

12. Ratinov, A. R. (1965) Sovetskaya psikhologiya kak nauka [Soviet psychology as a science]. *Sovetskoye gosudarstvo i pravo*. № 5. S. 53-54. [in Russ.]
13. Saltevs'kyy M. V., Lukashevych V. H., Hlibko V.M. Navchal'no-dovidkovyy posibnyk z kryminalistyky [Forensic study guide]. Kyiv : VIPOL, 1994. 180 s. [in Ukr.]
14. Sakharov, A. B., Sarkisov, G. S. (1991) Problema prestupnosti v sovremennykh usloviyakh [the problem of crime in modern conditions]. Yerevan : Ayastan, 278 s. [in Russ.]
15. Ferri, E. (1924) Ugolovnaya antropologiya i sotsializm [Criminal anthropology and socialism]. *Problemy prestupnosti*. Sb. 2. S. 31-32. [in Russ.]
16. Shalhunova S. A. (2011) Osoba zlochyntsy za uyavlenyamy dorevolutsiynyykh vitchyznyanykh yurystiv: antropolohichna ta sotsiolohichna shkoly [Criminal identity according to the ideas of pre-revolutionary domestic lawyers]. *Pravo i suspil'stvo*.. № 6. S. 157-164. [in Ukr.]
17. Shepit'ko, V. Yu. (2005) Kriminalistika [Criminalistics]: Kurs lektsiy. 2-ye izd., pererab. i dop. Khar'kov : OOO «Odyssey», 368 s. [in Russ.]

Summary

The scientific article deals with some aspects of crime investigation. The identity of the offender is considered as an element of forensic characteristics. Investigating the identity of the offender provides the investigation with a number of additional features. The identity of the offender as an element of forensic characteristics is a set of socially significant features and attitudes that characterize a person guilty of violating the criminal law, in combination with other conditions and circumstances affecting his criminal behavior. In particular, the information about it allows to distinguish the data necessary for the organization of the most effective search of the person who committed the crime, and subsequently – its exposition, provide elimination of the causes and conditions of committing criminal offenses and their recidivism. And during the conduct of investigative (search) actions – the possibility of effective establishment of psychological contact, the use of appropriate tactical techniques.

Investigation of the identity of the offender as an element of forensic characteristics, allows to accumulate in the «portrait» of the likely offender his characteristic features. Creating a forensic «portrait» is important enough for the whole investigation process. In any case, it allows putting forward certain versions and searching for the person who disappeared from the place of the incident, as well as the possibility of qualitative conduct of further investigative (search) actions.

Keywords: *crime, criminalistics characteristics, identity of the offender, motive, investigative (search) actions.*

UDC 343.985

DOI 10.31733/2078-3566-2019-5-172-177



**Kostyantyn
CHAPLYNSKIY**[®]
Dr of Law, Prof.

**Tetyana
KALYUGA**[®]
Aspirant



(Dnipropetrovsk State University of Internal Affairs)

WAYS OF COMMITTING FRAUD IN TOURIST SERVICES: FORENSIC ANALYSIS

Костянтин Чаплинський, Тетяна Калюга. СПОСОБИ УЧИНЕННЯ ШАХРАЙСТВА У СФЕРІ НАДАННЯ ТУРИСТИЧНИХ ПОСЛУГ: КРИМІНАЛІСТИЧНИЙ АНАЛІЗ. Стаття присвячена дослідженню криміналістично-значущих особливостей способів шахрайства у сфері надання туристичних послуг. Увага приділяється описанню способів, з'ясуванню їх особливостей, визначенню факторів, які впливають на їх формування, на підставі чого здійснено їх систематизацію.

Дослідженню способу вчинення злочину у криміналістичній літературі приділяється велика увага. Діапазон думок вчених з цього питання дуже широкий і точки зору щодо визначення

© Chaplynskiy K., 2019

ORCID iD: <https://orcid.org/0000-0002-9922-3743>

chaplinskii@ukr.net

© Kalyuga T., 2019

k_ksmp@dduvs.in.ua

поняття способу вчинення злочину та його змістовного наповнення різноманітні.

