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Preliminary examination of embezzlement reports of housing and public utilities budget funds

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Abstract

The urgency of the problem under investigation is caused by the issues arising in the course of the preliminary investigation of corruption crimes in the sphere of housing and public utilities, including theft of budget funds. In this regard, this article is aimed at a comprehensive analysis of examples from investigative practices, addresses the issue of single cases of bringing officials for crimes of this category to justice. The materials of the article can be used both for law enforcers and for students, undergraduates, and postgraduates studying in the direction of "Jurisprudence".

Keywords: corruption, crime, embezzlement, budget funds, investigation.

Examen preliminar de informes de malversación de fondos de presupuesto de vivienda y servicios públicos

Resumen

La urgencia del problema bajo investigación es causada por los problemas que surgen en el curso de la investigación preliminar de delitos de corrupción en el ámbito de la vivienda y los servicios públicos, incluido el robo de fondos presupuestarios. En este sentido, este artículo está dirigido a un análisis exhaustivo de ejemplos de prácticas de investigación, aborda el tema de los casos únicos de llevar a los funcionarios de los delitos de esta categoría a la justicia. Los materiales del artículo se pueden utilizar tanto para los agentes del orden público como para estudiantes, estudiantes universitarios y postgraduados que estudian en la dirección de "Jurisprudencia".

Palabras clave: corrupción, delincuencia, malversación, fondos presupuestarios, investigación.

1. INTRODUCTION

Very essential and important for the practice of criminal cases investigation are the issues arising in its initial stage, where special attention should be paid to the organization of preliminary (pre-investigation) check under art. 144-145 of the Russian Federation Code of Criminal Procedure. The essence of the preliminary (pre-investigation) check of the crime report is its procedural proof, carried out by the relevant subject by the method of reason analysis to initiate

a criminal case, in the conduct of procedural actions established in the Russian Federation Code of Criminal Procedure (Eminov & Ishchenko, 2015). The decision to be taken depends on the results of such activities to verify reports of a crime (Article 145 of the Russian Federation Code of Criminal Procedure): initiation of a criminal case, refusal to initiate a criminal case, or transfer to another body to decide on the jurisdiction or the court (on private prosecution cases). Preliminary (pre-investigation) check is the key to detect the theft of budget funds in the sphere of housing and public utilities which is aimed at the initial documentation of the signs of a crime, that is, to conduct a study of the financial and economic activities of an official or a legal entity. Effective and correct action to detect signs of crime, traces and methods of its commission is conduction of a certain type of judicial economic examination: accounting, tax, financial and analytical, financial and credit, etc. It should be noted that the initiation of criminal cases in this category of criminal cases has its own peculiarities, conditioned by the specifics of the mechanism of the analyzed category of criminal acts. Studying the investigative practice, the authors have established the relationship between the mechanism of committing the crimes under investigation and the regional specifics of the country, while in each of the subjects of the Russian Federation a preliminary (pre-investigation) investigation is conducted, criminal acts are identified, criminal cases are instituted and are investigated in different ways, in spite of the single Russian Federation Criminal Code of the Russian Federation and the Russian Federation Code of Criminal Procedure.

One of the reasons to open a criminal case on embezzlement of budget funds in the sphere of housing and public utilities can be the material sent by the control and supervisory bodies, by the results of audits, audit and (or) documentary checks. In this regard, from the time of preliminary (pre-investigation) checks it is recommended that investigators involve specialists for studying, analyzing and identifying signs of crimes in these materials, since the investigator himself may not have sufficient knowledge in the field under investigation and cope with a large, as a rule, quantity and the amount of specific information. There is another problem to involve the specialists to conduct both the preliminary (pre-investigation) check and the criminal case investigation in the sphere of housing and public utilities. This is due to the lack of the necessary number of skilled workers in the field under investigation, as well as the physical inability of existing specialists and the lack of time to study and give opinions on the vast number of materials seized in criminal cases. In accordance with Art. 144-145 of the Russian Federation Code of Criminal Procedure, investigators together with the involvement of operatives, experts and specialists conduct a preliminary (pre-investigation) examination. With reference to materials of inspections on corruption crimes in the sphere of housing and public utilities, the latter are conducted with respect to specific officials. In this regard, the main task of law enforcement bodies is to collect evidence of the guilt or innocence of these individuals. The experience of practical work of one of the authors of this article in the investigative bodies of the Investigative Committee of the Russian Federation gives grounds to state that the investigators

