills (if any). The perpetrators rented another apartment, usually for several months, to realize the criminal intentions, and during the examination, the victims were informed that it would be the subject of the exchange. After taking possession of the victims' property, other housing was not provided to them and apartments occupied by the criminals were sold to other persons.

8. In 4 cases, victims of their physical, psychological or other disabilities (but not disability) were unable to fully appreciate the circumstances of the purchase or donation of the residential property (non-language foreigners, visually impaired persons), the elderly, etc.). In such cases, the victim was deceived about the terms of the contract. For example, instead of a life-long lease agreement, a contract of sale or gift of housing was entered into. In this way, criminals usually have the intention of seizing ownership of a residential property.

In the field of residential real estate turnover, there are also other ways of deceiving victims to take possession of their real estate, but, as a rule, such cases are isolated and their occurrence is conditioned by a particular life situation, and therefore it is not appropriate to describe them.

On the basis of the study N.V. Pavlova cites the classification of ways of taking possession of property or the right to property by the content of fraudulent acts during the alienation of private housing: a) renting a house with subsequent sale to a person who is not its owner;

b) use of a fictitious intermediary firm and a fictitious notary office; c) an offer to exchange a smaller living space for a larger one with a surcharge or refusal to provide the victim with other housing; d) misleading the homeowner about the contents of the agreement; e) appropriation of money without fulfilling the conditions stipulated in the contract of sale and purchase of housing; e) sale of housing to several persons simultaneously; g) the sale of the home without the consent of the family members who own it; h) sale of housing that has legal restrictions or outstanding obligations; i) the sale of housing to an address that does not exist; j) recognition of the transaction as invalid and misappropriation of money; j) receiving money before the documents are processed; l) collection of collateral; m) fraud during the calculations<sup>12</sup>. Most of the provisions of this classification are worth agreeing with, but it is not clear that the author of two separate groups actually one way of committing crimes: k) obtaining money before processing documents, l) collecting collateral and e) appropriating money without fulfilling the conditions stipulated in the contract of purchase and sale of housing.

It is worth noting that when committing fraud in this area, fraud is applied not only to the victims, but also to notaries who give power of attorney, certify different types of contracts, state registrars, employees of law enforcement agencies and other persons who commit legally significant acts. (legal acts and deeds) concerning residential real estate.

In the sphere of turnover of residential real estate it is also possible to seize property or the right to property by the actions provided for in Article 189 of the Criminal Code of Ukraine. Extortion is one of the most dangerous criminal offenses in the field of residential real estate. This crime violates the fundamental constitutional rights of citizens to own, use and dispose of their property, and the demands, combined with causing harm to the victim, in addition to mental as well as physical violence, violate the rights to life and health, honor and dignity, integrity and security, provided for in Article 3 of the Constitution of Ukraine. The composition of the crime provided for by Article 189 of the Criminal Code of Ukraine is formal, since the solicitation is a completed

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<sup>12</sup> Павлова Н. В. Особливості розслідування шахрайства, пов'язаного з відчуженням приватного житла : дис. канд. юрид. наук : 12.00.09, Дніпропетров. Держ. ун-т внутріш. справ. Дніпропетровськ, 2007. С. 56.

crime from the moment of making a claim combined with threats, violence, damage or destruction of property regardless of the achievement of the purpose set by the guilty person, that is, the formal composition of the crime . A total of 7 criminal cases (criminal proceedings) were examined. In our opinion, such a small number of criminal cases indicates not the low level of claims in the specified sphere, but the high latency of crimes of the specified group. As a rule, the victims are those at risk (persons who abuse alcohol, drugs, lonely, elderly, etc.) who are not able to fully protect themselves.

Analyzing sentences in criminal cases (criminal proceedings), we pay attention: fraud was committed, as a rule, during the conclusion of different types of civil contracts, and during the extortion this situation is not traced. In fact, the victims did not intend to commit the crime at the time of the crime, for example, to sell or donate residential real estate, but after the actions of the criminals are forced to commit them.

In contrast to fraud, when claiming residential real estate rights, there are several ways of committing this socially dangerous act. There is, in fact, one way, but that changes depending on the situation that contributes to the crime or vice versa makes it difficult to bring the criminal intent to an end. It can be described as follows: The perpetrators, threatening violence, require the victims to sell proper residential real estate in order to seize the proceeds of its sale. In the event that victims do not agree to fulfill this requirement, they are mostly deprived of their liberty and, through physical and mental violence, issued a power of attorney for the right to dispose of all the property of the victim. Often there are cases when the injured persons die. For the most part, a power of attorney is issued to one of the criminals, sometimes to others who are unaware of the criminal intent of the perpetrators. The residential property is then sold to others.

