

ENGLISH SUMMARY

György Farkas

Dedication by the Publisher

The Public Foundation for the Safe Hungary (BMK) supports in compliance with the objectives determined in its Deed of Foundation the exchange of knowledge accumulated in the civil crime prevention, the development of the cooperation forms aimed at crime prevention of the police, the border guards, the disaster control authorities, social organizations, local governments and the citizens, moreover the research, training, education and information. In the past years by its work it has got into the forefront of the crime prevention, as a result of this the recognition that it is necessary to socialize the intervention against the commission of crimes has become a public property already by today. By issuing the book *With coordination of social forces against the housing mafia* the series of the BMK publications has got widened with a qualitatively new element. The book addresses a sort of criminal offences not appearing in a ten thousand order of magnitude, but it deals with a special way of committing criminal offences under particular, temporary social circumstances which represents merely a hundred order of magnitude in the number of the criminal acts and the criminal offenders, but in respect of the total value of the damage caused it is equal to the large-scale economic crimes. This renders it particularly justified for us to take in hand and study the book, to make use of its lessons, but to think about the challenges of tomorrow as well. As a matter of fact, in working out the local crime prevention concepts an important aspect is constituted by proactivity: it is more reasonable to avert the undesirable phenomena in time than to expect their escalation and to respond to them only subsequently, maybe with delay. The work of the editors and authors of outstanding preparedness can help efficiently the development of our common cause, the social prevention of crimes.

Szilveszter Póczik – Szilveszter Dunavölgyi

Habent sua fata libelli ...

Preface of the Editors

The publication of the book was uncertain for a long time, although it had already been suggested during the research commenced in the National Institute of Criminology in January of 2003 that there would have been a demand for a publication making the research results widely accessible. However, a number of doors previously open got closed on hearing the idea of a book treating of the housing mafia. Therefore, an acknowledgement is due to the advisory board and management of the BMK (Public Foundation for the Safe Hungary) for undertaking to publish the book. The work published contains in one volume two books with separate title, separate editor and separate table of contents, usable independently as well, but closely related, and the second book on CD attachment. The book is opened by the critical study of a renowned criminologist and administration expert, abounding in elements of the history of ideas. Afterwards the reader can take in hand the documents relying on the results of the research work partly empirical conducted in the National Institute of Criminology in the context of the housing mafia phenomenon. Passing beyond the mere scientific documentation of the phenomenon, the editors of the book invited such experts to write papers who were able to elucidate the deeper relationships of the problem from several aspects in detail. To make it clear, their long-range objective was to give a sort of handbook into the hand of the users of law who can encounter on any level of the admi-

nistration the opportunity of the real estate fraud, its perpetrators or its potential and actual aggrieved persons, are able to prevent or prosecute such acts, to protect or help the victims. The CD belonging to the printed book contains, as an independent book, the background materials which are necessary for getting familiarized on micro level with the housing mafia activity and the intervention against it: parliamentary working materials, decisions by the government, courts and the ombudsmen, bills, laws effective, inoperative and dating back to the 19th century, as well as other documents. The book can be an effectual device for crime prevention in the hand of the politician, policeman, prosecutor, judge, lawyer, notary public, court bailiff, civil guardsman, municipality employee, even any inexperienced citizen as well, who feel responsibility for his/her own and his/her fellow-men's safety, even going beyond this, for strengthening the social solidarity and cohesion. Both kinds of responsibility assumption are very much needed, since we share in far-reaching social transformations: we must struggle at one time for the reconstruction, survival, modernization and efficient operation of the Constitutional State, while the environmental conditions become more and more unfriendly. The housing mafia is a historical metaphor in a very wide meaning: the Eastern-European peoples are similar to the typical victim of the housing mafia who makes efforts to rise to feet again, many times deceived and disappointed, after immeasurable losses.