Проведений аналіз показав, що більшість поглядів пов'язано із розглядом способу вчинення злочину у повноструктурному варіанті, у взаємному поєднанні його компонентів. Крім того, всі дії, що входять до структури способу (підготовка, вчинення та приховування) розглядаються як детерміновані об'єктивними та суб'єктивними факторами і спрямовані на досягнення єдиного злочинного результату.

Шахрайства у сфері туризму ретельно готуються і злочинці заздалегідь пристосовують обстановку з метою подальшого вчинення шахрайських дій. Виходячи з цього, доведено, що спосіб учинення шахрайства у сфері надання туристичних послуг характеризується наявністю системи заздалегідь узгоджених та спланованих дій щодо підготовки, вчинення та приховування слідів злочину.

Покладаючи в основу ряд критеріїв для класифікації, всі варіанти шахрайських дій у сфері туризму зведено у три групи: обманні дії з боку суб'єктів, які мають офіційний дозвіл на здійснення такої діяльності (здійснюють обман у намірах, або з приводу різноманітних дій і подій); обманні дії з боку суб'єктів, які не мають ніякого офіційного відношення до туристичного бізнесу, але виступають від імені таких осіб. В окрему групу віднесено вчинення шахрайських дій особами, діяльність яких виражалася у супроводженні дій, необхідних для отримання туристичних послуг.

Розкрито й систематизовано типові способи вчинення шахрайства у сфері надання туристичних послуг та дії з його приховування. Виокремлено кореляційні зв'язки між способами та слідами злочину, а також іншими елементами криміналістичної характеристики шахрайства.

Ключові слова: шахрайство, туризм, договір, способи шахрайства, споживач туристичних послуг, туроператор, турагент.

Problem statement. The progressive changes in the structure of crime and the emergence of new modern methods of action, including the use of fraud and abuse of trust, make it necessary to find new solutions and take action to address the problems of improving the activities of law enforcement agencies to detect and investigate frauds committed in the tourism sector. However, without knowledge of law enforcement agencies about the basic means by which such frauds are committed, it is not always possible to guarantee success, since an investigation under such conditions is carried out under conditions of information failure.

The analysis of publications that started solving this problem shows that the method of committing a crime is a central element of the mechanism of the crime and has been repeatedly considered in the scientific works of R.S. Belkin, V.K. Gavlo, G.G. Zuikov, V.P. Kolmakov, V.O. Obratsov, A.M. Selivanov, N.P. Yablokov and other scientists. Attempts to systematize the methods of fraud can be seen in the works: A.F. Volobuev, O. Kryshevich, O.V. Kurman, T.V. Okhrimchuk, N.V. Pavlova, T.A. Pazinich et al. Meanwhile, there remain a number of unresolved issues regarding specific techniques and operations aimed at preparing, directly committing and concealing frauds related to the provision of tourist services. This indicates the need to improve law enforcement activities in terms of coverage of information about modern fraud in this area, which determines the relevance of this scientific article.

The article's objective is to analyze the approaches in the legal literature to the treatment of the crime, as well as to characterize the ways of committing fraud in the sphere of tourist services and their classification.

Basic content. Despite the wide range of opinions of scholars on the general issues of defining the concept and content of the crime, it should be noted that the scientific literature has not paid sufficient attention to the development of fraudulent practices in the provision of tourist services. You can find only the classification of criminal acts in the tourism business and criminal and criminal studies. According to A.I. Nester's most common types of fraud in the tourism business are the following: 1) the actual absence or reduction of services that were included in the value of the tourist product and paid for by customers; 2) providing false information to the customers of the tourist product or intentionally concealing it, silence about the circumstances that the guilty person was obliged to inform the person, but without doing so, mislead him; 3) requesting a separate payment for services, the cost of which was included in the tour program; 4) activities of day-to-day tourism firms, etc. [1]. Instead, O.A. Klimenko proposes to group fraudulent actions in the sphere of tourism by the subject of their perpetration into: 1) those perpetrated by representatives of tour operators and travel agencies; 2) committed by representatives of other entities of the tourism industry, which provide for the reception, service and transportation of tourists; 3) committed by consumers of tourist services. In addition, it proposes to identify in some groups ways of fraud in tourism, depending on the victims: 1) a minor; 2) in relation to an elderly person; 3) in relation to a disabled person or a disabled person [2]. In turn, L.M. Tomanevich and M.V. Ribbun believe that fraud in this area

can be grouped as follows: 1) fraud, initiated by tourists; 2) fraudulent actions initiated by tour operators; 3) fraudulent actions initiated by travel agents; 4) fraudulent actions initiated by state authorities; 5) fraudulent actions initiated by hotels; 6) fraud by carrier companies; 7) fraud in the sphere of activity of insurance companies; 8) cybercrime [3, p. 158].