In relation to physical violence, it was applied in 4 cases (mental violence in all cases). In the vast majority of the cases we investigated, the violence was applied to the owner of the residential property or his close relatives to suppress the victim's resistance. Related crimes in this category were: intentional grievous bodily harm (Article 121 of the Criminal Code of Ukraine), unlawful deprivation of liberty or abduction of a person (Article 146 of the Criminal Code of Ukraine), violation of privacy (Article 162 of the Criminal Code of Ukraine), abduction, misappropriation, extortion of documents, stamps, seals,

misappropriation or abuse of their position or fraud (Article 357 of the Criminal Code of Ukraine), forgery of documents, seals, stamps and letterheads, sale or use of forged documents, seals, stamps (Article 358 of the Criminal Code of Ukraine).

## **2. Typical Ways of Preparing for Crime in Residential Real Estate in Ukraine**

Attention should also be paid to actions taken by individuals in preparation for fraud or solicitation in the field of residential real estate turnover. The data obtained from the study can be summarized as follows. Consider the typical elements of preparing for a crime. In general, preparation for a crime consists of four basic elements: developing an action plan, searching for residential property or potential victims, choosing the means of influence on the victims, selecting accomplices (only with complicity). Other elements are optional and perpetrated by criminals depending on the particular situation and the mode of crime. Based on our research, we were able to distinguish a logical sequence of actions during the preparation for the crime, it can be argued that in all cases, the persons committed the basic actions first, but only after them optional.

Based on the investigated sentences in criminal cases (criminal proceedings), we have come to the conclusion that there are two typical ways of committing fraud:

1. In 48 cases, the perpetrators placed advertisements for renting residential real estate in the media in the long term. After that, they found other housing and rented it for a short time (1-2 days) in order to further sell it to potential victims. In all cases, the perpetrators informed the victims that they were the owners of the property and encouraged the victims to transfer the funds several months in advance. There have been instances where one residential property has been rented out to several different victims. Sometimes criminals forge identity documents and documents proving ownership of residential real estate, as a rule, these are photocopies of these documents.

2. In 34 cases, as a rule, the realtors were the realtors (but there are also cases when such a crime is committed by other persons who are, for example, owners of residential real estate). As in the previous method, the perpetrators placed in the media advertisements for the rental of residential real estate. But the difference between these methods is that,

in fact, after receiving the funds, the victims are unable to move into the home for various reasons (for example, criminals did not hand in the door keys, etc.).

Of course, this classification is conditional, because, as A.I. Boicov fraudulent methods "are not at all amenable to any classification, since deception is as diverse as human ingenuity"<sup>13</sup>.

According to the materials we have investigated, a parallel can be drawn between actions preceding the commission of crimes in the field of rental housing and during the conclusion of other contracts of a civil nature, with one exception – almost never criminals have forged documents certifying the ownership of the object residential real estate (only 2 cases) and only 7 cases (out of 82) forged identification documents. This can be explained by the relative ease of committing this type of fraud in comparison to others in the residential real estate market.

As already noted, in order to realize the intent to seize property or the right to property of victims, as well as to facilitate the commission of major crimes, the perpetrators, as a rule, commit other socially dangerous acts – so-called co-crimes. These delinquent acts, while not aimed at seizing property or the right to property, but do contribute to the commission of major crimes. In some places, it is impossible to carry out criminal plans without committing co-crimes. Based on the study, it can be argued that the following crimes include:

willful grievous bodily harm (Article 121 of the Criminal Code of Ukraine);

unlawful imprisonment or kidnapping (Article 146 of the Criminal Code of Ukraine);

violation of the inviolability of housing (Article 162 of the Criminal Code of Ukraine);

legalization (laundering) of proceeds of crime (Article 209 of the Criminal Code of Ukraine);

abduction, misappropriation, solicitation of documents, stamps, seals, seizure of them by fraud or abuse of office, or damage to them (Article 357 of the Criminal Code of Ukraine);

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<sup>13</sup> Бойцов А. И. Преступления против собственности. Санкт-Петербург : Юрид. центр Пресс, 2002. С. 332.

forgery of documents, seals, stamps and letterheads, sale or use of forged documents, seals, stamps (Article 358 of the Criminal Code of Ukraine);

abuse of power or office (Article 364 of the Criminal Code of Ukraine);

official forgery (Article 366 of the Criminal Code of Ukraine).

