Prospects for Development of Forensic Methods for Investigation of Criminal Offenses Related to Raiding

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DOI: 10.32353/khrife.1.2024.03 UDC 343.98:343.74(477)
Received: 20.12.2023 / Reviewed: 03.01.2024 / Accepted for print: 27.03.2024 /
Available online: 29.03.2024

Formation and development of economic security of the State requires taking effective measures to counteract and minimize negative impact of criminal offenses that encroach on economic and social relations, legal activities of economic entities, rights of public administration employees, etc. Among the latter, those that demonstrate signs of raiding deserve close attention, i.e., related to the illegal takeover and seizure of property, assets of enterprises, institutions, organizations, corporate rights to them and other resources, encroachment on the rights of owners or authorized persons of entities management of various forms of ownership, etc. In this regard, the article purpose is defined as outlining prospects for construction of forensic methods of investigation of criminal offenses in which signs of raiding can be detected. In order to achieve the specified goal, a complex of general scientific, philosophical and special research methods was applied. According to performed research results, it was determined that in modern sense, a separate forensic investigation method (in a broad sense) should be understood as an integrated product of scientific knowledge in the field of law, formed on the basis of a generalization of investigative and judicial practice, which in its essence is a set of forensic recommendations, proven tactics methods of conducting investigative (search) and covert investigative (search) actions, methods and techniques of optimal and effective
use of forensic techniques during pre-trial investigation developed in accordance with procedural requirements in order to optimize the model of conducting pre-trial investigation of a separate criminal offense, their groups, etc. Based on the generalization of certain elements of the criminal law and forensic characteristics of criminal offenses related to raiding, varieties of individual forensic methods of investigation have been determined, including interspecies, special, subspecies, species, etc.

**Keywords:** criminal offense; separate forensic method of investigation; pre-trial investigation; raiding; entity; enterprise; land plot; unlawful absorption; delight.

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**Research Problem Formulation**

Law enforcement activity related to pre-trial investigation of criminal offenses necessitates intensification of scientific researches to provide this activity with relevant scientifically based recommendations. Comprehensive recommendations are the basis not only for practical activities, but for scientific ones, as they can be presented in the form of separate forensic methods of investigation.

Developing issue of forensic methods for investigating crimes and criminal misdemeanors has been one of the most discussed topics in the scientific community for a long time. As stated in the legal literature: “forensic doctrine attempts to unify approaches to determining the content and structure of individual forensic methods, however, their development, typification and implementation in practice remains an unsolved problem negatively affecting their effectiveness in the process of practical implementation”\(^1\). In support of the stated thesis, we note that outlined issues have not yet found any logical solution. Some of their aspects are highlighted in the legal literature, but some proposals are not without signs of subjectivism that is not always consistent with the fundamental principles of forensic methods.

Our attention object are criminal offenses encroaching on legitimate activities of business entities, in particular, related to illegal takeover and seizure of property, assets and corporate rights of owners of enterprises, organizations,

institutions, etc. The latter is usually called raiding, which is understood as the seizure of property that occurs against the will of its owner and is combined with the use of means and methods of a criminal nature, in particular, acquisition of controlling stakes in ways that contradict legal procedures and the will of the management of the company being absorbed. It should be emphasized that raiding usually has a valid or pretended legal basis and is carried out in compliance with, or with the imitation of compliance with, legal judicial and corporate procedures. With this in mind, it is important to ensure not only their effective pre-trial investigation characterized by a number of difficulties, but proper countermeasure that should include measures to prevent this type of crime. Such areas of activity are relevant, because it is criminal offenses related to raiding that make it impossible for business entities to function negatively affecting market economy, opportunities to attract foreign investments, and also encroach on economic security as a component of national security of the state, etc. At the same time, it should not be assumed that raiding as a phenomenon has a negative effect exclusively on the activities of participants in economic and social relations, because officials and persons whose professional activities are related to the provision of public services are often involved in implementation of criminal intent.

Exposing such raiding schemes, making them public, robs the authority of public officials and lowers the level of trust of civil society institutions in them and in general in the state, personified by State authorities. Such facts have a negative impact on the Corruption Perception Index (hereinafter referred to as CPI) together with such factors as the lack of a professional public service in the state, the dependent functioning of the justice system, “traditional” nature of providing an undue advantage for concluding a contract or other personal reward, etc. Although in 2022 Ukraine scored 33 points out of a possible 100 according to the CPI, which is one point more than the previous year (in a ten-year perspective, this is 8 points), Ukraine still ranks 116th.