Géza Finszter

Role of the Social Science Researches in Crime Prevention in the Mirror of the National Strategy of Crime Prevention

The reader holds in hand a far-reaching scientific theory study. Starting from the term of natural and "artificial" criminal acts, the Author arrives by way of historical analysis at the comparison of the causal criminology and the control criminology. After analyzing the tasks of the criminal policy he states that there is an identity of interests between the day-to-day practice of the criminal policy and the research goals and methods of the criminology: without scientific support the criminal policy cannot get beyond the day-to-day improvisations, the causal criminology is indispensable in understanding the determination processes and the control criminology has a message on the efficient and lawful criminal investigation. It admits together with the leading international representatives of the criminal sciences at the period after the 2nd World War that if the human rights do not receive any protection in the application of the criminal law, the dangers of the distortion of the criminal jurisdiction cannot be eliminated, the criminalization of the politics and the overpoliticization of the criminal law remain a permanent danger. Therefore, the Author opposes the neoliberal revolution taking place in the field of the criminal policy, which refuses the social science results of the last hundred years and tries to intensify the efficiency of the criminal investigation by simplifying extremely the dangers threatening the society and invokes for this the help of the myth of the international organized crime. The study touches upon the social processes of the Hungarian social transformation and the aspects of the domestic organized crime as well, mentioning by way of example the oil affairs and the real estate fraud acts. Examining the content of the Parliamentary Decision 115/200 (28.10) on the national strategy of the social crime prevention, it states that further reforms are necessitated in the practice of the Hungarian criminal investigation and administration of justice. The precondition for these, however, is the creation of a public safety strategy based on a political consensus for at least 10 years, the modernization of the security service, the organization reform of justice, making the public safety financible as an infrastructure of not material character.

Szilveszter Póczik

Criminal Acts of the Housing Mafia
Social-Historical and Criminal Sociological Overview

The real estate market got open wide with the housing privatization following the political transformation, but the perpetrators of the criminal offences turned their attention to the opportunities of this. The so-called housing mafia activity has got to the forefront of public attention in connection with the problem of homelessness. In consequence of the changes occurred in the area of the housing credits and energy prices at the past decade the majority of the poorer households has run into serious debts and become defenceless. The most crimes examined in the study are frauds. Along with this, we can find frequently forgery of official and private documents, blackmailing, duress, taking the law into own hands, violation of personal liberty as well. In the legal and institutional environment, as well as in the behavior of the aggrieved persons a great number of factors can be discovered which are made use of with success by the crime perpetrators. The real estate frauds lead to distrust in the constitutional legal order, therefore it is the fundamental interest of the society to overcome them. Among the initiatives against the housing mafia, mention must be made of the work and constructive proposals of the Kaptár (Beehive) subsection of the Budapest Police Headquarters (BRFK), the police stations of the counties, the competent parliamentary committee of investigation, the specialized committee established at the general assembly of the municipality of Budapest, the civil organization advocating the cause of the aggrieved parties, as well as of certain professional chambers, but along with, of the possibilities of the individual protection. In the last part of the study the Reader encounters the exposition of the social and collective crime prevention relying on new scientific results. Pursuant to the optimistic forecast of the Author pronounced upon closing the study, the coordination of forces against the housing mafia can be a successful model project of the social crime prevention in Hungary, if the cooperation of the institutions outlined in the report of the competent parliamentary subcommittee and in the associated parliamentary decision comes into being.

Szilveszter Póczik

Selected press reports of real estate fraud

This chapter of the book is a collection of real life cases, known also from the press. In the first part of the chapter 11 cases occurred in Hungary are presented in brief, which are typical in their details and in their final dénouement and can serve as admonition to all those who handle irresponsibly their material goods or walk in the trap of the crime perpetrators by undertaking disproportionate risk in the hope of growing quickly rich. Almost in each of the cases a role was due to thoughtlessness, the disordered family environment, perhaps the alcohol or any other factor hindering the recognition of interest. In the second part of the chapter the Reader can get convinced that real estate frauds and fraudulent manipulations connected with real estates do occur in Western Europe as well. These are of much more contrived and sophisticated structure than the cases in Hungary, they cover at one time economic criminal acts provable with difficulty and formally legal traps nearly insurmountable by the injured parties. It is to be feared that the place of the primitive housing mafia acts is going to be occupied soon by these complicated methods of perpetration.

