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GENEZA POGLĄDÓW NA TEMAT KSZTAŁTOWANIA PROBLEMU DOCHODZENIA W SPRAWIE SAMOWOLNEGO ZAJMOWANIA TERENU I SAMOWOLNEGO BUDOWNICTWA

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Adnotacja. Artykuł poświęcono badaniu współczesnego stanu rozwoju naukowego problemu dochodzenia w sprawie samowolnego zajmowania terenu i samowolnego budownictwa, jego istotnych właściwości, cech, kolejnych etapów formowania. Argumentuje się znaczenie i terminowość teoretycznego uzasadnienia problemu dochodzenia wspomnianego wykroczenia karnego. Ustalono, że skuteczne zwalczanie samowolnego zajmowania terenu i samowolnego budownictwa zależy w dużej mierze od tego, jak głęboko zbadane są przez naukę kryminalistyczną problemy jego dochodzenia.

Należy zauważyć, że współczesne rozumienie problemu dochodzenia w sprawie samowolnego zajmowania terenu i samowolnego budownictwa rodzi się w pierwszych latach niepodległości Ukrainy. Zaproponowano nowe podejścia naukowe i propozycje rozwiązania problemów dyskusyjnych, określono obiecujące kierunki dalszych badań.

Słowa kluczowe: problemy dochodzenia, samowolne zajmowanie terenu i samowolne budownictwo, skuteczność dochodzenia, opracowanie naukowe badanych problemów.

GENESIS OF IDEA ON THE FORMATION OF THE PROBLEM OF INVESTIGATION UNAUTHORIZED OCCUPATION OF LAND AND UNAUTHORIZED CONSTRUCTION

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Abstract. The article is devoted to the study of the current state of scientific development of the problem of investigation of unauthorized occupation of land and unauthorized construction, its essential properties, characteristics, successive stages of formation. The importance and timeliness of the theoretical substantiation of the problem of investigation of the specified criminal offense is argued. It has been established that the effective fight against unauthorized occupation of land and unauthorized construction largely depends on how deeply the problems of its investigation are developed by criminalistics.

It's substantiated that the modern understanding of the problem of investigation of unauthorized occupation of land and unauthorized construction, originates in the first years of Ukraine's independence. New scientific approaches and offers on the decision of debatable problems are offered, perspective directions of the further researches are defined.

Key words: problems of investigation, unauthorized occupation of land and unauthorized construction, the effectiveness of the investigation, the scientific development of the studied problems.

ГЕНЕЗА УЯВЛЕНЬ ПРО ФОРМУВАННЯ ПРОБЛЕМИ РОЗСЛІДУВАННЯ САМОВІЛЬНОГО ЗАЙНЯТТЯ ЗЕМЕЛЬНОЇ ДІЛЯНКИ ТА САМОВІЛЬНОГО БУДІВНИЦТВА

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Анотація. Статтю присвячено дослідженню сучасного стану наукової розробленості проблеми розслідування самовільного зайняття земельної ділянки та самовільного будівництва, її суттєвих властивостей, характеристик, послідовних етапів формування. Аргументовано доведено важливість і своєчасність теоретичного обґрунтування проблеми розслідування зазначеного кримінального правопорушення. Встановлено, що ефективна боротьба

із самовільним зайняттям земельної ділянки та самовільним будівництвом значною мірою залежить від того, наскільки глибоко розроблені криміналістичною наукою проблеми його розслідування.

Зазначено, що сучасне розуміння проблеми розслідування самовільного зайняття земельної ділянки та самовільного будівництва зароджується в перші роки набуття Україною незалежності. Запропоновано нові наукові підходи та пропозиції до вирішення дискусійних проблем, визначено перспективні напрями подальших досліджень.

Ключові слова: проблеми розслідування, самовільне зайняття земельної ділянки та самовільне будівництво, ефективність розслідування, наукова розробленість досліджуваних проблем.