However, when analyzing the course of action in the field of tourist activity, we have seen that fraud can be committed by 78% of the entities that have official permission to carry out such activities (fraudulent intentions or by various actions and events), and entities that have no official relationship with the tourism business, but act on behalf of such persons – 22%. In addition, in 36% of cases fraudulent activities were facilitated by persons whose activities were accompanied by actions necessary for obtaining tourist services.

The first group is characterized by fraudulent activities at any stage, from the creation of a tourist product by an entity to its maintenance and consumption.

The methods of the second group mostly take place at the stage of creation of the tourist product and at its sale (conclusion of the contract). Other stages may not be due to the lack of such a «tourist product».

The separate group includes the types of fraud, which are accompanied by the actions necessary for obtaining tourist services, by entities that are not related to the tourist activity (fraud in obtaining visas, passports, insurance cases, crossing the border, etc.).

Let's look at these groups of ways in more detail. First of all, it must be noted that in order to get to another country, you need a permit to enter or transit through its territory (visa). However, this authorization is not always obtained legally and is not always granted by the person authorized to issue it. Therefore, the first way is to commit fraudulent visas to cross the border for a tourist trip.

Instead, each state has the right to impose its own entry restrictions, set the list of required documents and rules for the import of goods and valuables. Some embassies, for example, require copies of documents confirming hotel reservations, flights, an insurance policy, and sometimes a security deposit (for each state, this amount is different) and a certificate of income providing some guarantees. Some embassies require border crossings to provide health information and criminal records, and so on.

As for our state, the rules for issuing visas for entry into Ukraine and transit through its territory are dictated by the Cabinet of Ministers Decree No. 118 of 01.03.2016, which also defines the list of authorized bodies entrusted with the functions of issuing such permits: foreign diplomatic institution of Ukraine, department of consular service of MFA, representation of MFA on the territory of Ukraine. Among the requirements (passport, application form, document on payment of consular fee, health insurance policy, etc.), foreign tourists are also required to provide documents confirming the availability of sufficient financial support for the period of planned stay and for return to the country of origin or transit. to a third country [4].

However, the results of empirical studies suggest that, for the most part (89%), consumers of tourist services do not apply directly to consular institutions and other authorized bodies, which are required by law to review visa applications and make decisions on visa processing, but apply with assistance to the subjects of tourist activity (tour operators, tour agents and other intermediaries).

Meanwhile, travel agencies sometimes use a variety of illegal schemes to make bogus invitations, fake vouchers, and apply for visa extensions, and so on. There is also information on corruption links between individual tourist entities and foreign diplomatic and consular staff [5, p. 31]. In practice, there are cases where fraudsters block the e-consulate system by overloading it so that no one can self-register and at the same time reserve seats in the system for office clients – visa intermediary [6].

The next way is when providing services that are included in the value of the tourism product declared by the tour operator.

The content of this method is a pre-planned reduction in the cost of paid services (for example, instead of a five-star tourist hotel is placed in a doubtful hotel with a minimum amount of amenities or in an area that does not meet the contractual terms and amount of money paid in terms of prestige and geographical location. fraudulent actions are made by reducing the volume of declared tourist services (for example, according to the terms of the contract the funds were paid for excursion, transport and other additional services, however the tourist does not receive these services, or the tourist receives a one-way ticket and is forced to purchase the ticket independently.) In some cases, it may be the actual absence of the services provided at the point of receipt of the tourist product, but this situation arises only if the subject of the

tour operator's activity ceased his entrepreneurial activity in the sphere of tourist business and took possession of the client's money, and did not fulfill his obligations for realization of his tourist trip.

Recently, in connection with the mass migration of the Ukrainian population abroad for the purpose of finding a job, this type of fraud, such as "employment" under the guise of providing tourist services, has spread.

