



CZU 343.7

DOI 10.5281/zenodo.5796521

REAL ESTATE PROPERTY AS A SUBJECT OF FRAUD: FEATURES OF LEGAL IDENTIFICATION

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The article reveals the problems of defining the concept of the subject of a crime when committing real estate fraud, for correct legal identification. The concept of «real estate» is complex and multifaceted, and for a more precise definition of this term, the author proposes the distribution of real estate objects into groups, based on their functional purpose.

When writing the work, the author compared the modern concept of real estate with similar concepts in Roman law and its special regimes, on the division of ownership of real estate. The analysis of the points of view of scientists on the establishment of the subject of fraud in the field of real estate is carried out. In the context, the specific features of real estate are highlighted to determine the subject of crime and the object of property rights.

The author comes to the conclusion that criminal acts committed in the field of real estate are dangerous by the onset of harmful consequences: violation of property rights, illegal state registration of the emergence, transfer or termination of rights to real estate and, accordingly, causing material damage to the victim.

Keywords: fraud, subject of crime, property rights, real estate, crimes against property.

НЕДВИЖИМОЕ ИМУЩЕСТВО КАК ПРЕДМЕТ МОШЕННИЧЕСТВА: ОСОБЕННОСТИ ПРАВОВОЙ ИДЕНТИФИКАЦИИ

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В статье раскрываются проблемы определения понятия предмета преступления при совершении мошенничества с недвижимостью, для правильной правовой идентификации. Понятие «недвижимость» – сложное и многогранное и для более точного определения данного термина, автором предлагается распределение объектов недвижимости по группам, исходя из их функционального назначения.

При написании работы, автором проводилось сравнение современного понятия недвижимости с аналогичным понятиям в римском праве и его особыми режимами, о разделении права собственности на недвижимое имущество. Осуществляется анализ точек зрения ученых по установлению предмета мошенничества в сфере недвижимого имущества. В контексте выделяются специфические признаки недвижимости для определения предмета преступления и объекта имущественных прав.

Автор приходит к выводу, что преступные деяния, совершаемые в сфере недвижимого имущества, опасны наступлением вредных последствий: нарушением имущественных прав, незаконная государственная регистрация возникновения, перехода или прекращения прав на объекты недвижимости и, соответственно причинение материального ущерба потерпевшему.

Ключевые слова: мошенничество, предмет преступления, права на имущество, недвижимое имущество, преступления против собственности.

Introduction. The subject of the crime plays an important role both in the practice of lawmaking and law enforcement. The doctrine of the subject of crime with the time of its occurrence until now, has always been distinguished by controversial provisions and developed due to the need to

establish the subject of crime in law enforcement or in the process of scientific interpretation of criminal law. That is why this doctrine does not cause the slightest doubt about its purpose to serve the development of criminal law theory and the improvement of legal practice. [1, p. 192]



The study of real estate as a subject of fraud deserves special attention. Such a study has not only theoretical, but also practical significance, since the understanding of the corresponding object of criminal law protection depends on this.

Applied methods and materials. When preparing the article, the author used modern methods of scientific knowledge. In particular: the dialectical method - for scientific knowledge of social and legal phenomena that arise in the field of real estate; historical and legal, comparative legal, for the analysis of national and foreign legislation on the subject of fraud, in general, logical and semantic in order to define the concepts of «real estate» and «subject of fraud». Also, a formal-logical method was used to define certain terms: the subject of real estate fraud and signs of real estate.

The concept of real estate is key for understanding the fundamental features of the institution of law in general and crimes committed in relation to this type of property. Immovable property can be conditionally divided into three groups.

The first group is made up of real estate objects, which are assigned there according to their functional purpose. The legislator singled out land plots as an independent and basic type of real estate, this position is fair and indisputable, because all objects are located on the ground and are inextricably linked with it.

The second group of real estate consists of objects located on a land plot, the movement of which is impossible without their depreciation and changing their purpose. The legislator defined this provision in the Civil Code of Ukraine, but did not specify these objects. Objects located on a land plot can be conditionally divided into two types, namely: natural real estate objects and objects created as a result of human activity. Natural real estate is water bodies, forests, perennial plantings, independent or not always dependent on the results of human activity. At the same time, it should be remembered that neither subsoil areas, nor isolated water bodies, nor perennial plantations, nor even a layer of fertile soil of the earth can exist without connection with the land. In turn, real estate objects created by human labor, which have a direct connection with the land, include: buildings, structures, a single property complex of enterprises and objects of unfinished construction.

The third group is made up of mobile objects, which are subject to the legal regime of immovable property by law (ships, aircraft, space objects). This group is completely independent, and it includes things listed in Article 181 of the Civil Code of Ukraine. [2, pp. 23-30.]

It should be noted that in the criminal legal context there is no own concept of real estate applicable to criminal offenses against property. Based on the analysis of judicial and investigative practice, and public consciousness, some of the above-mentioned real estate objects, according to the Civil Code, indicated by the legislator as real estate, will not be taken into account in the context of the problem under consideration. This refers to rather colorful objects such as air, sea and space ships, as well as subsoil, which are the subject of regulation of an independent article of the Criminal Code of Ukraine.

