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Hrebeniuk M. – Ph.D in Law, Associate Professor, Head of the Interagency Scientific and Research Center on Problems of Combating Organized Crime Under the National Security and Defense Council of Ukraine, Kyiv, Ukraine

Counteraction to Agrarian Raidership as an Important Component of Ensuring Food Security of the State

Food security is the key to the social and political stability of the society, the existence and development of the nation, as well as the sustainable economic development of the country. In the current conditions of a large-scale social and economic crisis and the existing military operations in the East of Ukraine, our state faced significant challenges and threats to food security, so the issue of its strengthening has risen sharply than ever. It is impossible to underestimate the scale and consequences of raiding in the agrarian sphere, which significantly threaten Ukraine's food security.

In the article the author describes the most typical methods of raiding in the agrarian sphere, namely: appropriation of property and lands of agricultural enterprises using forged documents; conclusion of fictitious transactions by certifying them by dishonest registrars (corruption element – private notaries conduct appropriate registration actions for certain remuneration; redemption of corporate rights to farms through «judicial machinations»).

In the study, the author notes that raider attacks occur most often with the participation of registrars and notaries, and raider seizures of the property of agro-enterprises are the physical seizure of the land plot and the harvest of crops, using physical measures and sometimes violent actions.

In this regard, the author stresses the need to eliminate conflicts in the organizational and legal documents that regulate the following: modern agrarian relations; identification and elimination of gaps in the regulations, in order to prevent possible corruption risks; measures to counteract the realization of typical schemes of raider attacks in the agricultural sector of the economy.

Given the practical experience of counteracting agrarian raids in Ukraine, the author outlined ways to improve information support for preventive measures of law enforcement in this area. In addition, according to the author, there is an urgent need to speed up the improvement of domestic legislation in the field of preventing agrarian raids and determining effective measures to combat this disgraceful phenomenon, especially in anticipation of preparations for the introduction of a full-fledged land market in our country.

Keywords: food security; agrarian raidership (illegal takeovers); problem issues; level of food supply; social and economic development.

Problem statement. In the context of the severity of the issue on completing the land reform and the creation of a full-fledged land market in the country, the problem of raider seizure of the assets of agricultural enterprises takes on special attention. Raidership in the agrarian sector has turned into a disaster of a national scale. Recently, the number of cases of attempts of raider seizures of land plots, harvest of crops, and property of agricultural producers has considerably increased in our country. However, the problem of counteraction to raiding is seen as a condition for ensuring economic security in the sphere of land resources, which is inextricably linked with the socio and economic development of society and the state as a whole [1, p. 32].

Problematic issues related to the definition of raidership, the formation of measures for its comprehensive counteraction in a certain way investigated in the works of the following scientists: S. Albul [2], V. Velychko [3], O. Melnychenko [4], O. Pyrkova [5] and others. However, none of the above scientists did not commit coverage of measures to counteract agrarian raiders in the format of an important component of ensuring food security, which increases the relevance of the chosen thematic area.

Food security is a level of food provision for the population that guarantees social and political stability in society, the survival and development of the nation, the individual, the family, and the sustainable economic development of the state. Food security is the most important and remains the most important factor in the national security of any state, especially in today's conditions of proactive implementation of European integration on the one hand, and simultaneously, a large-scale social and economic crisis and hostilities in the East of Ukraine. As never before, our state faces significant challenges and threats to food security, so the issue of its strengthening is more acute than ever. One can not underestimate the scale and effects of raider attacks in the agrarian sector, which seriously threaten the food security of Ukraine [6].

There are frequent cases of raids in the agrarian sphere taking place in most regions of Ukraine, and related to the desire of interested persons to carry out the appropriation of property and land of agricultural enterprises, using schemes for document forgery, corrupt registrars' activity, or in general, seizure and forcible takeover. In particular, the wave of raiding caused a change in the registration of land rights in 2013 and the transfer of registration

functions from the land resources to the justice authorities. The most acute problem of the illegal appropriation of land and farms is in the regions where bread is grown. This is especially true of Cherkassy, Kirovograd, Poltava and other regions.

Thus, at the beginning of 2017, in Dnipropetrovsk region, a power confrontation between the parties of corporate conflicts around «Orion» LLC (Zaporizke village, Sofiiivskiyi district) and the private farm «Dar» (Popasne village, Novomoskovsk district) was recorded. The conflict with «Orion» LLC involved members of one of the local criminal groups that with the involvement of lawyers and corruption ties in the judicial and law enforcement agencies, tried to redistribute control over the most attractive areas of agricultural land. The representatives of the private security structures controlled by criminal groups, individuals who participated in the anti-terrorist operation (ATO), and the former volunteer battalions were involved to support the power conflict around the private farm «Dar».