and leaders of investigative units neglect the authority to verify the criminal acts of the subjects, information on which is published in the mass media, including the Internet. We are sympathetic to the above fact for the following reasons: a significant amount of work compared to a small number of employees, as well as the need for thorough investigation and other actions that affect the lack of time and physical capacity-do not allow investigators to quickly monitor information on the Internet, public publications, etc., especially to carry out its verification for the reliability of the facts stated. With regard to the verification of such reports at the level of the Main Investigation Department and the Investigative Committee of the Russian Federation, an interuniversity round table on "Corruption in Housing and Public Utilities: Detection, Investigation and Prevention" held within the forensic laboratory of the "Plekhanov Russian Economic University" offenses "in the report of the representative of the Investigative Committee of the Russian Federation showed that the staff of the Main Department of Procedural Control of the said agency is analyzing such a daily Info and conducting its inspection in accordance with the criminal procedure legislation (including the information contained in the Internet).

In his turn, Khalikov (2010) notes that in the most typical cases, criminal cases involving corrupt practices (including theft of budget funds in the sphere of housing and public utilities) are either initiated:

- 1) According to the results of operational search activity;
- 2) According to the results of joint investigative and operational search activities.

This position is objective from the point of view of practical workers, as evidenced by the results of our survey, as well as the analysis of criminal cases of this category. The investigators explain that these are the operational services that help to identify and collect the primary information base on which to base and select the right tactical and strategic actions at the initial stage of the investigation. In addition to operational services, the investigation is assisted by control and supervisory bodies that carry out documentary audits and checks at the preliminary stage of the investigation, tax service bodies in corruption cases in the sphere of housing and public utilities. Not infrequently criminal cases are brought on materials of the prosecutor's check, which is confirmed by letters from the Ministry of Internal Affairs of Russia for the Bryansk region. Kamchatov (2014) writes that the practice of unjustifiably prolonged carrying out of inspection activities was widespread, given the obvious grounds to open criminal cases, including official crimes. The author points out the inadequacy of the scope of the prosecutor's powers to resolve this situation. The preliminary (pre-investigation) check is the key to identifying corruption crimes in the sphere of housing and public utilities, including theft of budget funds (Lvov & Zenkin, 2009, Mardar, 2007), which is aimed at the initial documentation of the signs of crime, that is, conducting a study of the financial and economic activities of an

official or a legal entity (Lebedev, 2015). Effective and correct action to detect signs of crime, traces and methods of its commission is the conduct of a certain type of judicial economic examination: accounting, tax, financial and analytical, financial and credit, etc.

In the process of disclosure and investigation of crimes, the investigator receives information of an evidentiary or orienting nature from various sources and carriers. In criminal cases of corruption crimes in the sphere of housing and public utilities, forensic information has its own peculiarities, conditioned by the specifics of the branch of economic activity in which corrupt officials prepare, commit and conceal the crimes.

2. METHODOLOGY

This study in the methodical plan is an analysis of both housing legislation in general, and judicial and investigative practices, the practice of applying Russian legislation in the economic sphere of activity. The following methods are used: statistical, comparative-legal, sociological. On the basis of the findings, key findings have been formulated that have made it possible to reasonably identify the signs of corruption-related crime in the sphere in question, the forensically significant information that, first and foremost, is contained in the documents of organizational and financial nature that are drawn up on the basis of the joint discussion by the citizens - residents of apartment

houses, and representatives of management companies. This refers primarily to the protocols of the General Meetings of Tenants, where, according to the current legislation, objective information on the nature and procedure of decision-making must be reflected, taking into account the majority of voted participants.

3. RESULTS

The study of judicial and investigative practice has shown that a number of forensic signs, in some cases, are not recognized by the investigators in the course of such an investigative action as an examination of documents that show obvious violations of housing, civil, administrative legislation that together lead to corruption manifestations.

Thus, during the initial visual inspection of the protocol of the General Meeting of Tenants of an apartment house (Gorodilov et al., 2007; Puchnin, 2013), attention is not drawn to the color difference (shade) of the dye of the writing medium used on various pages of the document, and also to the clearly expressed discrepancies in the common signs of handwritten text (for example, slope, size, etc.) on different parts of the document, which gives grounds for nominating and verifying working versions of different performers or the fact of the supplement, although the text under study, judging by the signature should be executed by one person - the Secretary of the General

Meeting elected by the participants in accordance with the procedure established by law. Another document containing forensically significant information on the presence (or absence) of signs of technical forgery is the List of Participants, which, as an annex to the Protocol, must confirm the legitimacy of the General Meeting, on the basis of which all decisions taken by it are recognized as legitimate or in the absence of a quorum the basis for the implementation of specific actions of an organizational, economic and financial nature.

