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**The structural elements of criminalistics characteristic
of swindle with the real estate**

The studies about criminalistics characteristic of crimes, as an initial theoretical and informative base of construction of privately-methodical recommendations, being component part of finishing section of criminalistics — criminalistics methodology, in particular as it applies to a swindle in the sphere of housing relations are considered in the article. Criminalistics characteristic of crimes is the system of information about the typical elements of situations of committing crime of certain categories, criminal meaningful connections between these elements and features of mechanism of investigation.

Key words: criminalistics description, swindle, crime in the field of housing relations, real estate.

Speaking about a «criminal act», it is necessary to consider this question in all his displays, taking into account his multidimensionality. In jurisprudence questions of interpretation of concept «crime», namely his essence, structure, kind and form examined by such disciplines as a criminal law, criminology, criminalistics, operatively-search activity [1; 6].

Complex of cognitions about essence of crime and, in particular, information of characterizing him, such as finding out terms and reasons, abetting, analysis of personality of criminal etc. will serve a reliable instrument in realization of work sent to the exposure, discovery, opening and investigation of crime. To that end for complete and objective investigation of crimes, at presence of similar signs of criminalistics character, criminal lawyers are use a term «criminalistics description». This term was applied in 1927 by P.I.Ljublinsky, that asserted that for the successful opening and investigation of crimes the presence of knowledge and skilful application of logic are needed. Not insignificant is ability of application of technique of the use of proofs, criminalistics, judicial medicine, criminal psychology and judicial abnormal psychology, behave to that. According to P.I.Ljublinsky's opinion, exactly on their basis criminalistics description of one or another crime must be made, in particular falling under the article of investigation. The chart of similar description reached to us from Ancient-Roman times as the seven members Roman formula «Who, that, where, with whose help, why, how, when». P.I.Ljublinsky asserted: «Making off investigation, it is necessary to make sure, whether all is done for establishment of correct criminalistics description, whether with sufficient validity answers are given for questions making the brought formula over» [2; 32, 33]. On this question, J.F.Karelia also spoke out and asserted that: «Criminalistics description is beginning for the construction of methodology of investigation, because allows to set the method of commission of crime, used instruments and facilities, where and what information an investigator can get about the investigated event, indicative direction of investigation» [3; 4]. To the same opinion I.F.Gerasimov adhered, asserting that methodology of investigation of criminal act must be begun with criminalistics description of crime in beginning of actions of investigator [4; 7]. As a rule criminalistics description of crimes is examined in two aspects: as a general-abstract concept and as criminalistics description of certain groups (kinds) of crimes. In first case, criminal description is totality of knowledge about a concept, essence and value of this category. As a rule,

static not changing category. Group criminalistics description of crimes is the dynamic concept, based on data of practical activity, representing the features of certain crime.

It would be desirable to mark the justice B.P. Smagorinsky's opinion, that asserted that criminalistics description of separate types of crimes must be not only reliable and valuable but also timely.

The presence of reflection of the last updates of practical activity, maintenance of criminalistics analysis of one or another type of crimes, is needed [5; 252].

In this connection it is necessary to consider criminalistics description of certain type of crime. In legal science criminalistics description of crime is understood differently. For example, A.G. Filippov understands criminalistics description of crime as a system inherent to one or another type of crimes of features, having a most value for investigation and stipulating application criminalistics methods, receptions and facilities [6; 242, 243]. From the point of view of professor R.S. Belkin criminalistics description of crimes is this abstract, scientific concept, result of scientific analysis of certain type of criminal activity, generalization of his typical signs and features [7; 317]. Professor A.P. Rezvan examines criminalistics description of crime as functionally-pragmatic model of crime, created on the basis of science and practice with the purpose of orientation of subject of investigation in the features of initial information about tracks of event of crime, characterizing the state, properties and signs of the article of criminal trespass, circumstance of commission of crime, personality of criminal and victim, method of feausance and concealment of crime [8; 51]. In opinion of A.V. Sharov, criminalistics description of crimes is the system of typical data about the elements of crime and about appropriate connections between them, that can take place in every certain crime of this kind [9; 9]. From position of S.I. Bedrin criminalistics description this scientific and systematized description of conformities to law, founded on the base of empiric material, characteristic for the process of preparation, feausance and concealment of these crimes, and also intercommunications and cooperations of their structural elements used by the subjects of investigation for optimization of activity on their investigation [10; 18].

Hopes on that scientists, when or, will come to single opinion, concerning essence of criminalistics description of crime, is not. However in the variety of foregoing decisions it is possible to catch a presence general the sign of this decision. Summing up this question, it be possible to say, that to the most general signs of criminalistics description of crimes the system of basic structural elements, their associateness and interdependence, typicalness of signs of crimes, conformity to law of connections, behave between them, increase of efficiency of activity on opening of crimes [11]. Presence of data it is possible to find a sign and in the conclusions of otherscientists [1; 5, 4; 76, 12; 45].