In May 2017, a battle was fought with the use of hunting weapons between the representatives of «Dnipromet» LLC (Dnipro) and the former head of the agricultural enterprise «Niva-2010» LLC (Berezhinka village, Kirovograd district). During the confrontation, 3 people were injured, and 6 were detained by members of the National Police. The conflict is caused by the efforts of previous owners to return the assets of «Niva-2010» LLC, which were illegally alienated by «Dnipromet» LLC. The residents of Zaporizhzhia and Dnipropetrovsk regions were brought under the leadership of criminal authorities, and security officers of «Borisfen» (Dnipro) and «Leon» (Dnipro) were actively used during these actions.

Law enforcement authorities also revealed numerous facts of causing significant damage to national natural resources by illegally seizing the representatives of the self-proclaimed republic of the «DNR» with especially valuable state agricultural lands valued at more than UAH 250 million that are located on the territory of the Donetsk region that is under Ukrainian control. It was established that the intruders, using false documents, issued 7.3 thousand hectares of agricultural land at the National Academy of Agrarian Sciences of Ukraine on the forged persons. The aforementioned areas belong to the category of especially valuable agricultural lands and, according to the State Service of Ukraine for Geodesy, Cartography and Cadastre, their actual value is more than UAH 250 million (the real market value of these lands is several

times higher). According to a similar scheme, more than 2 thousand hectares of state agricultural land in the Lugansk region were illegally alienated, which on the right of permanent use belonged to the institutions of this Academy, worth more than UAH 50 million.

Also, a mechanism is used to conclude fictitious transactions, which are certified by private notaries, and carry out appropriate registration actions. Subsequently, criminals carried out several fictitious resales of property rights to prevent lawsuits. Also, the widespread scheme of agrarian raiding is the rapid rise in the price of land lease, which the farmer can not pay. Also, through judicial machinations, the criminals redeem corporate rights to farms. In particular, raiders use schemes of intra-corporate disputes and conflicts.

Recognizing the threatening nature and scale of agrarian raids, the State has made significant and progressive steps towards its complete elimination. Thus, the Cabinet of Ministers of Ukraine at the Government session on August 9, 2017 decided to establish anti-raiding agrarian headquarters, which included representatives of the Ministry of Justice, the State Service of Ukraine for Geodesy, Cartography and Cadastre, the Ministry of Internal Affairs, the Prosecutor General's Office and specialized agrarian associations [7]. At the initiative of the Ministry of Justice in 2017 in all regions of Ukraine as a pilot project, anti-raiding agrarian headquarters have been operating, which will resist attempts at raider seizures of lands and crops.

In order to ensure an integrated approach to combating the scale of raiding at the national level, representatives of the Ministry of Justice of Ukraine, law enforcement agencies, prosecutors, and the State Service of Ukraine for Geodesy, Cartography and Cadastre, as well as agrarians and members of the public, were included in the agrarian headquarters that were established on the basis of regional state administrations. In addition, the format of their activities provides for free legal assistance using the capabilities of established mobile groups that will move through rural areas and villages and provide urgent legal assistance to the local population within their competence.

In particular, Anti-raiding agrarian headquarters during their activity recorded the following typical abuses and violations: double signing of lease contracts, double registration of lease contracts, conclusion of leases for «dead souls», theft of crops, sowing other people's fields, causing bodily harm according to results force

capture. As the gained experience shows, raider seizures of agrarian business, real estate and other objects occur more often with the participation of registrars and notaries, and raider seizures of the property of agribusinesses are more often than not, physical seizure of a plot and harvest of crops with the use of physical force.

Summarizing the procedure for raider capture of an object, including land, the implementation is as follows: 1) on the basis of forged documents or a judicial decision (in most cases – obviously unjust), information on ownership of property (corporate rights, property management rights) to a frontman is entered in the state register, and information about the current owner is deleted; 2) by physical violent seizure of an object under the guise of realization by the owner of his legal authority; 3) the captured object is formally resold to a new «bona fide» possessor or a whole chain of such «bona fide» purchasers.