This document, prepared in advance in the form of a table for personal filling by each participant of the Meeting, contains data on the identity, the form of the document presented for registration, the address of residence, and also a column for personal signature (or signature of the authorized representative). In this situation, the object of forensic research is handwritten text, incl. signature (Makaryin, 2006). Forensic recognition of the signs of its forgery requires in most cases additional use of special knowledge, which necessitates the appointment of a relevant forensic examination. However, in this case, the investigator in the process of examining this document can independently identify and record in procedural order information on the number of registered participants in the General Meeting and compare these data with those contained in the minutes of the General Meeting. Mismatches or lack of fixation of quantitative indicators and the identification of other forensically significant features provides grounds for nominating and verifying the version of the illegitimacy of the General Meeting, and therefore about the illegitimacy of decisions

taken, incl. on the expenditure of money collected by the tenants of the apartment building, for example, to strengthen the foundation, the walls of the building, the replacement of the roof, for the improvement of the adjacent house territory. As the study of judicial and investigative practice shows, these works are organized, as a rule, by management companies, in many cases, the selection of which, due to various circumstances, has been previously carried out by local self-government bodies, whose business contacts have been maintained through personal contact. In the future, these contacts have grown into corruption manifestations.

The above-mentioned positions related to the organization and methods of investigating crimes of corruption in the sphere of housing and public utilities remain relevant (Alyukov, 2002; Kurbakov, 2011), despite significant measures being taken by the legislator and the government to improve the housing and public utilities complex. At the same time, optimization of judicial and investigative practice in this category of criminal cases, in our opinion, contributes to the formation of a system of effective measures to prevent these crimes. In addition, it should be noted that the initiation of criminal cases of budget funds embezzlement in the sphere of housing and public utilities has its own peculiarities, conditioned by the specifics of the mechanism of the analyzed category of criminal acts. Studying the investigative practice, the author has established a relationship between the mechanism of committing the crimes under investigation and the regional specifics of the country, while in each constituent entity of the

Russian Federation a preliminary (pre-investigation) examination is carried out, criminal acts are identified, criminal cases are instituted and are investigated differently, despite a single Russian Federation Criminal Code and the Russian Federation Code of Criminal Procedure.

One of the reasons to open a criminal case is the material sent by the control and supervisory bodies, the tax authorities, based on the results of audits, documentary checks (Slepova, 2012). In this regard, from the time of preliminary (pre-investigation) investigation, it is recommended that investigators involve specialists for studying, analyzing and identifying signs of crimes in these materials, since the investigator himself may not have sufficient knowledge in the field under investigation and cope with a large and the amount of specific information. From the above-mentioned, there arises a problem with the involvement of specialists to conduct both a preliminary (pre-investigation) investigation and investigation of the criminal case in the sphere of housing and public utilities (Titova, 2009; Gavlo & Titova, 2011). This is due to the lack of the necessary number of skilled workers in the field under investigation, as well as to the physical inability of existing specialists and the lack of time to study and give conclusions on the huge amount of materials seized in the operational search activity, audit and documentary checks, and procedural and investigative actions.

In accordance with Art. 144-145 of the Russian Federation Code of Criminal Procedure, investigators together with the involvement of operatives, experts and specialists conduct a preliminary (pre-investigation) investigation. With reference to materials of inspections on budgetary funds embezzlement in the sphere of housing and public utilities, the latter are conducted with respect to specific officials. In this regard, the main task of law enforcement bodies is to collect evidence of the guilt or innocence of these individuals. The analysis of the judicial and investigative practice in criminal cases of the category of crimes in the sphere of housing and public utilities, as well as the responses to inquiries from the Ministry of Internal Affairs of the Russian Federation for selective regions collected during the research, allows us to conclude that the majority of crimes of this type are: Art. 159 of the Russian Federation Criminal Code (fraud), art. 160 of the Russian Federation Criminal Code (misappropriation or embezzlement), art. 174 of the Russian Federation Criminal Code (legalization (laundering) of money or other property acquired by other persons by criminal means), art. 201 of the Russian Federation Criminal Code (abuse of power), art. 204 of the Russian Federation Criminal Code (commercial bribery), art. 285 of the Russian Federation Criminal Code (abuse of power), art. 291 of the Russian Federation Criminal Code (giving bribes), etc. So, the criminal case was initiated by the Ministry of Internal Affairs of Russia "Klintsovsky" under Part 1 of Art. 201 of the Russian Federation Criminal Code in relation to the director of LLC "Zhilkomkhoz" M., which serving apartment houses in the village of. Chemnyna of the

