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Universidad del Zulia
Facultad Experimental de Ciencias
Departamento de Ciencias Humanas
Maracaibo - Venezuela

Corruption crimes' forensic prevention in the sphere of housing and public utilities

Gyunay Aladdinovna Alieva

Plekhanov Russian University of Economics - 36-Stremyanniy per., Moscow, Russian Federation, 117997

qwertylevel@mail.ru

Ekaterina Nikolaevna Arestova

Plekhanov Russian University of Economics - 36-Stremyanniy per., Moscow, Russian Federation, 117997

ekaterina-arestova@yandex.ru

Andrey Vladimirovich Borbat

Plekhanov Russian University of Economics - 36-Stremyanniy per., Moscow, Russian Federation, 117997

andbor-61@mail.ru

Igor Alekseevich Burmistrov

Russian State Social University – 4 Vilgelm Pik Str., Bld. 1, Moscow, Russian Federation, 129226

burmistrovia@rgsu.net

Larisa Mikhailovna Zeynalova

The Russian Orthodox Institute of Saint John the Divine - 11a-Pereulok Chernyshevskogo, Bld. 1, Moscow, 107076

larisaz.69@mail.ru

Elena Anatolevna Mironova

Russian State Social University – 4 Vilgelm Pik Str., Bld. 1, Moscow, Russian Federation, 129226

MironovaEIA@rgsu.net

Tatyana Nikolaevna Sinyukova

Russian State Social University – 4 Vilgelm Pik Str., Bld. 1, Moscow, Russian Federation, 129226

tati1385@mail.ru

Abstract

This article is aimed to comprehensive analysis of the issues of preventive nature arising in the investigation practice of corruption crimes in the housing and communal services sector. Statistical, comparative-legal and sociological methods are used to identify the existing problems in the Russian Federation for suppressing corruption-related crimes. As a Conclusion, the authors suggest to create specialized investigative units at the investigation departments at the regional levels throughout the country, aimed directly at investigating crimes in the sphere of housing and public utilities including corruption. The materials of the article can be useful both for law enforcers and for students.

Key words: forensic, investigation, crime, corruption, prevention.

Prevención forense de delitos de corrupción en el ámbito de la vivienda y los servicios públicos

Resumen

El objetivo de este artículo es realizar un análisis exhaustivo de las cuestiones de naturaleza preventiva que surgen en la práctica de investigación de los delitos de corrupción en el sector de la vivienda y los servicios comunales. Los métodos estadísticos, jurídicos comparativos y sociológicos se utilizan para identificar los problemas existentes en la Federación de Rusia para reprimir los delitos relacionados con la corrupción. Como conclusión, los autores sugieren crear unidades de investigación especializadas en los departamentos de investigación a nivel regional en todo el país, dirigidas directamente a la investigación de delitos en el ámbito de la vivienda y los servicios públicos, incluida la corrupción. Los materiales del artículo pueden ser útiles tanto para los agentes de la ley como para los estudiantes.

Palabras clave: forense, investigación, crimen, corrupción, prevención.

1. INTRODUCTION

Contemporary forensic science has not determined yet a place for criminalistics prevention in its system. Despite the urgent need for research and development of theoretical foundations, as well as in the practice of law enforcement, issues related to the prevention (suppression) of crimes in domestic forensic science are insufficiently developed.

The study of scientific and methodological literature, criminal law and doctoral and candidate dissertations on the whole showed that criminalistics prevention began to be paid much less attention than it was done in previous years.

Our point of view is shared by Makhtaev (2001), who states that there is no scientific work for the time being, developed by doctors of legal sciences, devoted to questions of criminalistics prevention of crimes. The author notes that the situation is much better with respect to the expert prevention of crimes. This question is considered by Fridman & Aliyev (1971) in their doctoral dissertations.

This does not mean that the law enforcer and the public have ceased to need it. The reality and the criminal situation in the Russian Federation suggest the opposite. Here it is necessary to raise the issue of law enforcement officers who are now following more not for disclosure but for statistics and are more likely to work on the result of "throwing the case to court."