Factors that increase the likelihood of raider seizures include corporate and material. In particular, corporate ones include: the presence of minority shareholders owning a small block of shares and not receiving significant income from their shares; insufficient consolidation of the controlling block of shares (the minimum safe level of consolidation is 30 %); certain forms of a business partnership, for example, PJSC is the most risky form; further decrease in risk of management is LLC, LP, SVG, PE; contributions to the statutory fund of the economic company occur mainly intangible assets or shares of other companies (or those that are in the stage of bankruptcy) or by buying securities. Material ones include: the presence of large debts (a large number of small debts concentrated in certain uncontrollable owners of persons) of the enterprise, which did not expire the limitation period; absence or significant deficiencies in the registration documents for the property of the enterprise (technical documentation, acts on land, «boundary wars», etc.); remoteness of separate objects of property rights from the place of management of the company, its power structures, low coordination of actions of structural divisions of the company.

Realizing the scale and threatening tendencies of the spread of agrarian raiding in June 2017, the National Police of Ukraine prepared and sent out to all regions of Ukraine an “Instruction on actions in case of attempts of raider seizure” with the aim of practical use of police units in the regions [8].

It should also be noted that in March 14, 2018, the Verkhovna Rada of Ukraine registered a Draft Law No. 8121 «On Amendments

to the Land Code of Ukraine and certain other legislative acts against raiding» [9], which aims to minimize the potential risks associated with agrarian raiding. This draft law was prepared to replace the presidential law No. 7363, which contained a number of anti-raider standards, and were rejected by the results of the vote in the Ukrainian parliament.

Conclusions. In recent years, raider seizure of land and property of agricultural enterprises has become a threat to the economy of the country. Illegal takeovers have reached a qualitatively new level in Ukraine. Thus, if in previous years this happened mainly with the help and under the guise of armed groups, then today the raiders not only deal with the falsification of lease agreements and theft of the crops, they began to seize enterprises, changing the composition of the participants of the legal entity, redefining the shares (parts) in the authorized capital of agricultural enterprises, property and land used by them.

Under such circumstances, there is an urgent need to accelerate the improvement of national legislation in the sphere of prevention of agrarian raiding and to identify effective measures to combat this phenomenon, especially on the eve of the introduction of a full-fledged land market in the country.

It is also appropriate to improve the information provision of law enforcement activities to combat agrarian raids. In modern conditions, the access of law enforcement agencies, in particular, the National Police of Ukraine to the information bases of the State Service of Ukraine for Geodesy, Cartography and Cadastre, as well as cooperation in the format of information exchange with local authorities remains an urgent problem.

There is also a lack of unity in the registers of real estate and land resources, which leads to significant risks in eliciting ownership rights through disagreements between different databases or differences between legal conditions and geospatial data.

In general, such a fragmented nature of the registries makes it difficult to create a system that would allow users to provide affordable and cost-effective services, which proves the need to standardize the registries. Against this backdrop, there is a vital necessity to resolve urgently the issue of providing full access to the information of the state registries (including access to scan copies of documents), first of all, to law enforcement agencies. In accordance with the best practices of foreign experience, this problem should be solved by providing the investigators of the National Police of

Ukraine with official access to scanned copies of documents, on the basis of which the registration actions were carried out, and the establishment of a procedure for the certification of screenshots of the relevant electronic documents.