Klintsy district, in order to extract benefits and benefits for themselves and others, in the form of wage increases, bonuses, illegally established an inflated tariff for the maintenance and current repair of the dwelling (the grounds for initiating the criminal case were the materials of the prosecutor's check). By her deliberate illegal actions, M. caused damage to the business reputation of Zhilkomkhoz, as well as substantial property damage to the above-mentioned owners and tenants of residential premises of apartment houses for a total of 632,349 rubles; the damage was recovered during the investigation.

The criminal case was sent to the court, examined in a special order, M. was found guilty of committing crimes under Part 1 of Art. 201 of the Russian Federation Criminal Code and she was sentenced to a fine of 10,000 rubles in the income of the state (Letter of the Ministry of Internal Affairs of Russia for the Bryansk region of April 20, 2015; Vorobyova, 2013). Thus, the head of the investigation department of the Criminal Code of the Russian Federation for the Jewish Autonomous Region initiated a criminal case against the head of the administration of the municipal formation "Kuldurskoye urban settlement" of the Obluchensky district of K. He is suspected of committing a crime under Part 2 of Art. 286 of the Russian Federation Criminal Code. According to the investigation, in August 2012, K. concluded a municipal contract with one of the limited liability companies for the construction and repair work of the systems and objects of the housing and public utilities of the settlement. The specified contract was concluded in violation of the current legislation

of the Russian Federation, without conducting tenders. At the same time, the value of the contract amounted to more than 38 million roubles, with a total revenue and expenditure budget of the municipality for 2012 slightly more than 6 million roubles. Further, the head of the settlement signed acts on their acceptance without actual acceptance of works knowing that the contractor did not perform the work in full on the reconstruction of the central boiler house of the settlement, repair of the building of treatment facilities and other repairs of housing and public utilities. At the same time, the limited liability company was not paid for the work actually performed. The acts signed by K. served as the basis for the contractor's application to the court, whose decision was to charge the unpaid contract amount in favor of the plaintiff. On the basis of the judicial act, enforcement proceedings were instituted. Despite this, the head of the administration did not take any measures to compel the contractor to perform the work in full. The Criminal Code of the Russian Federation for the Sverdlovsk region investigated a criminal case against the temporarily dismissed head of the administration of the Verkhotursky urban district, the former director of the municipal unitary enterprise Verkhoturskoe housing and public utilities and another citizen born in 1981. Depending on the role of each, the investigation accused them of committing crimes under Part 4 of Article 159 of the Russian Federation Criminal Code, Part 5 of Article 33, Part 2 of Article 285 of the Russian Federation Criminal Code and Part 2 of Article 285 of the Russian Federation Criminal Code.

According to the investigation, the accused, acting as part of a group of individuals, committed fraudulent money theft from the regional budget in an especially large amount for a total of more than 1 million 400 thousand roubles from October 2012 to March 2013. Funds were allocated for the repair of kindergartens at schools in the villages of Deryabino and Kordyukovo in Verkhoturksky district, as well as a rest house in the village of Privokzalnoye. Repair on the listed facilities was to be completed by November 2012. However, at the time of initiation and investigation of the criminal case, repairs were not completed in any of the above objects. According to the investigation, the theft was committed through the conclusion of a municipal unitary enterprise "Verkhoturkskoe Housing and Utilities" of deliberately fictitious subcontracts for the repair of these facilities with two commercial structures. In addition, in October 2012, two of the accused - the head of the administration of the Verkhoturksky urban district and the ex-director of the Municipal Unitary Enterprise "Verkhoturkskoe Housing and Communal Services" - through abuse of authority, under the guise of repairing municipal housing, made repairs in the apartment of the head of the Verkhoturksky urban district administration setting window for the amount of about 40 thousand roubles. Even during the investigation, the head of the administration was removed from office by a court decision. It should be noted that one of the three accused - a citizen born in 1981, accused of complicity in abuse of official powers, fully acknowledged his guilt during the investigation, describing the criminal actions of each of the three accomplices, including the head of the administration. With this in

mind, the case against the guilty party and the pre-trial cooperation agreement for the accused was separated into a separate proceeding, and the verdict of the court was already pronounced - the defendant was given a 3 years' suspended sentence.

