

UDC 343.98
DOI 10.31733/2078-3566-2021-5-242-246



**Kateryna
ChEREDNYK[©]**

Candidate of Law ,
Head of the Main
Department
(National Land Cadaster
in Dnipropetrovsk
Oblast, Ukraine)

FEATURES OF REAL ESTATE FRAUD INVESTIGATION

Abstract. The scientific article examines the theoretical and practical features of organizational and tactical support for the investigation of fraud in the real estate market, committed by the law, as well as outlines and characterizes the components of the forensic characteristics of such a crime. A forensic analysis of the functioning of the real estate market was carried out, as a result of which the characteristic factors influencing the choice of the real estate market as a sphere of interests of criminal groups were determined.

Keywords: *investigation, tactical operation, tactical combination, fraud, real estate, real estate market, organized criminal groups.*

Relevance of the study. Recently, Ukraine has seen an active increase in the pace of construction of luxury new buildings, especially in large cities, which leads to massive investment in the construction of real estate. However, such activities are not always legal, and a significant turnover of money often attracts the attention of fraudsters. Fraudulent schemes of seizure of funds of investors intended for construction, cause a special resonance, which causes the reaction of law enforcement agencies to prevent such manifestations.

The growing number of such criminally active groups and the rapid increase in the facts of fraud in the real estate market demonstrates the inability of law enforcement agencies to resist these negative phenomena. The sharp increase in the facts of their commission over the last 5 years testifies to the insufficient efficiency of detecting persons who are preparing to commit fraud. This indicates the lack of a system to combat fraud in the real estate market, which significantly affects the lack of appropriate methods for their detection and investigation. Given the significant growth of this type of fraud, their latency, high level of organization, difficulties in detection and investigation, significant opposition to the investigation is the immediate development and implementation of law enforcement of the latest and proven scientific methods and tools for their most effective prevention and investigation.

Resent publications review shows that at different times the question of the peculiarities of the investigation of real estate fraud committed by criminal groups, studied by a number of scientists, including: R. Belkin, V. Karagodin, V. Konovalova, O. Kurman, O. Musienko, K. Chaplinsky, V. Shepitko and others. These authors have made a significant contribution to the issues of tactical operations and their complexes in the investigation of crimes of various categories. Meanwhile, there are a number of debatable issues that need to be addressed.

The article's objective is to analyze the existing scientific views on the problems of tactical operations, on the basis of which to determine the set of tactical operations, the most appropriate for the investigation of fraud in the real estate market.

Discussion. The main content. It should be borne in mind that not every set of investigative and other actions can be considered a tactical operation. In functional terms, the integration of investigative actions, operational and investigative and other measures into a tactical operation is based on the possibility of solving as a result of such a combination of a

© K. Cherednyk, 2021
ORCID iD: <https://orcid.org/0000-0001-6485-6148>
cherednyk.kateryna@pgasa.dp.ua

specific task of investigation, which due to the volume or content can not be solved by applying certain tactics, investigative actions etc. [1, p. 251].

Meanwhile, as noted by V.M. Shevchuk, along with the elemental structure of the tactical operation, forensic scientists have made proposals to create a structure of this category based on functional approaches. In particular, according to some scientists, the generally accepted idea of the structure of a tactical operation reflects the elemental aspect of the model, while the functional approach provides an opportunity to move from the structure of the object to the concept of its organization. If the elemental scheme provides only an understanding of the content and not always, then the functional scheme allows you to analyze this content [2, p. 320].

One of the supporters of this model is I. Komarov, who, highlighting the components in the structure of the tactical operation, gives a rather complex design:

a) the subject of proof as a condition for planning, organizing and conducting the method taking into account the subject-object the nature of the latter;

b) a complex special system of goal, the content of which, as a special case, may include technical-forensic separate and tactical-forensic simple special systems of goals;

c) means – procedural and non-procedural (organizational and technical) actions and measures, methods of cognition, special forensic methods (technical-forensic and structural-forensic), forensic recommendations, technical-forensic and tactical-forensic techniques, technical and other techniques and methods ; restoration; reconstruction; tactical and forensic combinations; forensic operations, etc.;

d) connections between the given components [3, p. 82].

Without underestimating the importance of such an approach, we are forced to state that it is quite cumbersome and overloads the content of tactical operations, hiding the main important components.

Analysis of the opinions of scientists and practitioners also showed that some identify the concept of "tactical operation" with "tactical combination".

Meanwhile, we support the views of those scientists who do not confuse and do not identify these two concepts, but invest in these concepts different meanings.