Absence of universal decision to the concept criminalistics description of crime is possible to explain two suppositions. First — this consideration of this question is excessive narrowly. Second, accordingly, is interpretation in wide sense. In addition it is impossible to ignore circumstance that some scientists go near interpretation to criminalistics description of crime depending on the specific of certain crime. In this case we deal not only with mandatory members but also with elements characteristic for the certain type of crime. For example, the same A.V. Sharov in criminalistics description of swindle includes information about the specific of object and object of crime, place, time and method of feausance of criminal act. It can draw conclusion following, that depending on the type of crimes, taking into account their features and methodologies of investigation, the elements of criminalistics description of criminal act can change. That's why, this concept of the crime closely associated with a certain kind. It would be desirable yet to mark that, speaking about criminalistics description of crimes, it is necessary to mark the third element is criminalistics description of circumstances of one certain crime. In addition, it is necessary to take into account the utility of similar sort of approach for legal teach to practical activity. At one of time R.S. Belkin marks that there is not practical meaningfulness in criminalistics description of certain crime, as functions are absent peculiar to criminalistics description as element of criminalistics methodology [13; 737]. A.G. Filippov agrees with this point of view, as according to his opinion similar receptions, methods and recommendations, are applicable only to the certain kinds and groups of crimes [14; 243]. Not agreeing with opinion foregoing scientists, it would be desirable as an example to advance arguments of A.A. Fokina, that was predisposed to opinion, that about criminalistics description of certain crime talking is needed, as a separate crime is component part of separate types of crimes. This deduction takes place to be, as general description what or it is possible to give only defining description of separate structural elements entering with composition of single unit. In other words, on by the means of study of separate units, it is possible to make typology description general. Expressing the opinion, it would be desirable to mark that for establishment of criminalistics description of separate types of crimes, it is necessary to distinguish private elements, educe the presence of connections between them and character of cooperation with another phenomenon. Only giving criminalistics descriptions to

the great number of separate crimes it is possible to define criminalistics description of separate type (kind) of crimes. Nevertheless, taking into account that term criminalistics description concept an abstract (in opinion of R.S.Belkin), single crime can not come forward an orienting criterion. Only the study of great number of crimes of one kind will allow to define properties of methods of committing crime, tracks of crime, persons accomplishing criminal acts, persons harmed that or damage etc., are distinctive. There is a concept criminalistics model in the scientific world, that is offered to as an alternative criminalistics description. In the work «Basis of criminalistics methodology of investigation of the illegal credit» N.R.Gerasimov marks criminalistics model of the illegal credit drawing [15; 15]. This concept is presented as a synthesis of criminalistics description and mechanism of criminal activity. However in our view a concept a «model» means something certain, the family template something. In turn «description» is description of distinguishers of object. Thus, it is possible to draw conclusion, that «criminalistics description» a concept is far wider, than term «criminalistics model».

There is a next polemic through question of criminalistics description of crimes in criminalistics at the beginning the XXI century. Analysing her problems, R.S.Belkin came to the conclusion about the necessity of either quality perfection of criminalistics description or (what an author was predisposed to) abandonment from her and return to development of criminalistics list of circumstances subject to establishment on one or another category of criminal cases. «We begin to be predisposed to this radical decision, — he marked, — but as yet finally not sure of his rightness, we abandon a choice after a reader» [13]. Doubts of R.S.Belkin were conditioned by that criminalistics description only then has a substantial practical value, when in her cross-correlation connections are traced between elements, what is not present in swingeing majority of the offered descriptions. Exactly absence of scientific developments on establishing cross-correlation connections pointed author on such ideas. On absence of solid empiric base on the basis of that it was possible to trace all intercommunications between the elements of criminalistics description of crimes, other authors specified.

