

ECONOMIC CRIME IN THE FIELD OF REAL ESTATE

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Abstract. The scientific article is devoted to a comprehensive study of criminal law issues of economic crime in the field of real estate. The research paper examines a range of theoretical and practical issues of economic crime prevention and substantiates a number of provisions and conclusions that are new in conceptual terms and are important for legal science and law enforcement practice. The article proves that each state has a system of measures that protect each individual and society as a whole from offenders and restore justice. Insufficient research into the problems of economic crime and the validity of measures to prevent it has an extremely negative impact on the economic sphere of the state. The urgency of the problem is also growing due to the long-overdue need to improve the legal acts regulating the prevention of economic crime. A study of the state and trends of economic crimes has shown a sharp increase in their number under martial law, especially serious crimes. The article establishes that a significant part of economic crime is latent crime, the main reasons for which are the reluctance of the victims (mostly due to circumstances beyond their control) and, in most cases, the inability to report a crime committed against them, mainly in the temporarily occupied territories of Ukraine. The authors studies and characterises two main levels of prevention of economic crime: general social and special criminological.

Keywords: crime prevention, economic crime, real estate, fraud, crime prevention measures.

JEL Classification: K20, R30

1. Introduction

Today, the main problem is the shadowing and criminalisation of the real estate industry, because along with positive market changes, the development of construction in Ukraine has significant negative trends, and therefore economic crime in the real estate sector is regular and occurs at all stages of the technological cycle.

According to the statistics of the Unified Crime Report of the General Prosecutor's Office, the number of offences committed in the real estate sector has a stable tendency to decrease in terms of their detection and prosecution. And if one considers that the following figures are very relative, since white-collar crime in the property sector has a high degree of latency and most cases remain unresolved, it becomes clear how much bigger the problem is.

In 2020, 1,312 economic offences in real estate and construction were registered, of which 143 persons were served with notices of suspicion and only

68 criminal proceedings were referred to court in accordance with Article 283(2) and (3) of the Criminal Procedure Code of Ukraine. In 2021, 1,356 offences in the field of real estate and construction were registered, of which 122 persons were served with notices of suspicion and 81 criminal proceedings were referred to court in accordance with Article 283(2) and (3) of the Criminal Procedure Code of Ukraine. In 2022, 798 economic offences in the field of real estate and construction were registered, of which 118 people were notified of suspicion and only 68 criminal proceedings were referred to court in accordance with Article 283(2) and (3) of the Criminal Procedure Code of Ukraine (Dmytrenko, 2020).

In 9 months of 2023, 174292 crimes against property were registered, which is 34.45% of the total number of registered crimes (453231). The number of frauds among them is 80786 crimes, the number of real estate frauds is 1137 offences. The number of proceedings registered on the fact of fraud, in which

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a person was notified of suspicion, is 17.85% of the total number of such registered facts. While the number of proceedings sent to court with an indictment is 13.36% of the total number of registered real estate fraud cases. This data supports the view that law enforcement agencies have difficulty identifying the person or persons who have committed real estate fraud.

Given the scope and scale of construction work, the number of employees involved in this process, the turnover of a significant amount of physical assets (equipment, materials, tools, components, etc.) and significant amounts of cash in construction, it is quite logical that the construction industry is becoming increasingly vulnerable to criminal attacks on property. At the same time, the lack of effectiveness of law enforcement agencies in combating property crime in the real estate sector, the lack of effective methods of detection and investigation, including scientifically sound and practically tested methods of prevention of this category of socially dangerous acts, has led to a significant complication of the crime situation in this area. This requires further targeted research aimed at the development and implementation of a system of measures to prevent criminal offences against property in the field of real estate in the practical activities of law enforcement bodies (Shkuta, 2022).

2. Literature Review

The present study of scientific literature on economic crimes committed in the real estate sector corroborates the hypothesis that this field of research will retain its relevance in the future. In light of the ongoing evolution and refinement of criminal methods by perpetrators, it is imperative to maintain a vigilant and proactive approach to prevent and halt criminal activities within the scope of this study. Consequently, the prevention of economic crime in the real estate sector has become a focal point of attention and investigation for legal experts in the fields of criminal law, criminology, and criminal executive law, both domestic and international.