Introduction. Today's realities are characterized by a negative trend towards a rapid increase in criminal activity, exacerbation of the criminal situation, as a result of reforming various spheres of public life, economic and social crisis in the country, which led to changes in priorities and tasks in science and practice (Shevchuk, 2020: 33). This statement is fully consistent with the strengthening of the nature and sophistication of encroachments on the unauthorized occupation of land and unauthorized construction, which poses a significant challenge to professional participants in criminal proceedings (investigators, NABU detectives, SBI) to take urgent measures to combat this criminal offence. Such circumstances require the strengthening of law and order, improving the professional skills of forensic investigators, the introduction into practice of advanced achievements in criminalistic science (Shepitko, 2010: 406).

Indeed, the unauthorized occupation of land poses a serious threat not only to landowners but is also one of the reasons for weakening the authority of the state. On the one hand, unauthorized occupation of land and unauthorized construction is a manifestation of lawlessness, intentional disregard for the rules of law governing the acquisition of land ownership and use (lease) (Zakharchuk, 2015: 6). At the same time, on the other hand, criminal intentions encroach on the violation of constitutional norms that establish special protection of land, which is the main national wealth. All this indicates the need for an effective fight against unauthorized occupation of land and unauthorized construction, which largely depends on how deeply developed by criminalistic science the problems of its investigation.

Main part. Conceptual provisions of scientific research conducted by V. Terekhovych and E. Nimande declare that a successful investigation of a criminal act is always objectively difficult (Terekhovych, Nimande, 2018: 37). This fully characterizes the process of investigating the unauthorized occupation of land and unauthorized construction, because its effectiveness depends on many factors, among which the level of formation of the theoretical basis is important. In this regard, there are some difficulties in the scientific development of the problem of investigating the unauthorized occupation of land and unauthorized construction. So, we are talking about the fact that such developments are quite insignificant, compared with the possibilities and scientific potential of criminalistic science, although the interest in the outlined issues among scientists has not disappeared.

It should be emphasized that the scientific elaboration of the problem of investigation of the criminal offense in question lies in the plane of criminalistic science and, as it seems, its inefficiency creates an acute problem for both the scientific community and investigative and judicial practice. In addition, the imbalance in the scientific development of the problem of investigating the unauthorized occupation of land and unauthorized construction is a reflection of the uneven development of criminalistics. This is quite obvious, because V. Konovalova notes that this process took place separately and was influenced by objective and subjective reasons. Thus, the objective reasons include the needs of society, and the subjective – the scientific aspirations of individual institutions, scientists (Konovalova, 2012: 36).

At the same time, A. Ishchenko emphasizes that the negative impact of insufficient study of the state of scientific problems of criminalistic research, which leads to disproportion, complicates the relationship between practitioners and scientists, and as a consequence inhibits the impact of science on improving the fight against crime (Ishchenko, 2003: 9). That is why the primary and rather difficult task that needs to be solved quickly is the consistent study of the state of scientific development of the problem of investigation of unauthorized occupation of land and unauthorized construction. This approach will make it possible to improve the existing ones, and in their absence – to develop the most adequate recommendations for an effective investigation. In this regard, Yu. Chornous emphasizes that the involvement of criminalistic recommendations in the activities of the investigation of criminal offenses, this is primarily a criminalistic support of the investigation (Chornous, 2017: 39).

Certainly, it is impossible to give reasoned answers to these questions without an in-depth analysis of existing scientific approaches to the problem of investigating the unauthorized occupation of land and unauthorized construction. As a result, any problem leads to discussions, inconsistencies in views. In this regard, V. Shevchuk points out: «in itself, a critical analysis of certain scientific ideas, concepts, authorial approaches and their consideration in the order of discussions, reasonable criticism is a normal state of further development of any field of scientific knowledge. And this approach is correct and natural for criminalistics» (Shevchuk, 2019:134). At the same time, this cannot be avoided in the issue of investigation of unauthorized occupation of land and unauthorized construction, which, in fact, is relatively new.