As A.I. Nesterova, such activity is mainly characteristic of the western regions, where there are many travel agencies, for which tourist activity is a cover for fraudulent activities. According to her, in recent years a number of criminal proceedings have been opened on the facts of the activity of such enterprises and persons involved in fraud (travel agencies «Maz-zar», «Galatea», etc.) [7, p. 296]. Moving on to the next type of fraud, it should be noted that the Law of Ukraine on Tourism provides for compulsory health and accident insurance. Other types of insurance the tourist chooses at his own discretion or at the recommendation of the tour operator. The insurance is provided either by the tourist on his own or by the subjects of the tourist activity on the basis of agreements with the insurance companies, which are entitled to carry out such activity, that is, have a corresponding license. The main purpose of this type of insurance is to compensate for medical expenses that may occur on a trip abroad due to a sudden illness or accident directly in the country (place) of temporary stay.

The foregoing makes it necessary to insure outlined cases. However, this activity is not always legal and often attracts fraudsters. Therefore, the next way is fraudulent activities related to tourism insurance.

I.O. Nesterova notes that in practice there are quite sophisticated and sophisticated schemes of fraud, involving Ukrainian tourist companies, employees of foreign hotels, foreign doctors, etc. As a result, having an insurance policy does not always guarantee the policyholder free and trouble-free treatment abroad [8, p. 57]. In the legal literature you can find the following common types and schemes of fraud in the field of travel insurance: 1) the insurer develops the following rules and conditions of travel insurance, which significantly complicate the receipt of insurance payments to the insured in the event of an insured event; at the same time, these provisions are written out in the insurance contract in such a way that a person who has no relevant experience, is not able to identify it independently, the more so that before concluding the policy the insurer is strongly convinced (misleading) of the benefits of this insurer and which is covered by insurance. This simple method is one of the most common in practice; as a result, in the event of an insured event, the insured often remain without insurance payments; 2) certain types of travel insurance (for example, luggage insurance) are sometimes considered compulsory by the insurers, although they are not really so, and whether or not the tourist decides personally to do so; 3) the doctor, who works at the hotel, assures the tourist that his / her policy is invalid and sends to the doctor (by prior arrangement with him), who treats the cash; the payment amounts can be quite large, and there are no guarantees that the insurance company will agree to return them; 4) heads of tourist groups, having conspired with foreign doctors, under the pretext of compulsory reporting, collect insurance policies from tourists, and then on their basis medical documents are issued and invoices are issued for treatment of diseases about which the tourists themselves did not «suspect»; similar cases are recorded in the popular among Ukrainian tourists of Greece, Cyprus, Turkey and other countries; 5) there are cases when, after the occurrence of an insured event, it becomes clear that the insurance company that issued the policyholder does not actually exist and the insurance policy in hand is ordinary paper, etc. [5, p. 50]. Instead, the victims of fraud can be not only consumers of tourist services (92 %), but also entities providing tourist services (tour operators, travel agents) (8%).

From here, the following is fraudulent actions against the tour operator by the travel agency, and vice versa I.O. Nesterova describes the mechanism of committing fraudulent actions by the travel agency in relation to the tour operator, as follows. Yes, the travel agency begins to actively book tours for its tourists, but with payment is in no hurry. The tour operator from this agency actively receives applications, whereby the payment is confirmed by copies of bank payment documents. Given the long-standing partnerships with this company, as well as the solidity of the network, the operator, without waiting for the receipt of money, draws tourists all the necessary documents for the tour and sends on a "trip". However, after several weeks of waiting, the tour operator insists on paying the debt urgently. In response, the travel agency sends guarantee letters and assures that the money will soon be sent to the tour operator's account. However, the tour operator does not receive money [8, p. 296]. Sometimes travel agents forge payment documents certifying the client's transfer of vacation money, and the

money received from the latter is appropriated.

Turning to actions taken by entities that have no official relation to the tourism business but act on behalf of such entities, it would be desirable to note such a method as "creating a fictitious legal entity as a travel agency". At the same time, we did not speak about the creation of such a legal entity as a tour operator, since we did not see such cases in the criminal proceedings. In our view, this is due to a more complex registration procedure for such a person and more stringent controls by competent persons.

The scheme of such deception is very simple. Thus, at the stage of preparation of fictitious documents, a legal entity is created – a travel agency whose activity is related to the provision of a specific tourist product. The next stage is advertising the agency and attracting clients. After concluding a contract for the provision of tourist services (fictitious), the company collects money and disappears.