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among 180 countries. Undoubtedly, this affects the failure of national economic entities to receive foreign investments, which are necessary for the formation of a market economy, the development of modern entrepreneurship and the formation of production potential, despite the presence of advantages that Ukrainian entrepreneurs are able to offer. Therefore, the consequences of insufficient resistance to raiding, in particular by criminal procedural means, are not exclusively related to the infliction of various types of damage on business entities, their owners and other participants in economic and social relations, but are characterized by the scale of the interstate level, because they negatively affect the possibilities of concluding interstate economic agreements, prospects for Ukrainian accession to economic communities, etc.

The number of various criminal offenses committed by raiders forces scientists to classify their activities according to separate groups of offenses.

In some places, we can even talk about the existence of technologies of criminal activity, which actualizes the need to conduct comprehensive research in this area and to find scientific ways to solve certain problems of investigative and judicial practice.  

Article Purpose

Outline development prospects of forensic methods of investigation of criminal offenses related to the illegal absorption and seizure of property, assets of enterprises, institutions, organizations, corporate rights to them, i.e., criminal offenses with raiding signs.

Research Methods

In order to achieve the specified goal, a complex of general scientific, philosophical and special research methods was applied, in particular: analysis, synthesis, system analysis, systemic-structural, forecasting, dialectical ones.

Methods of systemic analysis and system-structural helped in the study of investigative and judicial practice, generalization of theoretical developments of Ukrainian scientists in the field of criminal offenses investigated by us.

Such general scientific methods as analysis and synthesis contributed to determination of criminal offenses most
often committed by raiders collectively, and on the contrary, on the basis of the analysis of investigative situations, a conclusion was drawn about which signs of criminal offenses can be seen in the actions of raiders; their respective legal qualifications are offered.

Method of analysis of quantitative indicators and grouping is applied to the processing of statistical reports of Prosecutor General’s Office of Ukraine, judicial practice (in particular, for the analysis of verdicts placed in the Unified State Register of Court Decisions).

The method of dialectics made it possible to formulate the author’s definitions of some forensic categories, and forecasting to outline the prospects for the construction of separate forensic methods of investigation of criminal offenses related to raiding.

**Analysis of Essential Researches and Publications**


At the same time, it should be emphasized that researchers have overlooked (despite their considerable relevance) certain forensic methods of investigation of criminal offenses related to the illegal absorption and seizure of property, corporate rights of owners of enterprises, organizations, institutions and other business entities, i.e. criminal offenses with signs raiding. Certain aspects of activities related to pre-trial investigation, proving and combating criminal offenses, which can be considered related to raiding according to certain characteristics, are highlighted in the works of domestic scientists (S. Andrusenko, L. Arkusha, O. Bandurka, S. Barhan, V. Bereziak, N. Hryshchenko, S. Husarova, V. Husieva, S. Dovhun, R. Dudarets, I. Kubariev, V. Kikinchuk, O. Lukianikhina, O. Podobnyi, Ye. Priakhin, M. Riabchenko, D. Sanakoiev, N. Tataryn, K. Fomichov, T. Khanov and co-author, M. Tsutskiridze, O. Gritsenko N. M. Кримінальна відповідальність за протиправне заволодіння майном підприємства, установи, організації: дис. ... канд. юрид. наук. Дніпро, 2019. 216 с. URL: https://dduv.in.ua/wp-content/uploads/files/Structure/science/rada/d2/dissertations/4/1.pdf (date accessed: 18.12.2023).


At the same time, only some of the works of the named scientists contain provisions on the types of methods or outlines of types of criminal offenses that can be considered related to raiding, and therefore are promising for determining their elements and specifics, which indicates the need for more thorough research in this direction.


Main Content Presentation

Forensic literature abounds with various definitions of the *forensic methods* term. There is no unity among scholars regarding the varieties of forensic methods and the classification criteria that can be applied to define these varieties, structural elements of the latter, etc.

V. Zhuravel notes terminology ambiguity used by scientists when researching the problems of constructing forensic methods: here there are forensic methods of crime investigation, separate forensic methods, and forensic methodological recommendations, but they all differ in semantic meaning. We make it our task to build separate forensic methods, because they embody a set of well-founded scientific and practical recommendations aimed at organizing an investigation and its immediate implementation. Let us summarize the position of Academician V. Zhuravel in the modern and broad sense and in the ideal form, a separate forensic investigation method is an integrated product; it is a set of forensic recommendations tested by tactical methods of conducting investigative (search) and covert investigative (search) actions, methods and means of optimal and effective use of forensic techniques during pre-trial investigation, applied in accordance with procedural requirements and the optimal model of pre-trial investigation of a separate criminal offense (their groups). At the same time, in our opinion, it is inappropriate to consider forensic recommendations aimed at improving and optimizing the process of judicial review of criminal cases among components when formulating the definition of this concept. We share the position of scientists regarding separation of trial methods.