Nevertheless, turning to the recent past, one can see that during the Soviet period of the home state and law development, the development of the science-based bases for the prevention of crime by the means and methods of criminology was actively pursued by Belkin (1963), Zuikov et al. (1967), Zudin (1963), Fridman & Aliyev (1971), Yablokov (1985), and many other scientists.

During the Soviet period, the All-Russia Research Institute of Criminalistics of the USSR Prosecutor's Office was engaged in the generalization of investigative and expert practice and the development on its basis of scientific and technical methods and means of combating crimes. In the future, its activities were aimed at investigating the causes of crime and creating measures to prevent them; solving the problems of strengthening the rule of law and order; at present, it has been transformed into the Academy of the Prosecutor General's Office of the Russian Federation, which includes the Research Institute for Problems of Strengthening Law and Order (Suvorov, 2009).

Turning to the work of experts in the field of criminalistics we note that the system of forensic science provides the development of tasks for the use of forensic tools to prevent delinquency.

In their turn, Zuikov et al. (1967) wrote that forensic methods, methods and tools aimed at preventing and uncovering crimes form a single whole. This is expressed in the creation of funds that prevent the commission of offenses and the intentions of the offender, and the use of means to identify the perpetrators and the disclosure of the crime. The author does not consider it necessary to distinguish the criminalistics prevention of crimes in the form of an independent section of criminalistics. Instead, they are encouraged to systematize the ideas, views and doctrines that exist in forensic science, as well as ways of thinking in studying the problems of crime prevention, namely

the development of a warning theory, a system of ideas aimed at understanding the laws and transformations of the phenomenon being studied.

One can agree with this point of view of the author, since we believe that there is no need to distinguish criminalistics prevention from the general structure of criminal science. It is proposed to include forensic prevention in the forensic section concerning the forensic characterization of crimes and to consider it in conjunction with the elements of the criminalistics characterization of crimes.

Defining the concept of criminalistics prevention (warning, suppression, prediction), we note that in the opinion of individual scientists, forensic prevention is the ability to foresee the development of forensic science, to correct all types of practical criminal activity (methods and means) in the anticipated conditions of change and the emergence of new categories of crimes based on the application of the theory of prognostication and analysis of the actions of objective laws of the formation of criminalistics significant processes and phenomena.

We assume that the correct definition is expressed by Fridman & Aliyev (1971) defining the criminalistics doctrine of prevention as detection, evaluation, research and use in order to prevent the emergence of circumstances that contribute to the commission of offenses.

In their turn, Mashoshin and Karpov (2008) noted that forensic forecasting helps to specify the permissible modifications of ways of committing crimes, the subject of criminal encroachment and the behavior of the subject of offenses. The idea proposed by the authors is necessary for the development of practical and theoretical recommendations for the prevention, detection and investigation of crimes.

There are a number of opinions that are not similar among themselves on a number of factors in the part concerning the definition of the concept of "criminalistics prevention" and its place in forensic science. Without delving into the discussion, we will denote that traditionally the term "criminalistics prevention (prevention, suppression, prediction) of crimes" is understood as a system of actions taken by law enforcement officers aimed at identifying the conditions and causes of crimes, as well as developing recommendations for the prevention of criminal activities.

It should be noted that theoretically, the possibility of foresight lies in the person's ability to adequately reflect the current reality and to build perspective models of the future on this basis. Practically, this possibility is reflected in the compilation of forecasts. These, in turn, are a means of managing social processes in general and the basis for making tactical decisions in the field of investigating crimes in particular (Samoylov, 1972).

Based on forensic scientific tasks and the application of scientific and technical tools and methods, forensic prevention promotes the development of techniques that facilitate the timely receipt of information about crimes under preparation.

Attention is also paid to this issue at the legislative level; it is noted in the speeches of the head of state, heads of law enforcement agencies, decisions of the Plenum of the Supreme Court of the Russian Federation.

Thus, giving explanations and interpretations of the norms of law in its decisions, ensuring their uniform application, the Plenum of the Supreme Court of the Russian Federation repeatedly speaks about the need to determine the conditions and reasons contributing to the commission of crimes, as well as reacting to them in procedural order.

