

Registration of Illegal Transactions with Real Estate: Features of the Object and Subject of the Crime

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ABSTRACT

The system of real estate crimes includes acts established under Article 170 of the Criminal Code of the Russian Federation, the text of which has been recently introduced the significant changes due to novelties in the civil and land legislation of Russia, which allowed to expand the scope of this rule. During the study, the author concludes that the crime under Article 170 of the Criminal Code of the Russian Federation represents an increased public danger, which attaches conditions for the necessity of the detailed study of the characteristics of the object and subject of the crime, with the aim of developing common approaches to qualifying these crimes. According to the author, this will reduce the level of errors in qualifications and, of course, increase the level of protection of citizens.

Keywords: *real estate, illegal transaction, registration, public danger, differentiation*

1. INTRODUCTION

Of course, at all times, owning your own real estate was considered respectable, almost everyone at least once in their life is faced with the need to register transactions with real estate. Over the past thirty years, countless real estate transactions have been registered, but, unfortunately, not all of them were legal. Nowadays, similar facts of criminal activity are still allowed and revealed, this determines the relevance of the chosen topic of the article, which purpose is to specify the features of the object and subject of the crime under Article 170 of the Criminal Code of the Russian Federation. In order to understand the features of the object and subject of the crime better, we need to refer to the statistics:

The analysis of statistical data indicates that in 2010 4 crimes committed under Article 170 of the Criminal Code of the Russian Federation, in 2011 - 7, in 2012 - 11, in 2013 - 28, in 2014 - 1, in 2015 - 4, in 2016 - 11, in 2017 - 12 (1, p. 774-775). A small number of registered crimes of the studied category indicates their high latency and ineffective judicial investigative practice.

It is necessary to comprehensively study the features of the object and subject of the crime since this will contribute to the correct qualification of the crimes provided for in Article 170 of the Criminal Code of the Russian Federation and will distinguish this crime from related crimes.

It is known that qualification of a crime is a sequential process that allows to establish the legal identity between the committed act and the signs of a specific corpus delicti, provided for by the criminal law norm. For the correct qualification of crimes in real estate, it is necessary to accurately and fully establish the actual circumstances of

the act, determine a number of criminal law standards that describe the signs of the act, delimit the related crimes, analyze the information received and, finally, draw the appropriate conclusion. The range of crimes committed in the field of real estate is quite wide, and the methods of committing these crimes are very diverse, often the criminals act sophisticatedly, inventively, without stopping at nothing, deftly using the defenselessness of the victims, who are easily misled by criminal intentions, taking advantage of the gullibility of the latter, or choose lonely elderly people who are not able to assert their rights and so on. In this article, we are going to consider the object and subject of the crime established under Article 170 of the Criminal Code of the Russian Federation.

2. METHODOLOGY

In the course of the study, systemic, synergetic and simulation approaches were used, it is due to the nature of the crimes established under Article 170 of the Criminal Code of the Russian Federation, as well as general scientific (systemic, structural-functional, statistical, prognostic, etc.) and special methods (formal logical analysis, comparative legal research, etc.).

3. STUDY RESULTS

The Article 170 of the Criminal Code of the Russian Federation provides for criminal liability for registering obviously illegal transactions with the real estate,

intentional misrepresentation of the state cadastre of the real estate and / or the Unified State Register of rights to the real estate and transactions with it, as well as an underestimation of the cadastral value of the real estate.

Of course, the criminal law processes in the field of protecting economic relations are interdependent with tax, civil, administrative, as well as housing and land laws.

Revealing the features of the object and subject of the crime established under Article 170 of the Criminal Code of the Russian Federation, various scientific approaches to their understanding were investigated. Moreover, it should be noted that as amended Article 170 of the Criminal Code of the Russian Federation from time to time, for example, ancestral and species objects were treated ambiguously. So, for example, during the revealing the generic object of crimes in the field of economic activity N.A. Lopashenko proposes to consider economic relations based on the principles of economic activity, and species objects to understand as social relations that meet the specific principles of economic activity (1). T.V. Pinkevich considers the generic object as social relations that take shape in relation to and in the process of economic activity and include socio-economic relations (property relations) and organizational and economic relations (relations associated with the production, distribution, exchange, and consumption) (2, p. 12-13). B.V. Volzhenkin sees it as if social relations taking shape in the field of economic activity in a society focused on the development of a market economy (3, p. 81).

B.V. Yatselenko considers social relations arising from the implementation of normal economic activity in the production, disposal, exchange and consumption of material goods and services as a specific object of crimes in the field of economic activity (4, p. 143), for V.E. Melnikov it is a group of homogeneous interrelated social relations that take shape in the field of economic activity (5, p. 178), without specifying the nature of these relations. According to B.M. Leontyev an object of crimes in the field of economic activity is the interests of the state and individual subjects in the sphere of their economic activity (6, p. 246).

