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PROBLEMATIC ISSUES AND THREATENING TENDENCIES OF THE RAIDERSHIP SPREAD IN UKRAINE

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SUMMARY

Raidership is a problem that has recently become more relevant in Ukraine. In an oversaturated bad news environment, it is often lost. The article studies raider attacks carried out by organized criminal groups in Ukraine. An assessment of typical schemes of raider attacks that exist today in the state has been given.

The author examined the gaps in legislation that “contribute” to the development of raiding, and also identified ways to minimize and eliminate the causes and prerequisites that lead to the complication of the crime situation in this plane.

Key words: raids, raider attacks, organized crime groups, market economy.

ПРОБЛЕМНІ ПИТАННЯ ТА ЗАГРОЗЛИВІ ТЕНДЕНЦІЇ ПОШИРЕННЯ РЕЙДЕРСТВА В УКРАЇНІ

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АНОТАЦІЯ

Рейдерство – це проблема, яка останнім часом стала актуальною в Україні. Випадки рейдерства в різних проявах можна спостерігати у всіх країнах із ринковою економікою. У статті розглядаються рейдерські напади, що здійснюються організованими злочинними групами в Україні. Автором здійснено оцінку типових схеми рейдерських нападів, які існують нині в державі.

Автором окреслено прогалини у законодавстві, які «сприяють» розвитку рейдерства, а також визначено шляхи мінімізації та усунення причин і передумов, що призводять до ускладнення злочинної ситуації в цій площині.

Ключові слова: рейдерство, рейдерські напади, організовані злочинні угруповання, ринкова економіка.

Problem statement. Recently, a wave of large-scale raider attacks has swept Ukraine in order to capture the property of enterprises, organizations, as well as land plots, housing and business. In particular, there is a steady and threatening tendency to carry out raider seizures of enterprises, organizations that demonstrate financial success, receive super-profits. Enterprises with powerful assets are also of interest. Without exaggeration, organized criminal groups (OCGs) seize and accumulate capital through raider seizures. At the same time, OCGs are increasingly using new schemes to seize property, property complexes, land, housing and business.

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.

The main purpose of raidership is the use of criminal schemes to seize large businesses, large firms, enterprises, significant areas, land plots, equipment and real estate. In the current climate, experts divide raiders on white and black. White raiders operate by a method of corporate blackmail within the framework of the current legislation. In our country, they occur infrequently and are more characteristic for countries with developed economies and high business culture. Such raiding directly with the bankruptcy procedure eliminates inefficient management from management, improves the effectiveness of business processes, and encourages the employment of highly qualified specialists, etc. The beginning of the attack is the purchase of shares at relatively high prices. Usually,

the raiders need only buy 10-15 % of shares in order to initiate a meeting of shareholders, including the issue of changing the company’s management on the agenda. Often, leadership does not conduct negotiations, after which the raiders turn to “black” actions.

“Black” raiders use criminal methods to obtain the result (capture, forgery of documents, registration of companies for straw persons, bribery of representatives of law enforcement agencies, officials, judges and bailiffs, physical elimination of unprofitable people). The results of the activity of “black” raiders are negative. They directly encroach on the property of the person and on other of her fundamental rights guaranteed by the Constitution of Ukraine (the right to life, health, honor, dignity, etc.). When carrying out the seizures, the “black” raiders use methods of buying up shares and debentures, initiate bankruptcy procedures, unlawfully access to the shareholders register, significantly understate the value of the enterprise and etc. Of particular interest are state and private enterprises that own real estate. A similar assessment can be given to such a phenomenon as “greenmail” – blocking and obstructing the work of the enterprise by blackmailing them on the part of owners of small blocks of shares.

Recently, the scheme of using “titushki” (i.e. bullies) and physically developed young people for the purpose of seizing enterprises, unfinished construction objects is also working effectively. To carry out raider attacks, they are sought primarily in sports federations and clubs or campaigning using social networks. Also, property is seized through bribery by a judge, fraud using open electronic registries.