Activity of developing individual forensic methods of investigation is continuous, determined by peculiarities
of the regulatory and legal regulation of criminal procedural activity, corresponding trends that are formed in investigative and judicial practice, the development of science and technology, and the introduction of innovative technologies in the field of investigation of criminal offenses. In order for developed forensic recommendations to meet and contribute to satisfaction of the needs of law enforcement agencies, they must be constantly updated, in other words, brought “in line with current realities” 24.

Therefore, outlining construction prospects of forensic methods of investigating criminal offenses related to raiding requires a thorough analysis of criminal activity mechanism aimed at committing raiding actions, or its individual elements and this is impossible without generalization of legal literature, in particular theoretical scientific research, which became the subject of study of the outlined questions, and at the empirical level: generalization of investigative and judicial practice of investigating criminal offenses of this type. Criminal law and criminological characteristics of the crime and some information of a sociological and psychological nature are meaningful in the context of the construction of this type of methodology that has been repeatedly mentioned in legal literature 25.

First of all, we plan to determine specifics of the mechanism and criminal-legal characteristics of criminal offenses related to raiding on the basis of an analysis of the methods of committing criminal offenses related to raiding. First, we should note the complexity of the latter. Most often, they are fully structured and contain actions for preparation, direct implementation of criminal intent: method of commission (mostly the latter is determined by the disposition of corresponding article of Criminal Code of Ukraine) and actions for concealing the case of criminal offense.

Thus, at one time, M. Kamlyk, M. Pohoretskyi, V. Shelomentsev, on the basis of generalization of investigative and judicial practice, taking into account the provisions of criminal legislation, thoroughly approached generalization of totality of actions and schemes of raiding: in accordance with the provisions formulated by scientists, the raider capture of the subject under certain conditions, only criminal organizations are capable of doing business 26. In this regard, the actions of raiders who organized themselves with the aim of committing a serious or particularly serious crime will fall under the legal qualification of Art. 255: Creation, management of a criminal
community or criminal organization, as well as participation in of Criminal Code of Ukraine 27. In the future, members of criminal organization usually take actions necessary to formulate a capture strategy, which most often consist of finding out information about the assets of the business entity, managers, financial statements, etc. If the actions of the raiders (criminal organization) are aimed at obtaining information that is a commercial or banking secret, they will also be qualified under Art. 231: Illegal collection for the purpose of use or use of information constituting a commercial or banking secret of this Code 28, and the disclosure of the latter will be grounds for bringing perpetrators to justice also under Art. 232: Disclosure of commercial, banking or professional secrets on capital markets and organized commodity markets of the Criminal Code of Ukraine 29.

Raiders are not limited to committing criminal offenses in the field of economic activity. Sometimes they resort to acts of a violent nature, including threats (intellectual and physical) that is the basis for qualifying the actions of criminals as a whole. As evidenced by the analysis of investigative and judicial practice, for criminal offenses related to raiding, it is typical to commit crimes that encroach on the life, health, will, honor and dignity of a person: among the latter, Illegal deprivation of liberty or kidnapping of a person (Article 146 of Criminal Code of Ukraine), Forcible disappearance (Article 146-1 of Criminal Code of Ukraine), Intentional bodily harm of moderate severity (Article 122 of Criminal Code of Ukraine), Threat to kill (Article 129 of the Criminal Code of Ukraine) 30.

Concurrently with criminal offenses investigated by us, the raiders commit “Stealing, misappropriating, extorting documents, stamps, seals, acquiring them through fraud or abuse of official position or damaging them” (Article 357 of Criminal Code of Ukraine), “Forgery of documents, seals, stamps and forms , sale or use of forged documents, seals, stamps” (Article 358 of Criminal Code of Ukraine) 31.

Raiders manage to commit other illegal actions. Thus, in investigative practice, there are cases when after the death of a single elderly person who owned a plot of land during her lifetime, criminals try to get this inheritance on the basis of, for example, recognition in court of the fact of living together as one family without registering marriage. In order to confirm the fact of running a joint economy (joint budget) and expenses (mutual rights and obligations), fraudsters submit forged documents to the court in the form of statements, certificates, etc.: they forge relevant documents on their own or by providing undue benefits to officials of state authorities or representatives of local self-government (they receive forged documents attesting to non-existent facts from them), and by providing material benefits to third parties, force them to give false testimony during judicial review of their applications. In case of a positive decision of the court regarding inheritance, in the future, such a dishonest person acquires the right of ownership of the object of inheritance (a land plot), which he can resell to a third party: “bona

28 Ibid.
29 Ibid.
30 Ibid.
31 Ibid.
In such cases, the actions of the raiders, aimed at seizing land plots usually for agricultural purposes, can be qualified as aiding in the falsification of official documents. At the same time (due to the presence of legal gaps), the latter will not bear responsibility for coercion (in any way) to provide false testimony to the court (another authorized body). As for the resale of the object for which the ownership right has been obtained, this, as it is rightly emphasized in the legal literature, “has signs of legalization of property obtained by criminal means, but this crime requires proof of the intention of the so-called “bona fide purchaser” to implement difficult in practice” 32.