In this regard, the remark of V. Shepitka, who believes that the definition of "tactical combination", which includes a combination of investigative actions, is objectionable. Moreover, he is convinced that it is inexpedient to combine in one concept two separate categories – "combination of tactics" (system of techniques) and "combination of investigative (or other) actions" (tactical operation). The combination of tactics and investigative actions have different purposes and are not equivalent. In the etymological sense, the term "combination" is identical to the term "system of techniques to achieve something." A tactical combination is possible only within one investigative action and does not involve a combination with tactical techniques of another procedural action, so it should be considered as a synonym for tactical techniques [4, p. 95-97].

Impressive opinion of S. Lavrukhina, who notes that the set of investigators and other actors in criminology is usually called a tactical operation, using the formation of terminological confusion, it seems appropriate tactical combination to call a set of tactics of investigative action [5, p. 152].

Summarizing the above points of view, we can say that most scientists and practitioners, speaking of a tactical operation, put in its content certain structural elements, which are mostly similar. These include:

– carrying out a complex of the same or different procedural or non-procedural actions (investigative actions, NSDS, measures to ensure criminal proceedings, audit actions, operational and investigative and organizational measures, etc.);

– unity in a single plan;

– a single guide for the investigator to conduct;

– performance of certain intermediate tasks subordinate to the general objectives of the investigation;

– solving problems in a certain investigative situation.

There is a different view on the classification of tactical operations. Thus, S. Zdrovko offers the following grounds for classifying tactical operations:

1) depending on the type of crime;

2) depending on intermediate investigations of crimes;

3) depending on the nature of the elements of the structure of tactical operations:

homogeneous or heterogeneous; two or more similar investigative actions, a set of diverse investigative actions, a set of investigative actions and operational and investigative measures, a set of investigative actions and organizational measures; operational and investigative and organizational measures);

4) depending on the level of complexity of tactical operations (simple and complex);

5) depending on the time period of the tactical operation (one-moment and those that have a certain length in time);

6) depending on the stage of the investigation of the crime (tactical operations carried out at the initial, subsequent or final stage of the investigation);

7) depending on the nature of the direction of the operation (cognitive tactical operations, search, those that perform organizational functions);

8) depending on the persons who carry out interaction during the tactical operation (tactical operations conducted by the investigator; tactical operations conducted by the investigative task force (or investigative team); operational and tactical operations conducted under the direction of the investigator, etc.) [6, with. 7].

In this case, V. Karagodin emphasizes that to develop typical tactical operations on the level of generality can be divided into two groups. Typical tactical operations of the first, higher level of generalization are designed for use in situations that are typical of crimes of various kinds. The development of such operations is possible, despite the differences not only in criminal law, but also in the forensic characteristics of certain types of crimes. Typical tactical operations of the second group are developed taking into account the forensic characteristics of certain types and groups of crimes and situations typical for their investigation. These tactical operations are more specific, because their tasks are specified, they should be planned on the basis of more general operations of the first level [7, p. 56].

This approach is impressive, and if we first approach tactical operations in general, we can successfully distinguish among them those that will solve more specific problems in cases of fraud related to raising funds for the construction of real estate.

Analyzing the views of supporters of the problems of forensic methodology in terms of tactical operations, it should be noted their diversity. V. Shevchuk, trying to defend the approach to the mandatory use of tactical operations in criminal proceedings, defined a fairly broad generalized list of them. The list includes the following operations: "Establishing the nature of the crime"; "Establishment of the place and time of the crime"; "Establishing the method of committing a crime"; "Establishment of the subject of criminal encroachment"; "Establishing the motives for the crime"; "Establishing the identity of the offender"; "Identification of the victim"; "Establishing the provocative behavior of the victim"; "Checking the victim's connections"; "Identification of accomplices in the crime"; "Detention of a criminal at the scene of a crime"; "Search for a person who disappeared from the scene and is hiding from the investigation"; "Checking the suspect's alibi"; "Identification of witnesses"; "Checking the reservation"; "Self-checking"; "Neutralization of opposition to the investigation by interested parties"; "Study of the suspect's identity"; "Elimination of negative influence from the suspect"; "Protection of evidence"; "Protection of victims"; "Witness protection", etc. [8, p. 138].