Intercommunication between the elements of criminalistics description assist establishment of unknown circumstances on by the means of the fixed facts, that presents not small practical meaningfulness in turn. It is possible to draw conclusion for itself, that an exposure of cross-correlation connections between the elements of criminalistics description is an obligatory action. Results following: criminalistics description of crimes serves for the construction of methodology of investigation of crimes; for her construction it is necessary to investigate a not certain crime, and type of crimes. The circumstances reflected in criminalistics description of separate crime can be both typical and offtype. In the scientific world more or less single opinion is absent concerning the structure of criminalistics description of crimes. So N.P.Jablokov in maintenance of criminalistics description distinguishes three elements: criminalistics lines of method of commission of crime, inquisitional situation, character of information subject to finding out [16; 38]. Associate professor V.V.Radayev in the structure of criminalistics description distinguishes information: about the typical elements of situation of committing crime of this category, about criminalistics meaningful connections between these elements and information about the features of mechanism of investigation [17; 8]. O.V.Volokhova marks that in maintenance of criminalistics description of crimes must enter situation of feausance crime (terms, time, place etc.), method of feausance and concealment of crime, mechanism of his feausance (certain actions of subject of crime), object and article of criminal trespass, personality of criminal, personality of victim, circumstances and terms, abetting [18; 15]. A.V.Sharov takes the features of object and object of criminal trespass to the number of elements of criminalistics description (in particular, he talked certainly about the crimes of the studied category), method of feausance of swindle, place and time of his feausance, feature of mechanism of investigation, personality of criminal and victim [9; 9]. In our view it is needed to listen to opinion of A.F.Lubin, that distinguishes two approaches of construction of criminalistics description on the example of crimes in the field of economics. First — element, based on description of some elements. Second — phase, related to description of phases of criminal activity. In first case human and objective factors are included in the structure of criminalistics description. The second approach implies description of the stages and stages of development of criminal activity [19; 49–52]. On the essence element fitting for reflects the constructions of criminalistics description in itself the points of view are above enumerated scientists with a difference only in separate elements. Phase approach must be subjected to some criticism and necessary to agree with opinion of A.V.Sharov in opinion of that presence only intention on the feausance of illegal act can not serve as founding for bringing in to criminal responsibility. Consequently description of similar activity can not be named criminalistics description of crimes [9; 8]. In our case phase approach is unacceptable as description of features of development of the stages of crime (preparation,

feasance and concealment) does not represent another signs of illegal act. The variety of opinions of structure of criminalistics description of crime is explained first of all by an uncertain highway structural elements. Secondly, by an underestimation by some authors of axioms position about the necessity of consideration for private methodologies of investigation only of such elements the complex analysis of that assists opening and successful investigation of crimes [20; 20]. Thirdly, that is over-estimated factor of different disciplines of object of research of crime and frequently in criminalistics description include the elements related to the article of study of another sciences. In continuation of the examined question, it is necessary to expose to the analysis the separate elements of criminalistics description, being of interest for most scientists (inquisitional situation, reason, aim, reason and condition, abetting). For example litigions is a question — whether an inquisitional situation enters in the structure of criminalistics description. It is possible to listen to opinion of such scientists as N.G.Shurukhpov, N.A.Selivanov asserting, that an inquisitional situation must not enter in the complement of structure of criminalistics description [21; 25, 22; 30]. This statement is explained by that an inquisitional situation characterizes matter-position, situation in different moments of inquisitional actions and all motion of investigation. In other words collection of information is conducted about terms activity of the criminal proceeding comes in that true.

Thus, description of process of investigation of crime (inquisitional situation) can not be a structural element by criminalistics description of crime, as does not describe the process of commission of crime. However not looking on it such scientists as V.V.Aleshin are asserted, that an inquisitional situation is a basic element by criminalistics description of investigation of crime [20; 44].

It is impossible to go round a side and a question about including of reason and aim of crime in the structure of criminalistics description of crime as a component element. And in this case scientists did not come to single opinion. For example V.V.Trukhachev asserts that reason of illegal act is the mandatory member of criminalistics description [23; 11]. O.V.Volokhova sticks to neutrality asserting, that reason and aim it maybe to leave as an element of criminalistics description only on separate kinds to the crimes. Next litigions element of criminalistics description it is a mechanism of investigation. Separate category of scientists examine him within the framework of method of commission of crime. However in our view these elements must be examined on a separateness. It is not just to assert that typical tracks are related to the certain method of commission of crime. It is necessary to take into account that the process of forming of tracks often passes independently. In support of this position it would be desirable to quote expression of scientist of V.A.Obraztov: their «Practical value at times is so great, that opening of many crimes often begins not from tracks of application of certain method, and from the data constrained, for example, with personality of victim, characterizing his way of life, connection, intention» [24; 25]. B.A.Standards asserted justly, that there are quite a bit examples in practice, when a crime opens up on the way of collection and analysis of information about a victim, namely what he engaged in the day before, with whom contacted, where was etc. And frequently a that person appears a criminal with that victim that or by another character contacted shortly before the commission of crime [24; 25].

Now we will consider the debatableness of question of the touching plugging in the structure of criminalistics description of such element as reasons and terms assisting a feasance to the crime. On this question of opinion of scientists divided into three categories. First category of scientists predisposed to opinion that reasons and terms must be plugged in criminalistics description of crime as independent element [25; 204, 26; 104]. The second group of scientists asserts that reasons and terms must not be included in the complement of criminalistics description of crime [27; 65]. The third opinion says of that reasons and terms of commission of crime must be examined within the framework of research of situation of commission of crime [28; 81, 20; 39].