The President of the Russian Federation during the meetings with the heads of law enforcement bodies repeatedly raises the issue of identifying and suppressing crimes. There was also an order to develop a set of measures for the prevention of corruption crimes in the sphere of housing and public utilities, what is currently being done by the General Prosecutor's Office of the Russian Federation, the Russian Federation, the Main Directorate for Economic Security and Anti-Corruption of the Russian Ministry of Internal Affairs, and the Federal Service for Financial and Budgetary Supervision (Kosov, 2007).

The relevance of this issue affects not only the law enforcement structures of the state. The problem should be resolved through the interaction of law enforcement agencies of the state and control and supervisory services and agencies (Resolution of the plenum of the supreme court of the Russian Federation, 2011).

Considering the activities of Rosfinmonitoring through the prism of criminalistics prevention of corruption crimes in the sphere of housing and public utilities, there is an increase in the level of interagency cooperation, and for this reason the service for the first time conducted training within the framework of an interdepartmental workshop on the application of financial analysis in the investigation of economic and corruption crimes.

Also, through interaction with the Ministry of Internal Affairs of the Russian Federation, the Investigative Committee of the Russian Federation and for the prevention of corruption crimes, the Ministry of Construction and Housing and Public Utilities of the Russian Federation was instructed to conduct a set of educational and educational measures to clarify responsibility for crimes of corruption in the housing and public utility system. In their turn, the IC of the RF and the Ministry of Internal Affairs of the Russian Federation are entrusted with conducting a complex of investigative actions and operational-search measures to identify and suppress corruption crimes in the housing and public utility system.

With regard to the problems of the study, we note that when establishing tariffs for housing and communal services and their consumption standards, on taxation issues, the placement of municipal orders for the supply of goods and services, the use of municipal property, the passage of municipal services, in the sphere of land use, there are often contradictory regulatory acts.

In order to eliminate the above violations, which began to be of a sustainable nature, it is necessary to actively conduct preventive work in the sphere of municipal rulemaking.

Thus, the bodies of preliminary investigation are proposed to include in the commission (competitive, auction, and quoting) of a law enforcement officer to monitor the reliability of the data specified in the bidding documents, the order of the competition, etc. in order to prevent abuses and violations of the Federal Law "On the contract system in the procurement of goods, works and services for the provision of state and municipal needs" No. 44-FZ during the contest (Kovalenko, 2007: 11).

It seems problematic to implement municipal housing control. So, due to the lack of authority at the municipal level to prosecute offenders, the effectiveness of control is reduced. Municipal inspectors do not have the right to draw up protocols of offenses. According to the results of the inspection, they can only draw up an inspection report, which they then send to the state housing control body.

The procedure for the interaction of the bodies of municipal control with similar regional and federal bodies authorized to apply measures based on the results of inspections has not been sufficiently regulated to date. In this connection, the normative consolidation of such interaction is possible through the adoption of administrative regulations in the implementation of municipal control. In particular, it is necessary to determine the work on informing the authorized regional and federal executive authorities of municipalities about the results of inspections and compliance with the legislation in the sphere of housing and public utilities.

It seems that to speed up the development and adoption of these regulations, it is appropriate to amend the federal laws on general principles of organizing a local government, state control (supervision) and municipal control, etc.

In a letter of 02.04.2012 No. 7435-AP / 14, the Ministry of Regional Development of the Russian Federation, in order to eliminate conditions conducive to the commission of crimes in the sphere of housing and public utilities, developed methodological recommendations for conducting awareness-raising work with citizens on the rights and obligations of consumers of public services. It seems possible to use the recommendations mentioned in the letter by law enforcement agencies in the preventive work on crimes in the sphere of housing and public utilities, including corruption (Karachalov, 2005).

Knowledge of the system of state and municipal bodies exercising management in the sphere of housing and public utilities, their competence, allows law enforcement bodies to properly organize their work, make maximum use of the capacities of these bodies, and as a result to achieve better results both in preventive activities and in investigating corruption crimes in the housing and public utilities sector.