One of the more common ways of cheating on the part of a one-day company is also a "raffle." Fraudsters get information about people who intend to travel to another country and ring the phone, announcing the gain of a tourist permit, and are invited to come to the office. A few more people are waiting in the office, who also seem to have won the tickets. Scammers are showing a video showing the place of travel. After that the manager informs that they have won the tourist permit, but it is necessary to pay the flight to the country, and it should be done immediately. As a result, the voucher turns out to be invalid. Psychological treatment of "victims" can lead to the fact that even fairly distrustful people agree to make money immediately [9]. Travel firms that are officially recognized as bankrupt may operate on the same principle, but continue to do business for some time.

There are cases of fraudulent activity by employees who have been hired to work for an agency that performs tourist activities legally. Of course, after signing a small number of contracts and receiving money from tourists, they disappear. However, the management of the travel agency only after the disappearance of this person becomes aware of fraudulent actions.

Conclusions. Therefore, there are many fraudulent schemes in the field of tourist services. Fraudulent actions may be taken either by entities having official authorization to carry out such activities (deceiving intentionally or by various actions and events) or by entities having no official relation to the tourist business, but act on behalf of such persons. Fraud can be directly or indirectly attributed to persons whose activities are associated with the activities required to obtain travel services (representatives of insurance companies, consulates, airlines, etc.).

References:

1. Нестерова І. А. Злочинність у сфері туристичного бізнесу: кримінально-правова характеристика та запобігання : дис. ... канд. юрид. наук : 12.00.08 / УжНУ. Ужгород, 2016. 240 с.
2. Клименко О. А. Особливості кримінально-правової характеристики шахрайства у сфері надання туристичних послуг. *Верховенство права* № 2. 2016: URL: <http://sd-vp.info>.
3. Томаневич Л. М. Рібун М. В. Протидія шахрайству у сфері туризму. *Науковий вісник Львівського державного університету внутрішніх справ. Серія економічна*. 2013. № 2. С. 154–161.
4. Про затвердження Правил оформлення віз для в'їзду в Україну і транзитного проїзду через її територію. URL: <https://www.kmu.gov.ua/ua/>.
5. Андрушко А. В., Нестерова І. А. Злочинність у сфері туристичного бізнесу: кримінологічна характеристика та запобігання: монографія. Ужгород : ТОВ «ІВА», 2016. 220 с.
6. Логінов Я. Польські 5-річні візи: обіцяне стало реальним, але проблеми залишилися. *Дзеркало тижня*. 16 жовтня 2015 р. URL: <http://gazeta.dt.ua/international/polski-5-richni-vizi-obicyane-stalo-realnim-aleproblemi-zalishilisya-.html>.
7. Нестерова І.А. Способи шахрайства в сфері туристичного бізнесу України. *Часопис Київського університету права*. 2011/1. С. 295–298.
8. Нестерова І. О проявленнях мошенництва в сфері туристичного страхування. *Leges et Viae*. 2014. № 4. С. 56–59.
9. Туристичні афери: URL: <https://sirius.kiev.ua/>.

Received to editorial office 06.12.2019

1. Nesterova, I. A. (2016) Zlochynnist' u sferi turystychnoho biznesu: kryminal'no-pravova kharakterystyka ta zapobihannya [Crime in the area of tourism business: forensic description and prevention]: dys. ... kand. yuryd. nauk : 12.00.08 / UzhNU. Uzhhorod, 240 s. [in Ukr]

2. Klymenko, O. A. (2016) Osoblyvosti kryminal'no-pravovoyi kharakterystyky shakhraystva u sferi nadannya turystychnykh posluh [Features of the criminal legal description of fraud in tourist service]. *Verkhovenstvo prava*, № 2 : URL : <http://sd-vp.info>. [in Ukr]

3. Tomanevych, L. M. Ribun, M. V. (2013) Protydiya shakhraystvu u sferi turizmu [Combating fraud in tourism]. *Naukovyy visnyk L'vivskoho derzhavnoho universytetu vnutrishnikh sprav. Seriya ekonomichna*. № 2. S. 154–161. [in Ukr]