The above methods of committing illegal acts indicate that crimes in the field of economic activity (in particular, related to raiding) involve the commission of not simple single-component actions, but are related to the implementation of a set of illegal behavioral acts, each of which forms an independent component of a criminal offense. In the forensic literature, to indicate similar facts, the terminological construction: criminal activity technology is used 34, which additionally confirms: knowing the criminal event of criminal offenses related to raiding is a complex activity, and their proof involves the accumulation of various resources, the implementation of a set of investigators (detective ) and covert investigative (research) actions, conducting tactical operations, involving carriers of specific expertise, etc. Such activity, of course, actualizes the need to build appropriate methods. Taking into account the outlined methods of committing crimes and the types of offenses committed by raiders, criminalized by the current legislation, as well as the criminal-legal criteria for
construction of methods of investigation of criminal offenses, we can summarize the following promising forensic methods of investigation of criminal offenses related to raiding:

1) interspace one (investigation of criminal offenses related to raiding, i.e., with illegal takeover and seizure of business entities, corporate rights to them or their assets, which commission is combined with the commission of criminal offenses in the field of official activity or those encroaching on life and health of a person, or related to encroachment on the will and honor of owners of business entities or persons authorized by, etc.);

2) special one (investigation of raiding-related criminal offenses committed in the sphere of economic activity);

3) depending on the stages of criminal proceedings (initial stage of investigation of criminal offenses related to raiding, investigation, trial, etc.);

4) depending on presentation (descriptive, formalized and mixed ones);

5) generic one (investigation of individual criminal offenses belonging to the group investigated by us);

6) subspecies (built on the basis of a separate article of Criminal Code of Ukraine, with additional highlighting of certain forensically significant features) etc.

Conclusions

In the modern sense, in a broad sense, separate forensic investigation method should be understood as an integrated product of scientific knowledge in the field of law, formed on the basis of generalization of investigative and judicial practice, which in its essence is represented by a set of forensic recommendations, proven tactical methods of investigative (detective) and undercover investigators (investigative) actions, methods and techniques of optimal and effective use of forensic techniques during pre-trial investigation, developed in accordance with procedural requirements and with the aim of optimizing the model of pre-trial investigation of separate criminal offense, their groups, etc.

Group of criminal offenses related to raiding is numerous and their recognition by criminal procedural methods and the process of proof are complex, which is due to the relevant specifics of this type mechanism of crimes, as well as technologies of criminal activity, which are usually used by criminal organizations, groups of individuals or individuals subjects.

Based on generalization of certain elements of the criminal law and forensic characteristics of criminal offenses related to raiding, among the individual forensic methods of investigation of these criminal offenses, we consider it appropriate to single out the following:

1) interspace one (investigation of criminal offenses related to raiding, i.e., with illegal takeover and seizure of business entities, corporate rights to them or their assets, which commission is combined with the commission of criminal offenses in the field of official activity or those encroaching on life and health of a person, or related to encroachment on the will and honor of owners of business entities or persons authorized by, etc.);

2) special one (investigation of raiding-related criminal offenses committed in the sphere of economic activity);

3) depending on stages of criminal proceedings (initial stage of investigation of criminal offenses related to raiding, investigation, trial, etc.);

4) depending on presentation (descriptive, formalized and mixed ones);
5) generic one (investigation of individual criminal offenses belonging to the group investigated by us);
6) subspecies (built on the basis of a separate article of Criminal Code of Ukraine, with additional highlighting of certain forensically significant features) etc.

We have listed only some of the possible varieties of individual forensic methods of investigation, and therefore we believe that this issue requires further thorough research.

Financing
This research did not receive any specific grant from funding institutions in the public, commercial or non-commercial sectors.

Disclaimer
Founders had no role in the research design, data collection and analysis, decision to publish or manuscript preparation.

Participants
The author has contributed solely to intellectual discussion underlying this document, case law...
research, writing and editing, and assumes responsibility for its content and interpretation.

**Declaration of Competing Interest**
The author declares no conflict of interest related to this topic, although he is Advisory Board member of research paper collection; he was not involved in publishing decision and this article has undergone a full peer review and editing procedure.

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