Due to the fact that most of the crimes in the sphere of housing and public utilities are identified by the employees of the Ministry of Internal Affairs of Russia, it is necessary to pay attention to the reform of this body, which resulted in a staff reduction. The workload of the employees did not decrease from this, and taking into account the instructions of the President of the Russian Federation, it only began to grow. As a result, in practice, we see that work to suppress crimes, including corruption in the sphere of housing and public utilities boils down to the provision of statistical reports on the requests of higher authorities. Given the regional characteristics throughout the country, it is extremely difficult to influence this situation.

Touching upon the issue concerning such a special procedural document as the submission, it must be said that it is drawn up on the basis of the revealed objective circumstances, that contribute to the commission of offenses; is stated as briefly as possible, with a mandatory reference to the specific persons guilty of creating the

relevant situation, and it provides information confirming that this situation has caused a certain crime.

It should be noted that submissions can be made at any stage of the preliminary investigation. Within a period of up to 1 month, the necessary measures are taken on it, the results are reported to the investigator. The investigator studies the response received and, if insufficient measures are taken, informs the head of the investigative unit and the prosecutor about this.

Given the urgency of this problem, we will look at it from the point of view of the past. Turning to the Criminal Procedure Code of the RSFSR, we see that the above right was previously the responsibility of the officials: The inquiry body, investigator, prosecutor, having established the reasons and conditions that contributed to the commission of the crime, submit to the relevant state body, public organization or official on taking measures to eliminate these causes and conditions. Not later than a month after the submission, the necessary measures should be taken and the results reported to the person who sent the presentation.

What do we see in reality? In practice, this is manifested in the fact that today's law, in the past - the duty, as noted above, law enforcement officers rarely uses because of heavy workload to investigate criminal cases and conduct pre-investigation checks under Art. 144-145 of the Russian Federation Code of Criminal Procedure.

Taking into account this circumstance, we consider it necessary to influence not only the prevention, but also the further activities of investigative workers, with the aim of improving and the possibility of criminalistics prevention, to include a section devoted to forensic prevention (suppression, prevention) of crimes of corruption in the housing and communal sphere in the scientific and methodological developments (Regional law of the Leningrad region, 2013).

Analysis of the current legislation to identify ways to suppress crime shows that the Presidential Decree on the National Security Strategy of the Russian Federation until 2020 defines the main directions of state policy in the field of ensuring public and state security, including improving the legislative regulation of crime prevention, developing a single state system for the prevention of crime and other offenses (Megmartseren, 2006).

Let us turn to the Federal Law "On Counteracting Corruption" dated 25.12.2008 No 273-FZ where the article 6 provides for measures to prevent corruption, namely:

1. Formation of intolerance towards corrupt behavior in society;
 2. Anticorruption examination of legal acts and their projects;
 3. Pesentation in accordance with the procedure established by the law of qualification requirements for citizens applying for the replacement of state or municipal posts and posts of state or
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municipal service, as well as checking in the established manner of information submitted by these citizens;

4. Establishment, as the basis for the dismissal of a person who replaces a state or municipal service, included in the list established by the regulatory legal acts of the Russian Federation, from a replaced position of a state or municipal service or for the application in his other measures of legal responsibility of failure to provide him with information or representation knowingly inaccurate or incomplete information about their income, property and liabilities of a property nature, as well as deliberate presenting of false facts about income, property and property obligations of his wife (husband) and minor children;

5. The introduction into the personnel work practice of federal bodies of state power, public authorities of the constituent entities of the Russian Federation, local authorities, per which the long, perfect and effective performance by the state or municipal employees of their official duties must be considered when appointing him to a higher position, awarding him a military or special rank, class rank, diplomatic rank or with his promotion;

6. Development of public and parliamentary control institutions over compliance with the legislation of the Russian Federation on combating corruption.

Currently, there is a federal law developed by the Ministry of Internal Affairs of Russia, "On the Basics of the Prevention of Offenses in the Russian Federation," which outlines the basic elements of the structure of the normative legal act (basic concepts, principles, tasks, rights and obligations of certain subjects, types of prevention, etc.). Our attention is drawn to the legislative proposal of the rights list of local self-government bodies, about the fact that they, per the bill, are empowered to control the implementation of the local budget in terms of expenses for preventive activities, which, it seems to us, once again creates a loophole in the legislation for criminal schemes both for the withdrawal of funds, and for the concealment of persons committing offenses (corruption component).