Of course, this list is not exhaustive and may depend on each individual crime. The listed warehouses of socially dangerous acts occur in at least 10% of cases during the seizure of property or the right to property in the sphere of turnover of residential real estate, that is, they are typical when committing a major crime. We also consider it inappropriate to conduct a criminal characterization of each of these crimes, since they do not have a specific nature, and in the scientific literature there is a fairly large number of works devoted to each of them individually<sup>14</sup>.

The choice of the method of committing a crime depends on a significant number of different factors: the moral and value orientation of the offender, his legal knowledge in the field of turnover of residential real estate, the identity of the victim and his behavior, before, during and after committing the crime, the presence of conditions conducive to the commission of the crime etc.

Investigation of ways of committing crimes in the sphere of residential real estate turnover is necessary for the development of crime prevention measures in the sphere of residential real estate turnover. For example, by providing general information to the public on the ways of entering into civil contracts in the sphere of residential real estate turnover, the most common ways of committing crimes in the said sphere, the procedure of applying to law enforcement agencies for protection, responsibility for violation of the law, ways of ensuring compliance with obligations. As well as the actions of a potential victim to prevent or stop committing a crime, it can reduce the level of victimization of potential victims of crime. Such information should be provided through the media and the Internet, it aims not only to direct the behavior of citizens in the legal channel, but also to promote

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<sup>14</sup> Дикий О. В. Кримінологічна характеристика особистості злочинця в сфері обороту житлової нерухомості. *Актуальні проблеми держави і права : зб. наук. пр.* 2013. Вип. 70. С. 346–355.

morality, to clarify the content of the rules of the current legislation. In addition, the social status of potential victims and the intended audience should be taken into account. That is, the content of such information should be as close as possible to the interests of the persons to whom it is addressed. The information provided should not be abstract, but specific, with real life examples. In addition, you should describe the procedure to be taken to avoid becoming a victim of crime, or to act when a crime has already been committed. Such information should be contained, for example, in memos, manuals, articles in the media, as well as on official websites of state institutions: the Ministry of Internal Affairs, the Prosecutor General's Office, the State Registration Service of Ukraine, etc.

## **CONCLUSIONS**

Based on the study of the Criminal Code of Ukraine and the practice of law enforcement, it was found that crimes in the sphere of turnover of residential real estate are committed in the forms provided for in Articles 189 (extortion) and 190 (fraud).

Fraud can be committed in two separate forms: seizing or acquiring someone else's property. The first case is typical when the intent of the perpetrators is to seize money from the sale of property without encroaching on the ownership of the property. In the second case, the perpetrators, on the other hand, encourage the victim to give them property rights. The possession of the right to property is done mainly during the conclusion of various types of contracts: sale, gift, lease, etc.

Unlike fraud, the victims did not intend to, for example, sell or donate residential real estate, but were forced to do so when committing ownership of residential real estate.

The crimes in the sphere of residential real estate turnover are characterized by a pre-conceived, specific way of committing the crime, since it requires considerable time for preparation related to the search for residential real estate, development of actions, production of counterfeit documents, selection of accomplices, etc.

On the basis of the actions perpetrated by the perpetrators, as well as on the basis of the situation affecting the choice of the mode of behavior of criminals, there are eight ways of committing crimes during the conclusion of different types of civil contracts (except rent) and two ways of committing crimes in the sphere rental of residential real estate.

It is noted that in the sphere of turnover of residential real estate there are also other ways of deceiving the victims for taking possession of their real estate, but, as a rule, such cases are isolated and their occurrence is conditioned by a specific living situation.

While committing fraud, deception applies not only to victims, but also to notaries who provide power of attorney, certify various treaties, state registrars, law enforcement officials, and other persons who commit legally significant actions (legal acts and acts) regarding residential real estate.

Unlike fraud, there are several ways of committing this socially dangerous act when claiming residential property rights. There is, in fact, one way, but that changes depending on the situation that contributes to the crime or vice versa makes it difficult to bring the criminal intent to an end.

Attention is drawn to actions taken by individuals in preparation for fraud or solicitation of residential real estate. Typical elements of preparation for crime are considered. In general, preparation for a crime consists of four basic elements: developing an action plan, searching for residential property or potential victims, choosing the means of influence on the victims, selecting accomplices (only with complicity). Other elements are optional and perpetrated by criminals depending on the particular situation and the mode of crime. Based on our research, we were able to distinguish a logical sequence of actions to prepare for the crime, we can only say that in all cases, the persons committed the basic actions first, and only after them optional.