It would be desirable to express the opinion in behalf on position of salient on a side independence of reasons and terms, assisting the feasance of illegl act, as a structural element of criminalistics description of crime. Made decision stipulated by the row of reasons. Foremost it that reasons and terms of commission of crime assist the safe opening and investigation of swindle. It is impossible not to agree with opinion M.S.Strogovich in opinion of that, crime detection, discovery and exposing of persons committing crime does not exhaust the direct tasks of preliminary investigation, business can be considered investigated full then, when an investigator will find out reasons and terms, abetting or hampering his timely discovery and suppression [29; 67]. In addition, this element sets conformities to law of investigation of crime that is determined by cause and effect connections as the phenomenon is social [8; 82]. Importance of reasons and terms, abetting, contingently ability to decide methodical and tactical questions at investigation of illegal act

and prevent the feaseance of similar crimes in the future. Influence on reasons and terms of crimes more scale action is sent to warning of feaseance of illegal act [30; 13].

Summing up foregoing it would be desirable to do a next conclusion, that in the complement of criminalistics description of swindles, in the field of housing relations, in our view, it is necessary to include next structural elements:

- Taking about the article of criminal trespass;
- Crimes given about the situation of feaseance;
- Taking about the method of commission of crime;
- Information about the mechanism of investigation;
- Information about personality of criminal and victim;
- Data about reasons and terms of abetting.

In addition it is necessary to take into account cross-correlation character of basic structural elements of criminalistics description of swindle in the field of secondary accommodation.

In conclusion, on the basis of the stated, we will make the authorial decision of concept «Criminalistics description of crimes», that, as we consider, acceptable to the decision of criminalistics description of swindle in a housing sphere. We suppose that appropriately at once to set forth the decision of criminalistics description of the studied category of crimes and present him in a next release.

Criminalistics description of swindle in the field of housing relations is totality of associate and interdependent elements characterizing an object, method, mechanism of investigation, personality of criminal and victim, situation of commission of crime, reasons and terms, abetting, cross-correlation connections between that carry appropriate character and their establishment determines methodology of exposing and investigation of swindle in the field of housing relations.

Thus, set forth criminalistics description writing up the certain type of crimes, in particular, swindles in the field of housing relations, decision of her components being in close intercommunication and interdependence with each other, establishment of level of correlation between them has a practical value for persons carrying out the pre-trial hearing on criminal cases.

The practical setting of criminalistics description of the studied crimes consists in making of methodical recommendations on their exposing and investigation, because she is methodical basis in the choice of direction of investigation, especially on the primary stage; to organization and tactics of realization of inquisitional and judicial actions, and also decisions of tasks on warning of these crimes. Individuality of the studied crimes does not eliminate general lines inherent to all crimes. Repetition of separate signs is absolute, circumstances and different displays in the feaseance of swindle in a housing sphere.

Usually in them general conformities to law show up in preparation, method and disguise of crimes. It allows to educe typical, that finds a reflection in criminalistics description that in this connection it is conditionally possible to consider the program of actions of investigator on t exposing of these crimes.

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Д.Ш.Кұсайынов

Жылжымайтын мүлікпен байланысты алаяқтықтың криминалистикалық сипаттамасының құрылымдық элементтері

Мақалада тұрғын үй қатынастары саласындағы алаяқтыққа қатысты криминалистикалық әдістеме — криминалистиканың соңғы бөлімінің құрамдас бөлігі болып табылатын жеке әдістемелік ұсынымдарды құрудың бастапқы теориялық және ақпараттық базасы ретінде қылмыстарды криминалистикалық сипаттау туралы ілімдер қарастырылған. Қылмыстардың криминалистикалық сипаттамасы белгілі санаттағы қылмыста жасау жағдайларында типтік элементтер туралы мәліметтер жүйесін, із қалдыру тетігінің ерекшеліктері мен осы элементтер арасындағы криминалистикалық маңызы бар байланыстар туралы мәліметтердің жүйесін білдіреді.

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Структурные элементы криминалистической характеристики мошенничества с недвижимостью

В статье рассмотрено учение о криминалистической характеристике преступлений как исходной теоретической и информационной базы построения частно-методических рекомендаций, являющихся составной частью завершающего раздела криминалистики — криминалистической методики, в частности, применительно к мошенничеству в сфере жилищных отношений. Отмечено, что криминалистическая характеристика преступлений представляет собой систему сведений о типичных элементах ситуаций совершения преступлений определенных категорий, криминалистически значимых связях между этими элементами и особенностях механизма следообразования.

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