In addition, legislative amendments and additions to the Russian Federation Criminal Code and the Russian Federation Code of Criminal Procedure, other federal laws (No. 144-FZ, No. 86-FZ, No. 3-FZ, etc.), do not sufficiently explain the analyzed issue of this article. Some wording given in these normative legal acts do not give sufficient powers to properly implement preventive activities aimed at identifying and suppressing socially dangerous crimes to law enforcement agencies, in the sphere housing and public utilities.

Our vision of the problem to combat corruption-related crimes, including in the sphere under investigation, is that it is expedient to regard the basis for the organization of preventive actions as a qualified training of law enforcement and expert personnel; carrying out sudden inspections of certain operations (loading, unloading, removal of materials in the housing and communal services sector); spot check; creation of specialized courses (programs); the creation of special operational investigative and investigative units involved in preventive work in each field of activity; preventive work of law enforcement officers with the population in order to increase the sense of justice for the possibility of further confronting offenses in various areas; conducting a continuous analysis of the criminogenic situation and the causes of its emergence, as well as the development of tactical and strategic methods to combat the latter, etc. It is also important to emphasize that the suppression of crimes must begin with work on the level of professional training and legal awareness of law enforcement officers who are directly related to the identification, the disclosure and investigation of crimes, since at present, as noted in most scientific works and periodicals, professional education and competence of these persons is not sufficient. Although it is they who, in direct contact with the population, create the image of law enforcement agencies of the state as a whole.

In addition to the above, we note the need for the use of technical and forensic tools, techniques for conducting all sorts of preventive measures by the operative-search units, as detailed in the

works devoted to the operational-search prevention of socially dangerous acts.

Along with forensic prevention (suppression), it is advisable to use the special expertise to significantly increase the detection, prevention, disclosure and investigation of crimes. It is important to pay attention to the interest and consciousness of the owners of living quarters, which are the majority of us. By increasing our sense of justice, we will be able to identify and react promptly to possible initial signs of crimes in the sphere of housing and public utilities, the information on which will later be passed on to the specialized agencies for investigating crimes in this sphere that we propose to create. Thus, it is possible to form a sequence of interaction between the population and law enforcement agencies to suppress crimes, thereby increasing the confidence of citizens in employees of departmental structures. Citizens should understand that the problems of identifying and further suppressing crimes cannot be resolved only with the help of law enforcement agencies. It is necessary to understand that an operational officer and an investigator - by identifying, uncovering and investigating a crime, the court - by pronouncing a conviction to the offender, in general will not stop the criminal activity. Instead of a convicted criminal in a particular sphere, the next one appears and so on. Therefore, priority should be given to preventive measures that prevent the commission of crimes.

In order to form the correct way to identify the signs of crime in the sphere of housing and public utilities, tenants are advised to regularly attend homeowners' meetings, carefully handle documents to pay for the housing and public utilities (requisites, tariffs, quantity or volume of services, etc.) and keep paid copies, pay attention to the adjacent territory, the compliance of the number of cleaning works with the schedule to conduct them, the emergency condition of the building and engineering communications, etc., and also deliberate approach to select the administration company and to control its operation.

It is necessary to note the role of criminalistics prevention for the further work of law enforcers. Using his right to make submissions to eliminate the law violations, the investigator thus informs the public that it is advisable to undertake that the criminal activity of certain persons or their inaction does not lead to criminal or other liability. It seems that the current criminal legislation, and forensic science in general, is currently less focused on the necessity and importance of criminalistics prevention (suppression, prevention) of crimes.

Investigators are encouraged to constantly interact with government authorities to improve the effectiveness of crime prevention work. So, the structure of the Russian Federation Ministry of Justice includes a department for the prevention of corruption and other offenses, joint activities with law enforcement bodies of which

can positively affect the detection, prevention and suppression of corruption crimes, including in the sphere of housing and public utilities.

Analyzing the Russian investigative practice, we would like to demonstrate the examples of already partial positive work of law enforcement agencies in this direction from the practice. For example, in the Voronezh region, a department for combating economic crimes and combating corruption is already working to identify, uncover and investigate crimes in the housing and communal sphere under the Main Directorate of the Ministry of Internal Affairs of Russia (Ivanov, 1993).

