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## THE PLACE OF NON-STATE SUBJECTS OF THE SECURITY SECTOR IN THE SYSTEM OF CRIME PREVENTION IN THE SPHERE OF HOUSING

*Problems of non-state security services functioning as subjects of crime prevention in the sphere of housing are characterized. A set of legal, organizational and special criminological methods is offered to improve the results of their activity after analyzing the regulatory legislation, law enforcement and court practice along with foreign experience.*

**Keywords:** crime prevention; housing; non-state subject of the security sector; state bodies of architectural and housing control.

Housing is considered to be one of the main tools for the civil society to achieve its social goals. Residential sector is a clear indicator of state policy effectiveness which provides more accurate data comparing to other economic and social phenomena [1, p. 12]. Ukrainian housing complex includes more than 40 000 enterprises (about 90 % are private) employing up to 800 000 people [2, p. 8]. But the high market price of the dwelling creates friendly environment for the crimes against property to be committed. Recently the number of registered embezzlement cases and other intentional crimes in the housing sector has almost tripled. Every third criminal offense committed is characterized by an especially great financial loss – these crimes are respectively aggrieved by the material damage to the state and to the private proprietary forms [3, p. 221].

It is known that prevention of economic crimes is a task performed not only by law enforcement agencies but also by other state bodies and NGOs [4]. Legislation defines a system of law enforcement agencies responsible for economic crimes combating with which includes state bodies with special status (units of National Police of Ukraine, State Fiscal Service of Ukraine, Security Service of Ukraine) and state bodies which specific authorities are exercised within the scope of their basic competences. These state bodies include prosecution and penitentiary institutions, National Service of Financial Monitoring of Ukraine, units of State Border Service of Ukraine, state financial regulatory bodies (National Bank of Ukraine, National Commission on Paper Holdings and Stock Market), state controlling bodies and agencies in the structure of State Fiscal Service of Ukraine and State Financial Inspection of Ukraine (including central executive revision bodies), Antimonopoly Committee of Ukraine, Ministry of Economic Development and Trade, Ministry of Foreign Affairs of Ukraine, Ministry of Agricultural Policy and Provisions, State Statistics Service and other Ukrainian central and local executive bodies.

Legal relations between subjects (the abovementioned state institutions with regulatory and law enforcement authorities as well as private ones) of housing crimes prevention are characterized with complex interconnection. The specificity of law enforcement subjects' cooperation is determined by the concept that along with traditional «suppliers» of criminal proceedings – operative units, other newly designed specialized units (organized crime, tax and cybercrime combating ones) authorized to perform public and covert investigative actions activities are also involved in this process. This interaction considerably affects the structure, organization, directions and subjects of crime prevention and forms of their official and conspirative cooperation at all levels of this process.

One of the main subjects of interaction during detection and termination of housing crimes are the state housing controlling bodies – the legal successors of the State Housing Inspection. According to the Law of Ukraine «On Urban Housing Regulation» the abovementioned institutions are responsible for provision, receipt, registration and returning the authorizing documents; refusal or cancellation of its

registration; acceptance of completed objects into service (issuance of certificates, registration of declarations on objects' serviceability); maintenance of state control of legislative compliance in the area of urban housing (housing norms, standards and regulations, provisions of related all-level documents, primary data for urban housing projects, planning documents for residential objects); examination of cases on administrative offenses (breach of legislative provisions defining housing norms, state standards and regulations on planning, realization and non-fulfillment of the officials' commitments); examination of cases on offenses in the area of urban housing with appropriate decisions and other authorities under the applicable law [5].

Regulatory legislation does not define the procedure of law enforcement agencies cooperation with state inspection bodies – it only mentions the basic principles of interaction between relevant services which proves that there is no complex approach to the legislative support of law enforcement activity in this sector of economy. Current practice shows that law enforcement agencies do not consider the inspection material containing criminal offense characteristics as crime notifications – that is why the inefficient procedure of data checking is applied. As a result, valuable data and time is lost.