The theoretical basis for the study of the general principles, conditions and grounds of criminal liability for economic crimes in the sphere of real estate, types and amounts of punishment for their commission, ways and means of combating economic crimes in the sphere of real estate are the scientific works of domestic and foreign scientists, such as Bazhanov M. I., Baulin Y. V., Borisov V. I., Dudorov O. O., Gorokh O. P., Gutorova N. O., Kozachenko O. V., Konopelsky V. Y., Korzhansky M. Y., Lashchuk E. V., Matyshevskyi P. S., Merkulova V. O., Navrotskiy V. O., Pysmenskiy E. O., Ponomarenko Y. A.,

Ryabchynska O. P., Serdiuk P. P., Stashys V. V., Tatsii V. Y., Khavroniuk M. I. and others.

However, it should be noted that these and other studies deal mainly with fraud in the sphere of construction and privatisation of housing in Ukraine and are of an applied nature. These works do not cover all methods of prevention of these crimes, do not develop methods of reducing the latency of this category of crimes, and do not make proposals for improvement of the provision establishing punishment for fraud in the sphere of real estate. In particular, the authors did not carry out a comparative criminological analysis and did not study foreign practices. Most of them explain the causes of real estate crime in terms of the poor macroeconomic situation in the country, social stratification, low incomes, the lack of a state role in solving the housing problem, low rates of housing construction, privatisation and the lack of a system for allocating housing.

Notwithstanding the acute urgency of the issue, there is currently no comprehensive criminological study devoted to the specific challenges of preventing and detecting economic crime in the context of real estate, which offenders "disguise" as civil legal relations. It is similarly important to provide scientific justification for the elimination of legal conflicts, discrepancies and contradictions in legal acts, the alignment of the legal framework with generally accepted international standards in the field of regulatory regulation of the activities of legal entities and the consolidation of their rights and obligations through legislation, with the aim of reducing the possibility of committing such offences.

The foregoing indicates the need for a theoretical study of the peculiarities of qualification and criminal liability for economic crimes in the real estate sector in the current context of development of the criminal law theory and law application in Ukraine. Therefore, a comprehensive analysis of crimes encroaching on legal relations in the field of real estate is necessary and relevant at the methodological level.

3. Materials and Methods

Given the peculiarities of the theoretical and methodological foundations of criminal liability for encroachment on legal relations in the field of real estate, the study applies a wide methodological spectrum, namely, the general scientific methodology which includes historical, structural, systemic, functional methods and relevant logical techniques: analysis, synthesis, induction, deduction. The authors also examine the practice of application of legal provisions governing legal relations in the field of real estate, the way from the creation of rules to their practical application.

4. Results and Discussion

Currently, the main problem is the shadowing and criminalisation of the real estate industry, as along with positive market changes, the development of construction in Ukraine has significant negative trends. Crimes and abuses in the real estate sector are regular and occur at all stages of the technological cycle. One of the manifestations of criminal deformation of investment and construction relations is fraud in mortgage lending (Shkuta, 2022).

In light of the considerable scale and magnitude of construction projects, the vast number of personnel involved, the high turnover of material assets (equipment, materials, tools, components, etc.), and the substantial financial investments in construction, it is not surprising that the construction industry is becoming increasingly vulnerable to criminal attacks on property. Concurrently, the inadequacy of the measures implemented by law enforcement agencies to combat criminal offences against property in the real estate sector, the absence of efficacious methods of detection and investigation, including scientifically sound and practically tested methods of preventing this category of socially dangerous acts, has resulted in a notable exacerbation of the crime situation in this area. This requires further targeted research to develop and implement a system of measures to prevent criminal offences against property in the field of real estate, integrating these measures into the practical activities of law enforcement agencies (Rejman, 1994).