Meanwhile, despite a successful attempt to maximize the most common tactical operations that occur in the practice of crime investigation, we must pay attention to their high level of generalization. In addition, the scientist emphasizes that typical tactical operations should be developed in accordance with the specifics of the investigation of certain types (subtypes) of crimes, stages of criminal proceedings, investigative situations, tactical tasks, considered as integral components of species or subspecies forensic methods of crime investigation [8, p. 138]. Consider the proposed tactical operations in the investigation of groups of crimes that are related to fraud in the real estate market. These are crimes of a useful nature, including economic ones. In general, when investigating crimes related to theft of property, the most common tactical operations, most scientists consider: "Identification of persons involved in the theft", "Ensuring compensation for material damage", "Group search", "Search and apprehension of criminals", "Identification way of committing a crime", "Document", etc.

V. Knyazev in the investigation of embezzlement proposes to conduct only three tactical operations: "Document", "Accomplices" and "Ensuring compensation for material damage" [9, p. 79]. Tactical operations and developers of methods of fraud investigation are

considered. Yes, O. Musienko notes that the following operations can be used in the investigation of fraud: "Detention of a swindler at the crime scene", "Establishing the circle of victims of fraud", "Establishing ways to commit fraud", "Identifying the fraudster", "Document", "Determining the amount of material damage" [10, p. 139]. In order to solve the tasks in cases of fraud with financial resources O. Kurman considers it expedient to conduct tactical operations, among which the most important are such tactical operations as: "Document", "Accomplices", "Borrower", "Lender", "Identification and search for a hidden criminal", "Ensuring compensation for material damage" [11, p. 148].

Some scientists also suggest tactical operations to investigate real estate fraud. The most common of these are: "Identification and verification of the events leading up to the fraud", "Identification, search and detention of a fraud suspect", "Detention of a fraudster at the crime scene", "Verification of the suspect's alibi", "Detection of evidence of the suspect's behavior" "Exposing the accused of committing fraud", "Verification of the testimony of a person who pleaded guilty to fraud", "Prevention of the accused's attempt to hide from the investigation and court", "Prevention and neutralization of opposition to the investigation".

The process of pre-trial investigation becomes the most optimal if not one, but several tactical operations are carried out, which allow not only to successfully solve intermediate tasks, but also to get as close as possible to achieving the ultimate goal of investigating criminal offenses in real estate. In view of this, the content and direction of the tactical operation are determined, firstly, by the investigative situation, and secondly, by the specific features of the investigated crime. Therefore, tactical operations are general in nature, but at the same time should be finalized in forensic methodology, in accordance with the specifics of the investigation of a particular group of crimes. Thus, it can be concluded that the formation of tactical operations recommended in the investigation of a particular type of crime should take into account the following criteria: the specifics and stage of the investigation at which it is planned to conduct a tactical operation; circumstances of the crime; investigative situations and tactical tasks.

In conclusion, it should be noted that today no one has any objections and the thesis that the current state of the real estate market in Ukraine is characterized by active development and rapid growth, especially in large cities, with a variety of ways to acquire, alienate and obtain objects. real estate for temporary use (on the basis of lease, sale, exchange, gift, lifetime maintenance, investment) without legislative restrictions on the quantitative component of the implementation of this right by citizens. At the same time, the real estate market has not escaped the attention of the criminal environment, especially criminal groups that commit criminal offenses using fraud or abuse of trust with the use of various fraudulent schemes in the real estate market.

Acting in proportion to the development of modern technologies, adapting to innovations in all areas and changes in legislation, criminal groups lobby their criminal interests in the legislature and judiciary. By using corrupt connections with law enforcement and government officials, notaries, taking advantage of the legal ignorance of citizens, criminals illegally seize a number of real estate and money intended for their acquisition or invested in the construction process. However, it is extremely difficult to assess the real scale of organized crime in the real estate market, as most of these facts remain dormant. This indicates a number of problems in the detection, detection and investigation of fraud in the real estate market, which leads to the avoidance of criminals from fair punishment. Therefore, the activities of law enforcement agencies in this direction need to be improved and adapted, adapted to modern changes and innovations.

This puts before science, legislative and law enforcement practice the task of immediate development and implementation of new approaches to combating crime, finding new methods of counteraction that meet the realities of today.

Conclusions. Thus, despite the relevance of scientific developments of scientists, it should be noted that they explore only certain segments of the real estate market. However, the sphere of interests of organized groups is covered by a fairly wide range of actions in both primary and secondary real estate markets, each of which has its own specifics and requires a comprehensive study. In addition, due to constant changes in legislation, a number of provisions have to some extent lost their relevance, and some aspects of this issue need to be improved and further developed. Issues of international cooperation and counteraction to the investigation remain unexplored, the tactical features of the investigation need to be improved, using tactics and complexes of investigative