According to paragraph 2 (part 14 of Article 11) of the Law of Ukraine «On the Basic Principles of State Financial Control in Ukraine» officials representing the relevant body of financial control are authorized to initiate a justified revision provided that officials from subordinated bodies and other subjects of business activity get the copies of court decisions on the unscheduled off-site inspection with indication of grounds, dates of start and completion; if inspecting the subjects of business activity is not defined as subordinated by the law, a number of criminal proceeding bodies are authorized to perform pre trial investigation, date and grounds for the criminal offense suspicion. If these documents are not provided to the representatives of subordinated bodies and other subjects of business activity or are provided with violations of the procedure, the employees of state financial controlling body are to be suspended from the inspection. In case that the investigator requests the abovementioned inspection to be carried out by the state financial

controlling bodies in the criminal proceedings and the person is not notified of suspicion, these bodies dismiss the request. Taking this into consideration we offer to amend the Law of Ukraine «On Basic Principles of State Financial Control in Ukraine» by permitting the revision performance without indicating the date and grounds for the suspicion notification in the request.

Analysis of the law enforcement practice during the last decade shows that traditionally prevention of crimes against property in the area of business activity and interests of its subjects is the task of security service employees although functions of crime detection and termination (performed independently or in cooperation with law enforcement agencies) are not statutorily regulated.

Therefore private detective (investigative) activity in many countries is recognized on the state level, statutorily regulated and used effectively in order to help citizens and legal entities to protect their rights and interests.

The USA, Great Britain, France, Germany, Canada, India, Israel, Japan, Norway, Spain, Italy, Portugal, Mexico and many other states show how successfully their authorities have tackled the social challenges by establishing the institutes of private detective services (agencies and unions) – that is why today these non-state institutions have become an essential part of the state structure regulated by the national legislation [6].

For example, in Great Britain the number of personnel employed in private security and detective agencies prevails the number of police officers twice. Budget of American private security services exceeds the annual budget of law enforcement sector. In Israel (populated with more than 5 million people) 2000 detective and security agencies are functioning.

The experience of countries where the private detective activity is legally regulated proves that functioning of private detectives, detective agencies and their unions increases responsibility of the state law enforcement system in meeting the society's requirements, frees police from secondary tasks and helps to decrease the level of criminality.

Private detectives and private detective agencies (subjects of private detective (investigative) activity) provide considerable support

to the subjects of business activity during examination of reputation and financial state of creditors and other partners, identification of their ability to meet the financial commitments which eventually decreases the number of doubtful agreements to be signed.

Moreover, subjects of private detective (investigative) activity are asked to search the missing people, property and animals, intellectual property rights' infringement (illegal use of trademarks) etc.

These legal uncertainties, in our opinion, require extra regulations on legislative level (through adoption of the Law of Ukraine «On Private Detective (Investigative) Activity» still in draft [6], amending the Criminal Procedure Code of Ukraine, Administrative Offense Code, laws of Ukraine «On Prosecution», «On National Police», «On Security Service», «On State Tax Service», «On Investigative Activity», «On Corruption Prevention», «On Information», «On Banks and Banking Activity», «On Citizens' Applications», «On State Registration of Legal Entities and Individual Entrepreneurs» etc) and substatutory level by designing and adoption of interagency instruction on organization of cooperation in the area of securing the commercial and financial markets. [7, c. 146].

Repression of law enforcement agencies' actions on detection of crimes against property in business and official activity is often provoked by partial denial of legislator from the publicity principle during criminal prosecution for the separate crimes (decriminalization) and increasing the number of criminal offenses when the cases are opened upon the victim's request (par. 1 p. 1 of Article 477 of CPC of Ukraine); under articles 231, 232, 361, 362 (p. 1), 364–1, 365–1 of the CC of Ukraine and articles 185, 190, 191 (except of crimes committed by the organized groups) and 357 of the CC of Ukraine, committed by a victim's employee and caused damage only to the property. This right of business activity subjects to initiate the criminal proceeding is considered by the law enforcement agencies as imposing the primary responsibility for these criminal infringements detection on non-state subjects (security service employees).

Therefore the main tasks on housing crimes (aggressing the legal entities' interests) detection and recording are to be performed by the non-state security services.