REFERENCES

1. Afendikova, N.O. (2015). Protydiia reiderstvu na rynku zemli v konteksti zabezpechennia ekonomichnoi bezpeky natsionalnoi ekonomiky [Counteraction to raiding in the land market in the context of ensuring the economic security of the national economy]. *Ahrosvit, Agrosvit*, 13, 28-32 [in Ukrainian].
2. Albul, S.V., & Kuznichenko, S.O. (2013). Reiderstvo: do pytannia vyroblennia Derzhavnoi stratehii proty dii [Raidership: concerning the issue of developing a State strategy for counteraction]. *Pravnychi chasopys Donetskoho universytetu, Journal of the Donetsk University*, 2, 122-129 [in Ukrainian].
3. Velychko, V.A. (2017). Informatsiino-analitychne zabezpechennia proty dii reiderstvu: teoretychni polozhennia ta osoblyvosti zastosuvannia [Information and analytical support to counter raiding, theoretical concepts and features of the application]. *Naukovyi visnyk Uzhhorodskoho universytetu, Scientific Bulletin of the Uzhgorod University*, 1(49), 126-130 [in Ukrainian].
4. Melnychenko, O.A. (2010). Osnovy proty dii reiderstvu: derzhavno-upravlynskyi aspekt [Basics of counteraction to raider: the state-management aspect]. *Zbirnyk naukovykh prats Donetskoho derzhavnoho universytetu upravlinnia, Collection of scientific works of the Donetsk State University of Management*, 170, 212-224 [in Ukrainian].
5. Pyrkova, O.V. *Reiderstvo ta antyreiderstvo u zemelnykh vidnosynakh - teoretychni aspekty [Raiding and anti-crawling in land relations - theoretical aspects]*. Retrieved from <http://eprints.kname.edu.ua/39927/1/114-116.pdf> [in Ukrainian].
6. Palamar, I. Chomu pohirshylasia prodovolcha bezpeka v kraini, i yak tsomu zaradyty? [Why has food security deteriorated in the country, and how can this be prevented?]. *Liha. Blohy, Liga. Blogs*. Retrieved from <http://blog.liga.net/user/ipalamar/article/28517.aspx> [in Ukrainian].
7. Antyreiderskiy ahramni shtaby zapratsiuut v usikh oblastiakh Ukrainy [Anti-raider agrarian headquarters will work in all regions of Ukraine]. (n.d.). www.kmu.gov.ua. Retrieved from http://www.kmu.gov.ua/control/uk/publish/article?art_id [in Ukrainian].
8. Politseiskym rozislano novu zhorstku instruksiiu shchodo povodzhennia z reideramy [Police was sent a new rigorous guide to dealing with raiders]. (n.d.). www.pravda.com.ua. Retrieved from <http://www.pravda.com.ua/news/2017/06/3/7145907> [in Ukrainian].
9. Zakonoproekt "Pro vnesennia zmin do Zemelnoho kodeksu Ukrainy ta deiakykh inshykh zakonodavchykh aktiv shchodo proty dii reiderstvu": vid 14 berez. 2018 r. No. 8121 [The Bill "On Amendments to the Land Code of Ukraine and some other legislative acts on counteraction to raiding" from March 14, 2018, No. 8121] [in Ukrainian].

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Гребенюк М. В. – кандидат юридичних наук, доцент, керівник Міжвідомчого науково-дослідного центру з проблем боротьби з організованою злочинністю при Раді національної безпеки і оборони України, м. Київ

Протидія аграрному рейдерству як важлива складова забезпечення продовольчої безпеки держави

Продовольча безпека країни є запорукою соціально-політичної стабільності суспільства, існування та поступу нації, а також стійкого економічного розвитку держави. У сучасних умовах масштабної соціально-економічної кризи та бойових дій на Сході України перед нашою державою постали виклики та загрози у сфері продовольчої безпеки, тому питання її зміцнення надзвичайно актуальне. Зокрема, надто вагомими стали масштаби та наслідки рейдерства в аграрній сфері, що загрожують продовольчій безпеці України.

Автор визначив найтиповіші методи рейдерства в аграрній сфері, а саме: привласнення майна та земель сільськогосподарських підприємств із застосуванням підроблених документів; силове захоплення сільськогосподарських угідь; укладання фіктивних угод шляхом засвідчення їх недобросовісними реєстраторами (корупційна складова – приватні нотаріуси проводять відповідні реєстраційні дії за певну винагороду); здійснення через «судові махінації» викупу корпоративних прав на фермерські господарства тощо.

У дослідженні зазначено, що рейдерські атаки відбуваються найчастіше за участю реєстраторів і нотаріусів, а рейдерські захоплення майна агропідприємств – це фізичне захоплення земельної ділянки та врожаю сільськогосподарських культур із застосуванням заходів фізичного впливу та навіть насильницьких дій.

У зв'язку із цим акцентовано на необхідності подолання колізій в організаційно-правових документах, що регулюють сучасні аграрні відносини; виявлення та усунення прогалин у положеннях нормативно-правових актів з метою запобігання ймовірним корупційним ризикам; ужиття заходів протидії реалізації типових схем рейдерських атак в аграрному секторі економіки.

Керуючись практичним досвідом протидії аграрному рейдерству в Україні, автор окреслив шляхи вдосконалення інформаційного забезпечення превентивних заходів правоохоронної діяльності в цій сфері. Крім того, обґрунтовано нагальність потреби вдосконалення вітчизняного законодавства у сфері запобігання аграрному рейдерству та визначенні дієвих заходів протидії цьому явищу в контексті підготовки до запровадження в нашій країні повноцінного земельного ринку.

Ключові слова: продовольча безпека; аграрне рейдерство; проблемні питання; рівень продовольчого забезпечення; соціально-економічний розвиток.