In order to carry out the intent to seize property or the right to property of the victims, as well as to facilitate the commission of major crimes, the perpetrators, as a rule, commit other socially dangerous acts – the so-called related crimes. These delinquent acts, while not aimed at seizing property or the right to property, but do contribute to the commission of major crimes. In some places, it is impossible to carry out criminal plans without committing co-crimes.

The choice of the method of committing a crime depends on a significant number of different factors: the moral and value orientation of the offender, his legal knowledge in the field of turnover of residential real estate, the identity of the victim and his behavior, before, during and after committing the crime, the presence of conditions conducive to the commission of the crime etc.



## **SUMMARY**

The article is devoted to the characteristics of the typical means of committing frauds in the sphere of the turnover of housing estate. The research is provided with arguments, that on the bases of actions, which are committed by guilty persons, and on the grounds of situations, which influence on choice of the way of behavior of offenders, it is possible to divide eight means of the committing crimes while concluding different types of civil law contracts (except rent) and two means of the committing crimes in the sphere of the rent of housing estate. Noted that there are another means of fraud in the sphere of the turnover of housing estate of victims with an aim to possess their real estate, but as a rule, such cases are single, and their occurrence are based on the particular life situation.

Attention is drawn to the actions, which are performed by persons while preparing to the commitment of fraud in the sphere of the turnover of housing estate. The typical elements of preparation for the commitment of crime have been analyzed. In general, preparation for crime consists of four main elements: elaboration of an action plan, search for objects of housing estate or potential victims, choice of means of influence on victims and choice of accomplices (only in case of complicity).

Other elements are facultative and are committed by offenders depending on the particular situation and mean of commitment of crime. On the grounds of our research, there was no possibility to establish certain logical order of actions while preparing for commitment of crime, it is possible only to state, that in all cases, individuals firstly committed the main actions, and only after, the facultative ones.

## **REFERENCES**

1. Бойцов А. И. Преступления против собственности. Санкт-Петербург : Юрид. центр Пресс, 2002. 773 с.
2. Гаврилин Ю. В., Шурухнов Н. Г. Криминалистика: методика расследования отдельных видов преступлений : Курс лекций. Москва: Книжный мир, 2004. С. 52.
3. Гриценко О. А., Гриценко Л. В., Дарнопих Г. Ю. Основи економічної теорії : підручник / за заг. ред. О. О. Мамулая. Київ: Юрінком Інтер, 2005. 480 с.
4. Дикий О.В. Кримінологічні засади вивчення і попередження злочинів у сфері обороту житлової нерухомості в Україні : автореф. дис... канд. юрид. наук: 12.00.08, НУ ОЮА . Одеса, 2015. 20 с.

5. Дикий О. В. Кримінологічна характеристика особистості злочинця в сфері обороту житлової нерухомості. *Актуальні проблеми держави і права* : зб. наук. пр. 2013. Вип. 70. С. 346–355.

6. Зав'ялов С. М. Спосіб вчинення злочину: сучасні проблеми вивчення та використання у боротьбі зі злочинністю: автореф. дис. канд. юрид. наук: 12.00.09 ; Нац. акад. внутр. справ України. Київ, 2005. 19 с.

7. Зейдляєв А. У. Классификация способов совершения преступлений. *Юристъ–правоведъ*. 2006. № 4. С. 94–95.

8. Зуйков Г. Г. Криминалистическое учение о способе совершения преступления: дис. докт. юрид. наук: 12.00.09. Москва, 1970. С. 205.

9. Павлова Н. В. Особливості розслідування шахрайства, пов'язаного з відчуженням приватного житла: дис. канд. юрид. : 12.00.09 ; Дніпропетров. Держ. Ун-т внутріш. справ. Дніпропетровськ, 2007. 224 с.

10. Панов Н. И. Основные проблемы способа совершения преступления в советском уголовном праве : дис. ... доктора юрид. наук. Харьков, 1987. 514 с.

11. Словник української мови: в 11 т. / АН УРСР. Інститут мовознавства; за ред. І. К. Білодіда. Київ : Наукова думка, 1970–1980. Т. 9, 1978. 916 с.

12. Тищенко В. В. Корыстно-насильственные преступления: криминалистический анализ : монографія. Одесса: Юрид. літ-ра, 2002. 360 с.

13. Тищенко В. В. Подготовка преступления как объект криминалистического исследования. *Актуальні проблеми криміналістики* : матеріали міжнар. наук.-практ. конференції, м. Харків, 25-26 верес. 2003 р. Харків : Гриф, 2003. С. 94–96.

14. Юридична енциклопедія: В 6 т. / відп. ред. Ю. С. Шемшученко. Київ: «Укр. енцикл.», 2003. Т. 5: П-С. 736 с.

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