In the view of the domestic criminologist A. F. Zelinsky, crime prevention is "a system of measures taken by society to curb the growth of crime and, if possible, reduce its actual level by eliminating and neutralising its causes and conditions that contribute to it (prevention), as well as by preventing and suppressing certain specific crimes". Conversely, another Ukrainian scholar, V. V. Holina, posits that crime prevention is a set of measures taken by entities authorised by law to neutralise, block and limit the causes and conditions that determine criminal behaviour (Dmytrenko, 2021).

Prevention is the activity of the state and society aimed at maintaining the lowest possible crime rate by eliminating the causes and conditions that give rise to criminal behaviour, as well as preventing and suppressing specific criminal acts (Gross, 2009).

At the present stage of state-building in Ukraine, considerable public attention is being paid to issues related to the crime situation in the country, the state of the fight against economic crime, the prevention of the criminalisation of society and the neutralisation of negative trends in this process. First of all, it is about extraordinary problems directly related to the national security of Ukraine, the safety of its citizens, the protection of constitutional

rights and freedoms, law and order in the country. In this context, the problem of preventive activities is particularly acute, since today it is complex and controversial in its content, ambiguous in its consequences due to the processes of organisational reform and radical changes in social relations. Therefore, ensuring internal stability, law and order and legality in the system and its functioning mechanism has become crucial, as this is the basis of national security (Shkuta, 2022).

Today, the issue of the prerequisites for preventing economic crime is more relevant than ever, as Ukraine is de facto at war with Russia.

When characterising and studying economic crime, depending on the hierarchy of its causes and conditions, two main levels of prevention can be distinguished theoretically and practically: general social and special criminological (Dmytrenko, 2020).

General social measures to prevent economic crime in the field of real estate are the primary basis of economic policy objectives in this area, which are implemented through a system of political, economic, social, ideological and, above all, organisational measures aimed at solving existing problems.

According to O. O. Shkuta, these measures do not have a special purpose in the fight against crime and prevention of criminal offences. However, they have an important criminological aspect, becoming the basis and platform for special prevention, as their focus on solving Ukraine's problems creates conditions for reducing the level of such crimes (Shkuta, 2022).

The general social prevention of economic crime is manifested in a system of economic, political, ideological and organisational measures aimed at developing the economy, improving the standard of living of citizens and thus solving the problem of eradicating crime.

These measures do not have the specific objective of combating economic crime; however, they do have a significant criminological aspect. They serve as the foundation and platform for targeted criminal prevention strategies. By addressing the challenges currently facing Ukraine, these measures create an environment conducive to reducing the prevalence of criminal offenses.

Implementation of general social measures to prevent economic crime is a priority task of the Government and the Ministry of Economy of Ukraine and is primarily related to the implementation of the provisions of the new Ukrainian legislation in this area.

The implementation of general social prevention strategies should be regarded as a pivotal approach to addressing criminal activities. This approach aims to achieve genuine social justice in the distribution of material and spiritual resources among all members of society, while eliminating all forms of exploitation and social and economic inequality. Similarly, tactical

measures should be specifically designed to eliminate the risk factors associated with certain types of criminal behaviour (Arifkhodzhaieva, 2022).

It is worth supporting O. Shkuta's position that the following components should be taken into account when developing a modern model of economic crime prevention:

- Type of criminal offence committed (from minor to serious and especially serious);
- classification of crimes based on historical, legal, financial, economic, political, ideological, moral, medical and socio-psychological criteria;
- the type of damage (direct or indirect) caused by a special actor not only to the victim, but also to the state and society as a whole;
- amounts of payments to victims of criminal offences based on applications;
- the amount of payments for compensation for non-pecuniary damage to persons who have been unlawfully prosecuted under the decisions of the European Court of Human Rights (Shkuta, 2022).

At the same time, it should be noted that in order to solve the problem of preventing economic crime, it is necessary to identify specific ways to fulfil the tasks set by the state, so understanding the causes of such crime and the ability of society to prevent it is a key link in the formation of the state's criminological policy to counter this social evil.

The specific criminological prevention of economic criminal offences is oriented towards the identification and attenuation or eradication of the factors that precipitate the genesis of criminality in general, as well as its discrete forms and categories of criminal offences, and individual criminal offences. A significant element of the special criminological prevention of criminal offences in the economic sphere is the formulation and implementation of scientific programmes designed to examine the risk factors that influence the behaviour of individuals who deviate from the prevailing norms of conduct (Shkuta, 2020).