Roman legislators very interestingly solved the issue of the legal status of premises in apartment buildings (and the latter, of course, existed during the specified period). According to the norms in force at that time, the owner of the land plot acquired ownership of the entire building and the division of the latter could only be carried out vertically with the obligatory division of the land plot. At the same time, the special regime extended to common walls, which were not subject to division and in respect of which the right to prohibit the commission of any actions did not apply. [3, p. 22]

Real estate in Roman law was considered not only land plots (*praedia, fundi*) and the bowels of the earth, but also everything that was created by someone else's labor on the land of the owner. It was recognized as a natural or property part of the earth's surface (*res soli*). Real estate included, in particular, buildings, crops, plantings. [4, p. 43.]

Most scientists consider not only property, but also the rights to it, to be the subject of fraud. However, there are cases when, after the entry of the right to someone else's property, the culprit may not be able to actually use it for various reasons (for example, changing the locks in the apartment by the former owner). However, these circumstances should not affect the qualification of this offense as a completed crime - fraud. And if only property is recognized as the subject of a crime, this qualification cannot be considered correct.



We share the point of view of most scholars who argue that the right to property can and is the subject of fraud. It should be noted that paragraph 3 of the resolution of the Plenum of the Supreme Court of Ukraine «On judicial practice in cases of mercenary crimes against private property» dated December 25, 1992 No. 12 said: «The subject of fraud and extortion is not only property, but also the right to it (granting the right to demand the fulfillment of obligations, documents granting the right to receive property, etc.) ... «[5]

According to some scientists, only by acquiring the rights to housing, the criminal has the opportunity to carry out civil transactions with him in the future and profit from this. Money can be the subject of fraud related to the alienation of private housing, but provided that the offender took possession of the money without obtaining the right to housing. This is especially true in cases where the offender enters into an agreement on the alienation of housing in such a way that in the future it can be declared invalid in court. Under such circumstances, the offender's actions are not aimed at obtaining the right to housing, but at obtaining the difference between the inventory value of housing specified in the contract and the money actually paid, the amount of which is not indicated in the contract [6, p. 112]. In such offenses, the subject of encroachments in the commission of crimes in the field of residential property turnover is also money.

It can be determined that the specific features of real estate as a subject of crime and an object of property rights are as follows. 1. Real estate has a physical (geographic, spatial, property) attribute. 2. Real estate has an economic characteristic, i.e. has at least a minimal economic value (cost). 3. Legal sign of real estate.

If we proceed from the fact that the ownership of real estate is transferred to the person at the time of state registration of this right, then the following conclusion can be formulated: when determining the signs of fraud with real estate, it is required to establish not the fact of its seizure, but the fact of acquiring ownership of real estate, i.e. the moment of state registration of this right.

A generalization of existing positions and judicial practice allows us to single out a number of signs that indicate the specificity of the legal status of real estate as a subject of criminal encroachment:

- physical characteristics of real estate;
- material characteristics of property - impossibility of physical acquisition of real estate without changing its status;
- state registration of ownership of property;
- the fact of the transfer of the powers of ownership, use and disposal.

Due to the physical properties of residential real estate in the modern criminal law literature, it is reasonably noted that encroachment on it is possible not in all forms. Its inherent physical properties exclude the possibility of its abduction by secret, open or violent means, characteristic, respectively, for theft, robbery and robbery. Such objectively non-movable objects cannot be the subject of these methods of theft also due to their legal properties. The special economic value of residential real estate was determined by a special legal regime that ensures publicity and transparency of the acquisition and transfer of rights to such objects. For example, in the case of unauthorized seizure of a residential property, the perpetrator does not acquire property rights, and such an act cannot be considered as crimes against property, but must be qualified depending on the method of committing a crime under other articles of the Criminal Code of Ukraine.

To obtain property rights to a residential real estate object, the winemaker has no other way than by deception or abuse of trust to force the owner to transfer the rights to the property to the winemaker, which is possible only through fraud. [7, p. 27.]

A person committing a fraud acquires the right to property in a knowingly illegal way. In this case, the person who acquired the right to the property in this way does not legally become the owner of the property. You cannot acquire property rights by criminal means. You can become an owner only on the grounds specified in the civil legislation of Ukraine.

Thus, the acquisition of the right to property does not cause the victim to lose ownership of this property. This explains why the legislative definition of fraud refers to the acquisition of the right to someone else's property, and not to the acquisition of ownership of someone else's property. The acquisition of the right to property is inherent in most of the characteristics characteristic of the acquisition of someone else's property, in particu-



lar, someone else's property, illegality, gratuitousness, causing damage to the owner or other owner of property, a selfish goal. [8, p. 73]

One of the meanings of the word «acquire» means «to become the owner of something, mainly by buying.» [9, p. 930] Thus, the swindler, as a result of the commission of unlawful acts, becomes the owner of the right to someone else's property. By acquiring such a right, he has the opportunity to exclude it in the future and turn it to his own benefit or to the benefit of other persons. In this case, we are talking about the moment of the end of the fraud committed by acquiring the right to someone else's property. Scientists are solving this question ambiguously. Some believe that from the moment the fraudster receives the document on the basis of the possession of which he acquires the right to the property, the crime is recognized

as completed, regardless of whether the fraudster managed to obtain the corresponding property in kind or in monetary terms. [10, p. 128]

Conclusions. Thus, having studied real estate as a subject of fraud, the following conclusions can be formulated.

Fraud committed in the field of real estate actually infringes not on real estate as a thing, an object of the material world with certain physical properties and legal status, but on the totality of property rights determined by civil law that belong to the rightful owner. Such deviant behavior on the part of the perpetrators is quite common and dangerous with the onset of harmful consequences. At the same time, the main specificity of the legal regime of real estate is the obligatory state registration of the facts of the emergence, transfer or termination of rights to real estate objects.

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