In general, the typical schemes of raider attacks in Ukraine include: raiding through equity, mainly occurs when there is dispersed share capital; raiding through accounts payables, which provides for the repurchase by the raider of the obligations of the enterprise and their presentation to a one-time payment; raiding through the authorities, which can be realized both by bribery of the management of the enterprise and the introduction of control over it by means of blackmail, criminal prosecution and threats; deprivation of property as a result of appealing the results of privatization.

At the same time, the simplest methods of countering raider attacks are: the concentration of share capital or the repurchase of shares from participants who do not participate in the activities of the enterprise; constant monitoring of changes in the composition of shareholders; restructuring of the enterprise subdivisions with a change in their organizational and legal status; controlled purchase of shares and additional issue; determination of the legal status of property, revaluation of property. In conditions of significant risk, it will be useful to structure the property using subsidiaries, create an artificial debt of the enterprise and transfer real estate and other assets to a loan for lending; preventing the occurrence and delay of accounts payable; improvement of work of management and personnel (prevention of conflict situations, illegal dismissal of employees, etc.); improvement of the culture of business entities (transparent competitive relations, maintenance of business reputation, etc.); involving the public and the media in combating raider attacks.

Among the reasons that contributed to the emergence and development of this phenomenon, one can distinguish the following: 1) unstable political situation in Ukraine; 2) corruption at all levels, including law enforcement agencies and courts; 3) implementation of raider attacks involving state and law enforcement agencies; 4) absence of real legislative mechanism and practice of bringing to criminal liability for raiding.

Specific aspects of raiding in Ukraine are its unique nature and speed of its implementation. As practice shows, two equally organized and implemented raider seizures are extremely rare. During raider attacks, the scenario is implemented in two stages: 1) obtaining full physical control of the object; 2) obtaining full financial control. In this situation, the raider does not care how long the conflict lasts, because he uses not the personal resources, but the means of the captured object. The "victim" of the attack will be "exsanguinated", and he will have to invest in this "war" both personal and borrowed funds. So, the confrontation can last for years, during which the raider will continue to receive income from the captured object. In general, protection from a serious raider attack is a long and financially expensive process.

As practice shows, if a raider "enters" an object and receives control over the company's financial flows, it starts "manipulation", through which it is almost impossible to remove it from this object. At the same time, large raider seizures are carried out with the active assistance of certain authorized officials of state or local government bodies, significantly complicating attempts to return the illegally seized object.

Consequently, today property rights of both real estate objects and corporate rights in Ukraine are completely unprotected, which is a favorable aspect of the spread of organized crime. As is known, raidership is usually connected with the actions of registrars or with court decisions on changing property rights, the composition of founders or managers of the enterprise.

The Prosecutor General's Office of Ukraine refers to criminal raids criminal offenses under Art. 206 and Art. 206-2 of the Criminal Code of Ukraine. So, according to statistical materials of the Prosecutor General's Office of Ukraine, in 2017 315 criminal offenses under Art. 206 of the Criminal Code of Ukraine were registered, of which only 19 were

transferred to the court, and 99 criminal offenses were registered under Article 206-2 of the Criminal Code of Ukraine, of which only 6 were transferred to court. In the period January-June 2018 – 113 criminal offenses under Art. 206, the court received 4; and 48 criminal offenses under Art. 206-2 of the Criminal Code of Ukraine, 5 of which were transferred to court [5].

According to the reports of the National Police of Ukraine, 49 facts of such violations ("raidership") were registered for 7 months of the year in 2018 (form No. 1-R), and 25 criminal offenses were registered in the field of counteraction to legal economic activity (Art. 206 of the Criminal Code of Ukraine) [6].

Against this background, it is advisable to carry out a criminological description of the participants in criminal activity associated with raiding, which is only fragmentarily reflected in the scientific literature.