4. Pro zatverdzhennya Pravyl ofornlennya viz dlya v'yizdu v Ukrainu i tranzynnoho proyizdu cherez yiyi terytoriyu [On approval of the Rules of Visa Requirements for Entry and Transit through Ukraine]. URL: <https://www.kmu.gov.ua/ua/>. [in Ukr]
5. Andrushko, A. V., Nesterova, I. A. (2016) Zlochynnist' u sferi turystychnoho biznesu: kryminolohichna kharakterystyka ta zapobihannya [Crime in tourism business: criminological description and prevention]: monohrafiya. Uzhhorod : TOV «IVA»,. 220 s. [in Ukr]
6. Lohinov, Ya. Pol's'ki 5-richni vizi: obitsyane stalo real'nym, ale prblemy zalyshylysia [Polish 5-year visas: the promise became real, but the problem remained]. *Dzerkalo tyzhnya*. 16 zhovtnya 2015 r. URL: <http://gazeta.dt.ua/international/polski-5-richni-vizi-obicyane-stalo-realnim-aleproblemi-zalishylysia-.html>. [in Ukr]
7. Nesterova, I. A. Sposoby shakhraystva v sferi turystychnoho biznesu Ukrainy [Methods of fraud in tourist business of Ukraine]. *Chasopys Kyyvivs'koho universytetu prava*. 2011/1. S. 295-298. [in Ukr]
8. Nesterova I. (2014) O proyavleniyakh moshennichestva v sfere turisticheskoho strakhovaniya [Methods of fraud in the sphere of tourist business of Ukraine]. *Legea și Viața*. № 4. S. 56–59. [in Russ]
9. Turystychni afery [Tourist scams]: URL: <https://sirius.kiev.ua/>. [in Ukr]

Summary

The article deals with the study of forensically significant features of the methods of fraud in the sphere of tourist services. Attention is paid to description of methods, clarifying their characteristics, determining the factors that affect their formation on the basis of what they were ordering. Laying the basis of a set of criteria for the classification, all the options of fraudulent activities in the tourism sector are summarized in three groups: fraudulent actions by entities that are authorized to conduct such activities (exercise deception in intent, or about a variety of actions and events) fraudulent actions on the part of the constituent entities, which have no official relationship to the tourism business, but on behalf of such persons. In a separate group of related fraudulent operations by individuals whose activity was expressed in support of actions required to obtain travel services.

Keywords: *fraud, travel, contract, of fraud, consumer of travel services, tour operator, travel agent.*

UDC 343.21

DOI 10.31733/2078-3566-2019-5-177-183



Ihor MITROFANOV[©]
Dr of Law, Ass. Prof.
(Kremenchuk National University
named after Mykhailo Ostrogradskiy)

THE VALUE OF THE MECHANISM OF CRIMINAL LEGAL REGULATION FOR LAW-MAKING

Ігор Митрофанов. ЗНАЧЕННЯ МЕХАНІЗМУ КРИМІНАЛЬНО-ПРАВОВОГО РЕГУЛЮВАННЯ ДЛЯ ЗАКОНОТВОРЕННЯ. Проаналізовано механізм кримінально-правового регулювання з точки зору його структури. Розглядаються ключові категорії цього механізму – норми кримінального права та кримінально-правові відносини. Механістичний підхід до розуміння механізму кримінально-правового регулювання дозволяє побачити його структуру та фактично уможливити усвідомлення його динаміки. Такий підхід дозволяє досягти мети роботи – моделювання концепту механізму кримінально-правового регулювання, я кому норма кримінального права визнається не лише базовим елементом, а конструкцією, в якій містяться практично весь інструментарій для функціонування такого механізму з метою виконання завдань КК України, а також виявляється значення розглядуваного механізму. Виводиться значення механізму кримінально-правового регулювання для законотворення через конкретні приклади законодавчих новел.

Зроблено висновок, що механізм правового регулювання останнім часом розуміється теоретиками права як технологічна схема правової регуляції, володіючи знанням про яку, юристом усвідомлюються всі ланки, які пройде процес впровадження норми права в регульовані суспільні відносини, які перепони можуть з'явитися на цьому шляху, а отже, здатний запропонувати

© Mitrofanov I., 2019

ORCID iD: <https://orcid.org/0000-0002-1967-1985>

k_kpd@dduvs.in.ua