In Permsky Krai, a department was set up to combat economic crimes in construction and housing, bankruptcy and raiding under the Main Directorate of the Ministry of Internal Affairs of Russia (Department for Economic Security and Anti-Corruption).

At the end of 2013, the Volgograd region established a police department that identifies crimes in the sphere of housing and public utilities. Let us note that the employees of this department have two higher educations - economic and legal.

2. METHODOLOGY

This study in the methodical plan is an analysis of both housing legislation in general, and judicial and investigative practices, the practice of applying Russian legislation in the economic sphere of

activity. Methods are used: statistical, comparative-legal, sociological. Based on the data obtained, key conclusions were formulated that made it possible to reasonably identify the existing problems in the Russian Federation for suppressing corruption-related crimes in the sphere under consideration, and to advise both officers of security agencies and tenants of apartment buildings and representatives of management companies.

3. RESULTS

From the point of view of criminalistics, it is very remarkable that, according to experts, more than half of the criminal groups exposed in the Russian Federation have corrupted ties. Acting in interrelation criminal groups launder significant sums from the federal and regional budgets.

Despite the objective difficulties in identifying and investigating corruption crimes in the sphere of housing and public utilities, the authors seem not to give grounds to state that the process is organizational-methodical enough. The practice of investigating criminal cases of corruption crimes in the sphere of housing and public utilities shows that the issues of qualification of criminal acts are relevant during investigation and trial.

Along with this, the lack of effectiveness to detect and suppress the activities of fly-by-night companies is affected by shortcomings in the interaction of state control bodies. So, Rosfinmonitoring has a significant amount of information about the activities of the fly-by-night companies. However, the exchange of information between the bodies of state financial control (Rosfinmonitoring, Federal Tax Service, and Federal Customs Service) on counteraction to fly-by-night companies is not always carried out properly.

4. DISCUSSIONS

Issues of investigating crimes in the sphere of housing and public utilities are devoted to the work of Didenko (2006), Domozhirov (2009), Dvoryankin (2007), Efarov (2011), Koltsov (2006), Marinkin (2009) and etc. Forensic scientists have not performed the study of the problem to create and develop the methods to investigate corruption crimes in this area. The analysis of several publications in periodicals and the Internet has shown that there are repeated references to existing violations of the law revealed during prosecutor's supervision, as well as information on the criminal cases investigated and being on the preliminary investigation stage with respect to high-ranking and other officials in the sphere of housing and public utilities economy.

5. CONCLUSION

Summarizing the above, it should be noted that when developing the fundamentals of the methodology to investigate crimes of various categories, primarily crimes of corruption in the sphere of housing and public utilities, it is necessary to include a special section devoted to topical issues of forensic characteristics and criminalistics crime prevention, having in mind the expediency of investigating the relations ways to prepare the commission and conceal crimes and circumstances that contribute to their implementation. In this case, questions of forensic prevention require an even more detailed and thorough analysis with a view to make effective use of the study results of the above-mentioned authors. We have a common idea - to activate the fight against crime in modern Russia. In addition, the authors suggest to create specialized investigative units at the investigation departments at the regional levels throughout the country, aimed directly at investigating crimes in the sphere of housing and public utilities including corruption.

The foregoing should increase the sense of justice of law enforcement officers, contribute to the effective and timely recognition of crime signs. It is important to understand that without sufficient knowledge to identify crimes in the sphere of housing and public utilities the investigator (operational officer, expert, and specialist) is not able to prevent and suppress its committing in the future. Thus, for preventive work, it is necessary to increase the professional training

and legal awareness of law enforcement and forensic experts and the population of the country in addition to amending the criminal procedural legislation. Thus, employees of law enforcement agencies and expert institutions should conduct quarterly preventive work in the form of lectures, consultations, reception of citizens. Following the results of such work, after analyzing the questions, complaints, statements, remarks received from citizens, etc., it is recommended that a document containing the information received should be sent for consideration and study to the head of the structural unit, then to departmental centers to develop the investigation of techniques crimes.

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