Investigative practice shows (Kustov, 2011; Kuemzhieva & Zelensky, 2015) that it is difficult to prove the selfish intent of the crime subject in criminal cases about corruption crimes in the sphere of housing and public utilities (Garmaev, 2006; Bychkov, 2009). This is due, first of all, to the fact that there are many signatures of officials (public authorities and local self-government, other authorized persons) in the materials of audits and documentary checks, as well as documents seized during the investigation. When the explanations are received, the former refers to the second, those in turn to the third, etc., thus, it is difficult to identify a person who deliberately acts with a mercenary goal for personal gain. The prospective subject of budget funds embezzlement in the sphere of housing and public utilities, misleading the investigator in the process of establishing a responsible person, contributes to the issuance of a decision to refuse to open a criminal case. Police checks end, as a rule, at the stage of studying documents. This is also due to the fact that financial operations are being investigated for a long period of time. Money received from citizens is checked against the accounts of management companies, the distribution of these funds to the accounts of resource-supplying organizations, counterparties, and such transfers of funds may not be

related to the direct activities of the management company but the cash flow must be carefully checked.

An analysis of pre-investigation checks also shows (Churilov, 2009) that not always the management companies and local governments react to requests of law enforcement bodies, leaving them unanswered. Law enforcement agencies of the state do not have legislative levers to force management companies to maintain uniform documentation which requires a long time to collect evidence sufficient to resolve the issue of opening a criminal case or denying it. In the sphere of housing and public utilities it is quite difficult to identify and disclose crimes (Krivenko, 2008), as evidenced by the obtained results on the number of corruption crimes investigated in the areas of housing and public utilities in the territories of the selective subjects of the Russian Federation for the period from 2010 to 2016 - they are, as a rule, latent and extremely confusing. Sometimes it is difficult to determine where the money disappeared. For example, a management company concludes a contract for repair and construction works with a contractor, which often exists only on paper, the latter, in turn, to subcontractors, and they to third parties. This is how the complex chains are built: you need to track the entire number of performers, check who did what work in reality, how well, etc. The main thing is to prove the criminal intent, that is, to find out: this director - without any self-serving intentions, hired an unscrupulous contractor, or he deliberately transferred funds to a shell company. It is also possible - the contractor is a bona fide contractor while the

subcontractor acts for mercenary purposes. Schemes of funds embezzlement by officials in which crimes in the sphere of housing and public utilities are constantly being identified (Kazakov, 2011) include links, one of which are managing organizations (homeowners' associations, housing construction cooperatives, management companies, etc.). The source of embezzlement by officials are budget funds allocated by the state within targeted programs (capital repairs of common property in apartment buildings, resettlement of citizens from emergency housing stock, modernization of the communal infrastructure system), funds of private companies and citizens for payment of housing and public utilities services (Kuemzhieva & Zelensky, 2015).

4. DISCUSSION

Issues of investigating crimes in the sphere of housing and public utilities are devoted to the work of Titova (2009), Marinkin (2009), Aminev (2015), etc. The study of the problem of the formation and development of methods to investigate corruption crimes in this area, forensic scientists did not do. The analysis of a number of publications in periodicals and the Internet has shown that there are repeated references to existing violations of the law revealed in the course of prosecutor's supervision, as well as information on the criminal cases investigated and being at the preliminary investigation

stage with respect to high-ranking and other officials in the sphere of housing and public utilities.

5. CONCLUSION

Thus, in the framework of a preliminary (pre-investigation) investigation of budget funds embezzlement in the sphere of housing and public utilities, investigators, in conjunction with operational personnel, check mainly the expenditure of budget funds allocated by the federal (Fund for Assistance to Housing Reform), regional (aimed at implementing targeted programs for housing and communal services), from local budgets (for housing maintenance and improvement) and private companies, as well as citizens to pay for housing and public utilities. The task of operational staff is to collect the results of operational search activities, to transfer them to the investigation for a preliminary (pre-investigation) check, which, in its turn, needs to determine the presence of the crime, gather evidence and bring the matter to court.

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