Predominantly, crimes aimed at capturing the right to manage, use and dispose of assets of a legal entity are committed individually by the entity without the creation of a criminal group. Individually committed crimes aimed at obtaining the right to assets have two distinctive features. Namely, persons holding positions related to the management or disposal of assets, with the management of the activities of participants in corporate relations, have a direct and decisive influence on the organization and planning of work, concluding transactions, signing contracts on behalf of the company, establishing the procedure for selling property, their expenditure, the selection and placement of personnel, their release, objections and monitoring of their implementation, etc., that is, they perform organizational and managerial functions and administrative-in-house responsibilities within the framework of this legal entity.

Recently, organized criminal groups are also being activated, which are formed from the number of individual co-owners of assets and participants in corporate relations, with the aim of appropriating the property of other founders without further resale and maintaining the main production.

An organized criminal group formed on the basis of a legal entity has the purpose of using criminal schemes to seize assets of other legal entities.

The generalization of pre-trial investigation materials makes it possible to assert that it is impossible to commit a crime in a raid with a group of persons without prior conspiracy, because the achievement of the ultimate goal (possession of the right of use, disposal of assets) is connected with careful preliminary planning and distribution of functions among the members of a criminal group at various stages raider seizure of an entity. Specificity of the direction of criminal activity (property rights of legal entities) is decisive in the formation of the criminal group.

According to the functional sign of the participants of criminal groups, whose activities are aimed at criminal acquisition of assets of legal entities, can be conditionally divided into the following subgroups: 1) persons who have information about the real economic situation of "target companies"; proper higher education, age 30–45; 2) persons who develop the plan and scenario, determine the ways of capturing the right to manage, use and dispose of the assets of the "target company", their practical implementation (plan) and application (methods); 3) persons who are used in the implementation of only certain criminal actions that have a preparatory character in the general scheme of the mechanism of criminal activity (theft of the passport/title documents, their forgery, physical and moral impact, participation in mass actions at the enterprise during its seizure, etc.); 4) persons who organized and united for the purpose of realizing the criminal intent of the participants of the three groups listed above.

In general, characterizing the potential of an organized criminal group that specializes in raiding, we can point out the following features. Firstly, the members of such a group

have a high educational level, which makes it possible to make an assumption about the significant intellectual potential of the members of the criminal group. This feature is due to the diversity of crimes committed in the course of solving various tasks in the process of raider seizure and it requires individuals to have special training. So, the participants of organized criminal groups have deep special knowledge in the field of economics, accounting, jurisprudence, and planning, production management, material resources management.

In turn, the presence of a wide range of specialists naturally determines the presence of such a sign of a raider criminal group: actions are united by one goal of persons who are in causal and effect relationship, complement each other, stipulate and contribute to the onset of a criminal result. The diversity of the criminal offenses committed during the raider attack presupposes the presence of a criminal group consisting of persons having various special and physical training and various functions (tasks) in the course of implementing the criminal intent. Officials of state bodies may be involved in this process, but they cannot be considered members of a criminal group only on this basis, as they may not be aware of the real and ultimate goal of the perpetrators.

As a general principle, a powerful oligarchic financial and industrial group (FIG), which has a significant amount of free monetary resources, heads the criminal association, and its participants can hold elected positions in representative bodies through which it is possible to carry out unlawful influence on the actions of judicial, registration, controlling and law enforcement bodies.

The unlawful interference of law enforcement agencies, in particular police officers, in a corporate conflict is one of the most negative phenomena in the sphere of abuse of executive authorities. Using the powers given, the employees of the said units can solve the conflict in their own strength in favor of one of the parties.

Customers of raider attacks carefully conceal their intentions, appearing law-abiding businessmen who manage large financial groups or corporations, regularly pay taxes, often engage in charity activities, etc. As practice shows, according to the results of the investigation of these crimes, it is rarely possible to bring such a category of persons to justice.

Paradoxically, but the main link, the “core” of the criminal association is a group of lawyers (attorneys), who have economic specialization, have judicial and investigative practice, communication in judicial, executive and law enforcement agencies. This group studies information about the object, the interest to which was shown by the “customer”, reveals violations committed during privatization, current economic activities, registration of share issues, etc., i.e. everything that can be used in the implementation of preventive civil law and criminal law prosecution of owners and managers of the enterprise, which they plan to seize.