Examination of «internal» regulations of some non-state housing companies proves that the most common statutory duties of the security service are: detection of prepared and committed criminal infringements and taking preventive steps along with termination; collection of data for the law enforcement to initiate the criminal proceeding; participation in pre trial investigation; channeling the necessary information to law enforcement; taking relevant measures for damage reimbursement (in the scope of authority) etc.

Security service staffs are authorized to: perform investigative activity; take part in scheduled and unscheduled internal inspections of housing companies involving bodies of administrative and financial control; conduct internal (official) investigations of property damage cases and residential object's functioning; facilitate cooperation with law enforcement and provide support during their activity.

According to the results of our previous research, well-organized activity of security service allows to prevent potential «external» criminal infringements in housing sector on the stage of primary business contacts with clients. Security staff acts under internal statutory acts (instructions) and personal methodology on crime classification and termination.

It is easier to imagine the role and place of housing company security service as legal entity by examining its function of investigation conduct upon the facts of property damage or detected violations of financial procedures by the employees. This activity is aimed to provide the security of private structure (internal investigation is launched upon fact of property damage or detected violations leading to this damage).

Detection of crimes which do not affect the institution's interests may not be taken into account. Results of internal investigations may be interpreted as ground for the criminal proceeding to be launched and used during pre trial investigation and court hearing as well. But in some cases they have another legal interpretation – these materials can be the adequate ground for the criminal proceeding to be completed with the following disciplinary/administrative measures to be applied.

Internal investigation may also be launched on the ground of property damage or detected violations leading to this damage

detected by the authority of the legal entity. These facts are easily found in the official notes of the heads of units, notifications of controlling bodies and law enforcement agencies, clients' applications etc. during investigation it is important to provide evidence for the violation existence, time and place, negative consequences, amount of damage, connection between these consequences and separate actions or negligence, conditions and reasons etc.

Taking into account the process of reforming of Ukrainian criminal justice bodies it is offered to launch the interagency working group (with representatives from MIA of Ukraine, Security Service of Ukraine, State Fiscal Service, Prosecutor-General Office, controlling bodies) for monitoring the activities on the housing market and developing a draft of interagency instruction on cooperation in terms of security, establishing of simplified information exchange procedures.

Current practice shows that prevention of crimes against legal entities' interests is a task of state controlling and law enforcement agencies (investigative and preventive activities) and non-state security services of housing companies (internal investigations) – the latter often proves to be more effective. The subjects of this investigation are authorized security staff of legal entities (private detective agencies) which apply law enforcement methods to detect, record and prevent crimes. Examination of peculiarities of these security services activities proves the irregular legal regulation and poor theoretical background. The priority aspects of legal regulation of security service preventive activities to be improved are: amending the state policy (strategy) on crime combating to capture the principles and forms of non-state structures involvement in this process; adoption of the Law of Ukraine «On Private (Investigative) Activity» clarification of detection, investigation and prevention of crimes by the private detective and security agencies; definition of principles and forms of cooperation of housing companies' security services and state law enforcement agencies with relevant interagency instruction to be designed and adopted.

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### **Місце недержавних суб'єктів сектору безпеки в системі запобігання злочинам у сфері будівництва**

Охарактеризовано проблеми функціонування недержавних служб безпеки як суб'єктів запобігання злочинам у сфері будівництва. На основі аналізу регулятивного законодавства, правозастосовної та судової практики, а також зарубіжного досвіду запропоновано низку правових, організаційних і спеціальних кримінологічних заходів щодо вдосконалення їх діяльності.

**Ключові слова:** запобігання злочинам; будівництво; недержавний суб'єкт сектору безпеки; органи державного архітектурно-будівельного контролю.

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### **Место негосударственных субъектов сектора безопасности в системе предупреждения преступлений в сфере строительства**

Охарактеризованы проблемы функционирования негосударственных служб безопасности как субъектов предупреждения преступлений в сфере строительства. На основе анализа регулятивного законодательства, правоприменительной и судебной практики, а также зарубежного опыта предложен ряд правовых, организационных и специальных криминологических мер по совершенствованию их деятельности.

**Ключевые слова:** предотвращение преступлений; строительство; негосударственный субъект сектора безопасности; органы государственного архитектурно-строительного контроля.