These circumstances determine the urgent need to intensify research on the problem of investigating the unauthorized occupation of land and unauthorized construction, in particular by chronological ordering, which is reflected in successive periods and stages of formation of this process, allowing to replenish the arsenal of investigators, detectives able to significantly increase the level of efficiency of criminal proceedings. It should be noted that the proposals to periodize the development of the problem of investigation of the criminal offense in question by scientists have hardly been expressed, which negatively affects the study of its current state and forecasting its prospects in the future.

At the same time, the provisions of the special literature state that no social phenomenon can be studied and understood without taking into account the conditions and peculiarities of its origin and development, in isolation from its history (Shevchuk, 2013: 7). R. Stepaniuk holds a similar opinion: «without knowledge of the past it is impossible to build the future» (Stepaniuk, 2017: 389). In this regard, the study of the state of scientific development of the problems of investigating the unauthorized occupation of land and unauthorized construction should begin on the basis of the historical approach, which is a necessary foundation for forming ideas about the growth and spread of this criminal world.

In particular, it seems logical to assume that the scientific development of the problem of investigation of unauthorized occupation of land and unauthorized construction arises and develops since the adoption of the relevant article in the Criminal Code of Ukraine, which establishes criminal liability for an illegal act. However, in our opinion, this approach is not entirely correct, as the problems of investigating the unauthorized occupation of land and unauthorized construction begin to develop rapidly in the first years of Ukraine's independence, including the period of land reform, which occurs almost simultaneously.

As a result, land reform and changes in socio-economic life have led to changes in criminal law. Thus, in accordance with the Law of Ukraine of February 3, 1993 № 2977-XII «On Amendments to the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offenses» Art. 199 of the Criminal Code of the Ukrainian SSR, which established liability for unauthorized occupation of land, was set out in a new version, which decriminalized unauthorized exchange and sale of land, as well as other actions in violation of laws on nationalization of land, and established administrative liability for unauthorized occupation of land by addition. Nevertheless, special attention was paid to this offense in the comments to the then current Criminal Code of the USSR in 1960 and in textbooks on criminal law within the section «Crimes against the order of government» (Zakharchuk, 2015: 18). Obviously, the lack of comprehensive developments in the field of criminalistics does not mean that the problems of investigation of this criminal offense did not arise, because it is primarily due to the imperfection of the system of methods and means of their knowledge and ignorance by criminalistic scientists. As a result, these circumstances led to the temporary exclusion of criminal liability for the illegal act in question.

In particular, the attempts of scientists to reject the study of the criminal act in question, even after changing the nature of responsibility for its commission, do not find logical justifications. In this regard, V. Shepitko rightly points out that criminalistics has gone beyond the pre-trial investigation, there are ideas to expand the range of objects of criminalistic science, taking into account the possibility of developing problems of civil, economic and administrative process (Shepitko, 2010: 20). And this is quite justified, because the scientific potential of criminalistics, the level of its development has the opportunity, in full, to provide their recommendations outlined types of justice.

At the same time, it should be noted that among scholars it is widely believed that the first mention of unauthorized occupation of land and unauthorized construction has its roots deep in antiquity, namely in the period of statehood (Tataryn, Pryakhin, 2019: 192). However, this approach is not undeniable. This led to the conclusion that scientists have focused on the study of secondary issues that are not related to the process of investigating the unauthorized occupation of land and unauthorized construction. Moreover, the research concerned only the «prototypes» of the criminal offense in question, as its current interpretation appeared not so long ago.

In this regard, the problems of investigating the unauthorized occupation of land and unauthorized construction as a criminal offense, as it appears in the present, arise not so long ago, namely since Ukraine's independence. Moreover, such events became a turning point not only for the state, but also for the law enforcement system, as criminal liability for unauthorized occupation of land and unauthorized construction, which was neglected in Soviet times, was renewed. In turn, the process of investigation of unauthorized occupation of land and unauthorized construction has resumed, which is effectively impossible in the absence of comprehensive scientific developments.