(search) actions and NSDS, taking into account the organized nature of the crimes of the investigated category.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. Shevchuk V. M. Taktychna operatsiia yak riznovyd taktyko-kryminalistychnykh kompleksiv. Naukovyi visnyk Mizhnarodnoho humanitarnoho universytetu. Seriiia : Yurysprudentsiia. 2017. No. 5. Pp. 248-252.
2. Shevchuk V. M. Struktura taktychnykh operatsii: problemy ta propozytsii. Pytannia borotby zi zlochynnistiu: 2013. Visnyk No. 4. Pp. 318-328.
3. Obraztsov V. A. Krymynalystycheskoe uchenye o taktycheskoi operatsyy. Krymynalystyka pod red. prof. V.A. Obraztsova. M. : Yuryst, 1995. 82 p.
4. Shepytko V. Iu. Poznavatelnye funktsyy deiatelnosti sledovatel'ia y sredstva krymynalystycheskoi taktyky. Aktualnye voprosy pryumeneniia uholovno-protsessualnoho y uholovnoho zakonodatel'stva v protsesse rassledovaniia prestuplenyi: sb. mater mezhvuz nauch-prakt konf.: v 2 ch. M.: Akad. upr. MVD, 2004. No. 4.2. Pp. 95-97.
5. Lavrukhn S. V. Rol krymynalystycheskykh kharakterystyk y sledstvennykh situatsyi v rassledovanii umyshlennykh ubyistv: dys. kand. yuryd. nauk: 12.00.09. Saratov, 1992. 133 p.
6. Zdorovko S. F. Taktychni operatsii pry rozsliduvanni vbyvstv, shcho vchyniautsia orhanizovanymy hrupamy i zlochynnymy orhanizatsiiamy: avtoref. Avtoref. dys... kand. yuryd. nauk.: 12.00.09 / Natsion. yuryd. akademiia im. Ya. Mudroho. Kh., 2002. 18 p.
7. Karahodyn V. N. Taktycheskye operatsyy v deiatelnosti po raspoznavaniyu y preodoleniyu sposoba sokrytiia prestupleniya. Taktycheskye operatsyy y effektivnost rassledovaniia : sb. nauch. tr. Sv.-k : SIlUy, 1986. Pp. 56–59.
8. Shevchuk V. M. Mozhlyvosti zastosuvanniia typovykh taktychnykh operatsii u kryminalnomu provadzhenni. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. 2014. Pp. 135-139.
9. Kniazev V. A. Problemy taktycheskykh operatsyi v metodyke rassledovaniia khyshchenyi hosudarstvennoho yly obshchestvennoho ymushchestva: Dys. ... kand. yuryd. nauk: 12. 00. 09. Kharkov, 1986. 245 p.
10. Musiienko O. L. Teoretychni zasady rozsliduvanniia shakhraistva v suchasnykh umovakh : monohrafiia / O.L. Musiienko ; za red. V.Iu. Shepitka. Kh. : Pravo, 2009. 168 p.
11. Kurman O. V. Metodyka rozsliduvanniia shakhraistva z finansovymy resursamy: dys... kand. yuryd. nauk: 12.00.09 / O.V. Kurman ; Nats. yuryd. akad. Ukrainy im. Ya.Mudroho. Kh., 2002. 218 p.

Submitted: 01.12.2021

**Катерина ЧЕРЕДНИК
ОСОБЛИВОСТІ РОЗСЛІДУВАННЯ ШАХРАЙСТВА
НА РИНКУ НЕРУХОМОСТІ**

Анотація. У науковій статті досліджено теоретичні й практичні особливості організаційно-тактичного забезпечення розслідування шахрайства на ринку нерухомості, вчиненого ЗУ, а також окреслено і охарактеризовано складові елементи криміналістичної характеристики такого злочину. Здійснено криміналістичний аналіз функціонування ринку нерухомості, внаслідок чого визначено характерні фактори, що впливають на обрання ринку нерухомості сферою інтересів злочинних угруповань.

Сформовано типові тактичні операції, характерні для розслідування шахрайства на ринку нерухомості, а також розроблено оптимальний комплекс дій для тактичних операцій, спрямованих на: встановлення ознак організованості й викриття усіх учасників угруповання; вилучення, дослідження і використання документальних джерел інформації про ознаки шахрайства на ринку нерухомості; подолання протидії та забезпечення безпеки учасникам кримінального процесу тощо. Надано низку пропозицій, спрямованих на удосконалення практики розслідування шахрайств на ринку нерухомості, вчиненого злочинними угрупованнями, уточнено окремі наукові категорії.

Ключові слова: розслідування, тактична операція, тактична комбінація, шахрайство, нерухомість, ринок нерухомості, організовані злочинні угруповання.