Tibor László Nagy

Empirical Research on Housing Mafia Crimes

The study presents the results of the empirical investigation conducted during the research into the housing mafia crime as it is termed. In this framework, after the analysis of 293 case documents, 116 case sheets, 337 questionnaires by the perpetrators and 358 by the aggrieved persons were completed and their data were evaluated. It can be stated that this criminal syndrome is limited not merely to the capital city and its environs, but can be found on the largest part of the country, but at the same time we may not speak of a single polyp-like housing mafia encompassing the whole country either. The acts of serial character perpetrated in a businesslike way are undoubtedly frequent, these have been committed basically by criminal gangs independent one of another and along with these, the case-by-case affairs are not rare either. In judging the acts often complex the worst problem is caused by the difficulties of proving and the differences in approach, since in a great number of cases the confessions – credible and acceptable in themselves – of the aggrieved persons possessing a slight ability to enforce their interests are unanimously refuted by the documentary evidences and witness testimonies. In such cases, due to the application of the principle in dubio pro reo, the procedures are terminated and the defendants are acquitted, which rather irritates at the same time the sense of justice of the society. The judgment far from being unanimous of the individual conducts of perpetration can be evaluated as a practice endangering the legal safety. The contribution by the aggrieved parties and the role of the lawyers (notaries public) are of outstanding importance among the causal factors.

Szilveszter Póczik – Tibor László Nagy

A Few Important Proposals in the Struggle against the Housing Mafias

The Authors of this short essay gathered as a part of the researches carried out in the National Institute of Criminology the proposals and ideas, which constituted the subject of spirited debates in the circles of professionals at the period of the research. There can be found many among the proposals which have been implemented in the meantime and have proven well as a device both for the administration and crime prevention. At the same time such proposals have also been formulated, which have not been compatible with our today's legal approach or could not be fitted into the current order of statutory laws, because of their elements of form and content.

Szilveszter Póczik (ed.)

Minutes of the Conference entitled Criminal Acts of the Housing Mafia

The participants of the professional conference explained that the real estate frauds accompanied all along the social transformation during the 90s and could be put into parallel with other forms of the white-collar crime. It is an important social duty to hinder them, which requires among others changing the law system of the real estate registration, the modification of the housing act, of the Penal Code and of the act on criminal proceedings. Most of the professional groups concerned, among others, lawyers, notaries public, court bailiffs cooperate with the governmental and parliamentary bodies in order that the sham sellers could not abuse of false personal documents, the land offices could control

those inspecting the proprietorship registers and could solve the administration and crime prevention tasks piled up before them. In the meantime, devoting a particular attention to the problem, the criminal prosecution and the administration of justice perform their work with greater and greater intensity, thanks to this, a great number of criminal proceedings have been initiated and it could be reached in several cases that those deceived should regain their real estates or could enforce their claims for damages. In spite of this, those aggrieved are far from being satisfied even they continue feeling that they are in disadvantage against the crime perpetrators in the criminal procedures.

Szilveszter Dunavölgyi

Process of Law Preparation and Legislation in the Fight against Crimes of the Housing Mafia

Further to the request of the Sors-Társak (Fellow Sufferers) Non-profit Association in October of 2002, a parliamentary subcommittee of six members was established to discover the abuses and criminal acts related to the housing mafia activity, real estates and tenement houses. The Subcommittee started its activity in January of 2003 and during an inquiry lasting more than one year it mapped by a wide-scale analyzing and evaluating work the types of the acts of housing mafia character, consulted the opinions and proposals of the injured parties, the crime prosecutors, the participant of the real estate affairs and of their professional organizations. In cooperation with all the organizations concerned and the supporters of the committee work, the Subcommittee formulated the tasks connected with the suppression of the phenomenon, which put on shape also in two parliamentary decisions. In the wake of this, in the areas of the State and local government housing management, the land office procedures and the registration of title deeds many law modifications more stringent and helping the transparency, as well as other measures were adopted. Despite all these, the governmental factors have been at fault for implementing the rules contained in the bill No. T/18211 aimed at the complex settlement and creating the institutions, possibilities based on the former, moreover for fairly assisting the victims. The chaotic character of the legislation process comes markedly into relief here as well in connection with the topic processed. The data of the documents available regrettably only deficiently suggest that rather the party interests are reflected in the legislation process than the scale of values of the Constitution.