Also, the weak and vulnerable spots of the object of raider attack are identified; an action plan is being drawn up to seize land plots, business or property complex. To achieve this goal, the raiders use various tactical actions, in particular, develop and implement a whole PR campaign, manipulating public opinion to change the balance of power in their favor, including using patriotic associations and communities. As a result, “active fuss” appears which they use for their own purposes.

The budget required for the planned activities is calculated, which provides for the costs of “services” of representatives of pro-government structures – corruption costs. In this regard, the organized group has well-defined functions and roles: there are specialists responsible for interacting with the judiciary, the prosecutor’s office, the police, the tax inspectorate, the bribed “own” notaries or state registrars. Thus, an active party to legal relations related to raidership is a legal entity that

has a certain economic interest in relation to the “target enterprise” and has financial and legal levers of influence with the aim of implementing the measures of raider attack. Raiders also use several methods, including by purchasing company debts or through non-fully legal mechanisms that can create fictitious debts in the “victim enterprise”.

Conclusions. With the aim of systematically counteracting any manifestations of raidership as an informal institution for the redistribution of capital and property, the Ministry of Justice of Ukraine has developed and plans to launch an online security system against illegal seizure of enterprises, which has become known as a “sms-notification”. The content of this system is preliminary information: if other persons try to do something with the property, real estate or business of the legal owner in the state register, the owner will immediately receive an SMS message about such encroachments. Therefore, owners of property and business who understand that potentially raider attacks can be carried out, order this service to immediately react to any illegal actions with respect to their property rights.

With the purpose of legal support of system struggle against land raidership in the Verkhovna Rada of Ukraine the draft law No. 8121 as of March 14, 2018 “On Amendments to the Land Code of Ukraine and some other legislative acts to counter raidership” was registered [6], designed to minimize agrarian and land raids. The reasons for the drafting of the law were raider attacks of a new format. If in previous years this happened, mainly with the help and under the guise of armed groups, today the raiders not only engage in falsification of lease contracts and crop thefts, they began to seize enterprises, changing the composition of the participants of the enterprise, re-registering shares (stakes) in the authorized capital of agricultural enterprises, property and land that they use.

The abovementioned draft law proposes to introduce a number of anti-raider measures, actions to protect the property rights of owners and users of land to prevent illegal acquisition and seizure of enterprises in the agricultural sector of the economy, because in recent years, the scale of raider seizures of land and property of agricultural enterprises has become threatening as for the economy country, and for the national security of the state. Absolutely correct is the decision of the legislator to criminalize the unlawful seizure of the property of the enterprise, institution, or organization, as this makes it possible to distinguish between civil and criminal law relations in this field [7].

At the same time, it is necessary to amend the land and civil law, in particular to oblige registrars and notaries to check the registration history of the object during the registration process. It should also be established that it is possible to register the conveyance of property of integral land and property complexes only in the presence of the previous owner, that is, it is necessary to unite the registers of real estate, business and court decisions, as well as to strengthen the administrative and criminal responsibility of all those involved in unauthorized possession of assets and real estate enterprises. Thus, special attention should be paid to further reform of the judicial system; in particular, this is to speed up the launch of the work of the independent Supreme Anti-Corruption Court.

It also should be noted that unfortunately raidership in Ukraine is not defined by law, and the basis for the spread of raidership in our country is a gap in the regulation of relevant legal relations. The negative phenomenon of raidership, above all, is directly connected with the system of functioning of state registries. Against this background, in the opinion of experts, in order to minimize and eliminate the causes and prerequisites that lead to the complication of the criminal situation in this field, it is necessary to take systematic measures to overcome the economic factors of criminogenic nature, primarily due to the influence of corruption in state authorities and administra-

tion, the law enforcement system, as well as on the unshadowing of the state's economy by accelerating the implementation of the tax reform and eliminating the scale of the influence of oligarchically monopolistic groups.

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