The lack of a unified idea of the generic and specific object of crimes in the field of economic activity in the science of criminal law has an objective explanation. It is related to the fact that the criminal law in this area has always undergone significantly greater changes than any of its other norms. Numerous changes were due to the rapid response of the criminal law to changes in the economic policy of the state, which for many years was instable (7, p. 58).

The author adheres to the position that it is necessary to include social relations that develop over and in the process of economic activity as the ancestral object of the crime, believing that this definition reflects the essence of the ancestral object of crimes in the field of economic activity and, as notes T.V. Pinkevich, social relations about and in the process of economic activity include social and economic relations and organizational and economic relations; to a species object he refers public relations that ensure the rights of the owner to own, use

and dispose of real estate, believing that this particular definition briefly but succinctly covers the essence of the considering concepts.

Beginning the analysis of the direct object, we should agree with the opinion of N.A. Korzhansky that the immediate object of each crime in the sphere of economic activity should lie in the plane of the generic and species object (8, p. 44).

The scientific approach of S.V. Poznyshev is also interesting. He claims that "the unity of the crime, first of all, implies the unity of the object to which the encroachment is directed" (7, p. 59).

Based on the fact that we are considering the features of an object, it is precisely the main immediate object that is interesting to us. Considering the immediate object of the crime established under Article 170 of the Criminal Code of the Russian Federation, we came to the conclusion that alternative types of criminal acts of the criminal law norm, many of the possible consequences when they are committed in respect of real estate indicate the difficulty in its determination.

For example, some authors defined the object of the crime in question as relations on the use and protection of land in the Russian Federation (9).

N.A. Lopashenko examines the object of criminal assault, established under Article 170 of the Criminal Code of the Russian Federation "as a principle of prohibiting obviously criminal forms of behavior in economic activity, meaning that under no circumstances can economic entities commit acts that are clearly criminal in nature, even if they can bring the highest economic profit or any other benefit to the economic entity" (1, p. 266).

A.F. Ivleva claims that the object of the crime established under Article 170 of the Criminal Code of the Russian Federation, is the established procedure for the turnover of land (10, p. 16).

B.V. Volzhenkin relates the economic interests of the state, organizations, and citizens as participants in the legal turnover of land plots to the object of the crime in question (11, p. 165).

A.E. Zhalinsky spoke very specifically regarding the purpose of the norm under study: "Ensuring the legality of the activities of the state apparatus in the sphere of land turnover as an object of property and at the same time of the most valuable national heritage" (12, p. 235).

Based on the above positions, we can conclude that the immediate object of the crime established under Article 170 of the Criminal Code of the Russian Federation, is ambiguously interpreted in the scientific literature.

The disposition of the article includes three different elements of crime. Following this line of reasoning, the object of this crime should be recognized relations associated with the possession, use or disposal of real estate, based on the principle of the prohibition of obviously criminal forms of behavior in economic activity. Depending on the actions that make up the objective side of the crime, such relations are: relations associated with the registration of real estate transactions; relations associated with the maintenance of the state real estate

cadastre; relations related to the payment of land tax and rent for the use of land.

The author adheres to the position that the main direct object of the crime in question can be attributed to social relations arising from the registration of property rights to real estate, including relations related to the acquisition, disposal, possession and use of real estate, since it is these public relations that form the key link in the sector transactions with real estate.

Particular attention should be paid to the subject of crime of the investigated type of crime. In the theory of criminal law course, the subject of a crime is understood to be the materialized good in connection with which a crime is committed and which destroying, removing or modifying the harm is caused to the object of the crime (13).

According to Article 130 of the Civil Code of the Russian Federation, real thing (real estate, real property) include land, subsoil and everything that is firmly connected with land, i.e. objects whose movement without disproportionate damage to their purpose is impossible, including buildings, structures, objects of construction in progress. However, it should be noted that the list of real estate is not exhaustive. Real thing also include aircraft and sea vessels, inland vessels subject to state registration. The law may also classify other property as real property.

The expansion of the scope of criminal encroachment, including various real estate, certainly deserves a positive assessment, in modern conditions, it is completely justified that “along with land plots, other types of real estate also need special legal protection” (14, p. 27).

The subject of criminal assault, established under Article 170 of the Criminal Code of the Russian Federation, on the basis of alternative compositions, of which we are interested in registering obviously illegal transactions with real estate and distorting the information of the state real estate cadastre, respectively, firstly, real estate, since the act is committed in connection with real estate and regarding real estate, as well as the Unified State Register of Rights to Real Estate and Transactions therewith, as the state registration of transactions is carried out by making a record of the transaction in the specified ester is the only proof of the existence of a registered right; secondly, information from the state real estate cadastre, consisting of a register of real estate objects, cadastral affairs and cadastral maps. Information on the unique characteristics of the property and additional information on this property are entered in the State Real Estate Cadastre.

Real estate objects are subject to mandatory registration in the state real estate cadastre and (or) the Unified state register of rights to real estate and transactions with it. The state real estate cadastre includes: the register of real estate, cadastral affairs, cadastral maps, and it is maintained in two-dimensional form.