Specialised criminological prevention is closely related to general social prevention of economic crime, but, unlike general social prevention, it has a direct purpose and is aimed at identifying and eliminating (blocking, neutralising) the determinants of crime, which is its profile and main feature. At the same time, special criminological prevention includes both prevention of planned and prepared criminal offences and suppression of criminal offences that have already been initiated.

Special criminological prevention of economic crime should be understood as a social process based on the use of special methods and techniques, knowledge and skills of regulating social relations solely to eliminate their negative aspects that may lead to the commission of criminal offences, i.e., to ensure criminal law requirements (Arkusha, 2019).

In general, the following links between general social and special criminological prevention measures can be distinguished. Firstly, general social prevention of economic crime can be considered an independent subsystem of an integrated system of criminal offence prevention. First and foremost, it is essential to ascertain whether the potential of general measures has been fully exploited or whether their further development and intensification in this domain will prove ineffective. General measures form the foundation for other methods of influence and facilitate their implementation. When formulating a decision, particularly regarding the implementation of special criminological measures, it is of paramount importance to consider the intensity and types of general measures applied to a specific object (Shkuta, 2022).

In general, the following links between general social and special criminological prevention measures can be distinguished. Firstly, general social prevention of criminal offences can be considered an independent subsystem of the integrated system of criminal offence prevention. Secondly, it is necessary to attempt to utilise the possibilities of general measures or to ensure that their development and intensification in this area will not yield the desired result. Thirdly, general measures serve as the foundation for other methods of influence, creating conditions for their implementation.

Specialised criminological prevention of economic crime is aimed at identifying and eliminating or weakening the factors that determine it, certain types and groups of criminal offences, causes and conditions of specific criminal offences. An important aspect of the special prevention of economic crime is the development and implementation of scientific programmes for its prevention.

In order for special criminological measures to prevent economic crime to be as effective as possible, before planning them, it is necessary not only to identify the determinants of this category of criminal offences, but also to study in detail the person who is prone to commit them.

The main special criminological measures to prevent economic crime include the following:

- Modernisation and harmonisation of legislation with economic and political conditions;
- creation of a transparent and open recruitment procedure, especially for senior positions;
- timely internal investigations of economic crimes and bringing the perpetrators to justice;
- development of comprehensive criminological programmes aimed at preventing economic crime;
- creation of appropriate working and safety conditions for persons whose functional responsibilities include combating economic crime (Shkuta, 2020).

Thus, special criminological measures to prevent economic crime can be identified and implemented only taking into account the scope and effectiveness of general measures. When making a decision, in particular, on special criminological measures, it is necessary to take into account information on the intensity and types of general measures applied to a particular object of criminological research.

5. Conclusions

The dissertation provides a comprehensive study of criminal law issues of economic crime in the field of real estate, which resulted in clarification of a set of theoretical and practical issues of economic crime prevention and substantiation of a number of provisions and conclusions which are new in conceptual terms and are of great importance for legal science and law enforcement agencies.

It is proved that each state has a system of measures that protect each individual and society as a whole from lawbreakers and restore justice.

Insufficient research into the problems of economic crime and the validity of measures to

prevent it has an extremely negative impact on the economic sphere of the state. The urgency of the problem is also growing due to the long-overdue need to improve the legal acts regulating the prevention of economic crime.

The study of the state and trends of economic crimes showed a sharp increase in them during martial law, especially serious crimes.

It has been established that a significant part of economic crime is latent crime, the main reasons for which are the reluctance of the victims (mostly due to circumstances beyond their control) and, in most cases, the inability to report a crime committed against them, mainly in the temporarily occupied territories of Ukraine.

The article investigates and characterises two main levels of prevention of economic crime: general social and special criminological.

The publication provides a thorough description of economic crime prevention measures and identifies two main levels of prevention: general social and special criminological, which include: organisation and conduct of comprehensive systemic research aimed at ensuring the prevention of economic crime.

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