Indeed, with Ukraine's independence in the political, economic and social spheres, radical changes took place: the form of government, the form of state (territorial) system, the form of state and legal regime was changed, the legal content of the legal system of the state changed, which together led to private property. In addition, land resources, which are considered the main national wealth, needed proper protection by criminal law. That is why the adoption of the new Criminal Code of Ukraine, where the amendment to this code was the establishment of criminal liability for socially dangerous acts that encroach on the environment, becomes essential. Moreover, the legislator changed the priorities for the protection of land resources and gave a special place to Art. 197-1 «Unauthorized occupation of land and unauthorized construction», the content of which has undergone significant changes compared to its interpretation in the Code of 1960 (Shulga, 2019: 50–53).

The history of the origin of the first criminalistic developments on unauthorized occupation of land and unauthorized construction, within the period under review, is associated with the study of the criminalistic characteristics of unauthorized occupation of land and unauthorized construction (Pahovych, 2008: 126–132). What is decisive is that this was the first attempt to comprehensively investigate the elements of the criminalistic characteristics of unauthorized occupation of land and unauthorized construction.

At the same time, after the publication of the above work, the development of theoretical aspects of the investigation of unauthorized occupation of land and unauthorized construction, in the field of criminalistic science, temporarily stopped. In turn, the resumption of research was rather slow, mainly through the publication of disparate guidelines for the investigation (Vozniuk et al, 2011: 48). However, in modern realities it's outdated and needs improvement.

Further study of the problem of investigation of this criminal offense was updated in the works covering the issues of standard versions in cases of crimes in the field of land relations, which systematized the investigative versions of the unauthorized occupation of land and unauthorized construction (Dyakin, 2011: 240–246). In addition, the scientist continued his research in this area, which was reflected in the dissertation research on the evidence in criminal proceedings of crimes related to illegal land acquisition (Dyakin, 2019: 21). As a result, the researcher identified the main circumstance to be proved during the investigation of unauthorized occupation of land and unauthorized construction and the variety of features of this criminal proceeding.

These processes made it possible to intensify scientific research in the development of methodics for investigating the unauthorized occupation of land and unauthorized construction, which led to the publication of articles relating to certain aspects of the investigation of this criminal offense (Tataryn, 2014: 209–212). As a result, it was a kind of impetus for the publication of a monograph on the creation of a methodics for investigating the unauthorized occupation of land and unauthorized construction (Tataryn, Pryakhin, 2019: 192). At the same time, the analysis of scientific achievements on this issue shows that most issues will remain debatable or undeveloped at all. In particular, it is a question of lack of fundamental developments concerning formation of system of tactical means of investigation of unauthorized occupation of land and unauthorized construction among which tactical operations and problems of their application, a role and functional purpose of tactical operations in investigation of the considered criminal offense become important. That is why, today, the creation and implementation of fundamentally important for investigative and judicial practice scientific recommendations of theoretical significance and practical orientation continue.

Conclusion. Thus, progressive changes in society, which directly affect the improvement of criminal encroachments on the unauthorized occupation of land and unauthorized construction, require urgent and effective measures. However, before starting to develop them, it is necessary to analyse in detail the state of scientific development of the problem of investigation of the criminal offense in question. This is quite appropriate, because any investigation, as a kind of specific human activity, is constantly faced with certain difficulties and obstacles, which on the one hand negatively affect its effectiveness, and on the other – undermine the credibility of professional participants in criminal proceedings. That is why, at the present stage of development of criminalistics, the problem of careful analysis of the accumulated experience of scientists who directed their efforts to a comprehensive study of the peculiarities of the investigation of this category of criminal offenses is quite relevant and important.

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