Currently, the world is actively discussing the implementation of a three-dimensional (3D) cadastre in practice, which allows fairly quickly to obtain objective information about the location of the property, taking into account, inter alia, terrain features, take into account multi-level objects, etc.

Interesting is the position expressed by K. Yanechka on standardization supporting smart cities using the 3D cadastre as an example, which offered an overview of selected ongoing ISO standardization activities in the field of geographical information related to BIM / SES and 3D cadastre. In particular, the document standard ISO 19152 supports the intellectual registration of real estate, presenting a conceptual scheme that includes 3D plots, that is, a 3D cadastre, which makes it possible to make greater use of existing and semantically rich 3D digital big data when constructing 3D cadastre and GIS projects of Smart cities” (15).

It is necessary to indicate that the record of the property in the Register contains general information about the property, information about the location of the border for the land or information about the location of the property, mailing address, information on property rights and so on. Many authors offer various ideas for determining the location of real estate, which certainly deserve attention, for example, S. Mozaleipur, M.S. Shavarani, C. Steens and A. Eros proposed the implementation of a practical expert decision support system (EDSS) to analyze the location and make decisions about the location of real estate in the real estate organization and management department (FREM) in the presence of several decision criteria, in accordance with risk and uncertainty. The study conducted by these authors is especially useful for making strategic decisions in the field of determining the possibilities of using real estate (16).

The object and subject of the crime, established under Article 170 of the Criminal Code determines the nature of public danger. As D.V. Ilyin rightly noted: “In the criminal scheme for concluding transactions with land, the act is the final stage, an important link in the shadow real estate market” (17, p. 143).

S.I. Lesnyak drew attention to the fact that the public danger of a crime established under Article 170 of the Criminal Code of the Russian Federation, due to the fact that the crime is committed by officials acting on behalf of the state, which undermines the authority of the state power of the Russian Federation and contributes to the violation of the rights and legitimate interests of citizens, society and the state (18).

As we can see, circumstances are presented that indicate an increased public danger of registering illegal transactions with land, all the more we can talk about an increased degree of public danger of the crime in question, given the fact that public relations by the legislator are placed under criminal protection not only regarding registration illegal transactions with land, but also registration of transactions with real estate, the concept of which is more capacious.

Real estate, which includes housing, has always been of a special kind to a person. As a rule, it is the acquisition of real estate that is a means of investing earned money is a kind of guarantee of welfare. The special value of real estate, especially the housing stock, is emphasized in the provisions of the Constitution of the Russian Federation, the Universal Declaration of Human Rights of December 10, 1948, the Housing and Civil Codes of the Russian

Federation, this, in particular, determines the peculiarity of the subject of criminal encroachment established under Article 170 of the Criminal Code.

It must be emphasized that the legislator does not provide for differentiation of criminal liability for registration of illegal transactions with real estate: qualifying and especially qualifying features of Article 170 of the Criminal Code of the Russian Federation does not contain, although just the inclusion of these signs would significantly increase the degree of public danger of the criminal act in question.

We emphasize that the crime established under Article 170 of the Criminal Code of the Russian Federation, by the design of the objective side has a formal composition, it is considered completed upon the commission of any of these acts in the disposition of the norm, regardless of the onset of any negative consequences.

It should be noted that despite the fact that the sanction for the commission of the crime in question after expanding the subject of the criminal offense, although increased, does not correspond to the degree of public danger of the crime in question, the author holds the position that the fine should be set in the amount of five hundred thousand to one million rubles or in the amount of wages or other income of the convicted person for a period of three to five years, with the deprivation of the right to occupy certain positions or to engage in a certain act up to five years, or imprisonment for up to three years. The commission of an act containing qualifying characteristics, in case of including in the specified criminal law, respectively, should provide for more increased sanctions restricting the legal status of the offender, up to and including imprisonment for a certain period.

Thus it is a feature of the object of the crime, established under Article 170 of the Criminal Code of the Russian Federation, consists in the fact that the object is public relations arising from the registration of property rights to real estate, representing a completely special kind of value, and, accordingly, it is public relations in real estate that require increased criminal law protection.

4. DISCUSSION AND CONCLUSION

The analysis of the features of the object and the subject of the crime established under Article 170 of the Criminal Code of the Russian Federation allows us to argue that the criminal liability for the registration of illegal transactions with real estate was introduced relatively recently, regardless of this, it should be recognized as relevant and timely, since the measure taken will certainly contribute to the stabilization of relations in the sphere of real estate turnover, the implementation of an effective criminal policy and, ultimately, the observance of the rights and freedoms of man and citizen.

The indisputable fact is that the judicial investigative practice on the analyzed crime has not been developed, which causes difficulties in qualifying the crimes. At the same time, in order to resolve contentious issues of qualification, it is necessary to analyze judicial practice

and monitor the constantly changing methods and types of criminal attacks related to the registration of illegal transactions with real estate.

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