Szilveszter Dunavölgyi

The Legislation Process related to the so-called Housing Mafia Activity with the Eye of a Politician

An interview with Mrs. Devánszki Dr. Katalin Molnár

In the interview Mrs. Devánszki Dr. Katalin Molnár, Chairwoman of the parliamentary subcommittee to reveal the so-called housing mafia activity, speaks from the angle of the politician on her personal experience and impressions concerning the first elements of the familiarization with the housing mafia phenomenon, then on the work of the subcommittee. Beyond the knowledge of the facts, the Chairwoman of the subcommittee declared it as an obvious result that the bulk of the law execution sphere treated the suppression of the housing mafia phenomenon as a prioritized goal and initiated and/or executed a whole series of measures. She, however, regarded it as regrettable that during the creation of the law then budgetary bills for the years 2005 and 2006 did not allocate any single farthing to

improve the situation of the victims, to support the non-profit association representing their interest and/or to finance the activity of the local governments to this effect.

Monika Sári

And does housing mafia not exist, ... and will it not exist either?

Possibilities and limitations of the police work in overcoming the housing mafia

The Author of the study was the commander of the police unit specialized on the detection of acts of housing mafia nature, so she could observe with the eye of the crime prosecutor active in practice from very near the appearance, multiplication of the real estate frauds and could direct the fight against them. In her study she presents the housing mafia activity primary from the angle of the police, thus from professional point of view, however she cannot evade pronouncing a devastating moral judgment on the perpetrators abusing unscrupulously of the defencelessness of others and mentioning the victims with compassion. The writing makes the reader get acquainted with the different ways of perpetration, analyses both the aggrieved and the perpetrator sides and gives a detailed account of the establishment of the Kaptár (Beehive) Group of the Budapest Police Headquarters (BRFK), the initial difficulties of its operation and the results achieved. The organs of the BRFK investigated as early as December of 2000 in the matter of some 500 counts of real estate related criminal acts against about 200 suspects. The establishment of the Kaptár Group was followed by a vivid interest of the media and by an efficient work, in the first half year they received over 700 denunciations and 350 criminal proceedings were instituted.

Zsolt Kovács

Problems of the Crimes of the Housing Mafia based on the Experience of the Ombudsman's Office and of the Local Governments

The phenomenon of the so-called housing mafia has been a fruitful topic in the media since 2003. Since the Parliament has established a subcommittee to detect the causes and methods of this social phenomenon and to ensure the more efficient statutory background for the prevention and detection of such criminal acts, there is not possibly any month when any of the media did not deal with this topic. The study wishes to call the attention that this negative social phenomenon - as many other similar ones - could be developed out not accidentally, from individual ideas, but the major economic changes had consequences which could be foreseen even in advance with real and due attention. Since the beginning of their activity the parliamentary Ombudsmen perform a significant role in the detection of the disorderliness concerning the citizens in a greater number and they had made their proposal for the settlement of such problems already years before. Departing from a case worthy of example, as well as from its wider social background the Author provides detailed legal analyses. He sees in the extensive information one of the most important devices of the fight against the organized criminal groups, accordingly he considers the present volume of study to be also an extremely good and important initiative.

Gábor Kőszegi

Statutory Changes of the System of Real Estate Registration in the Fight against the Organized Real Estate Frauds

The study begins with the historical introduction going back to the presentation of the law of Middle Ages, it gets from here up to the Act CXLI of 1997 as amended by the Act of today No. CXXII of 2005, which stipulates today's form of the cadastral register and the rules of keeping it. The originators of the previous regulations did not count on and did not prepare themselves for the real estate frauds and other organized criminal acts, since beforehand nothing had accounted for a special protection against them. At the period of the political transformation all this has got changed. It meant a tremendous work for the land offices – particularly in Budapest – to convert the previous council flats, then municipal flats into free-hold ones. In the wake of the untraceably quick changes there occurred innumerable mistakes, the case backlog of the land offices got accumulated, its reputation got rapidly decreased and there came about ideal conditions for those fishing in troubled waters. Under the influence of the established situation and of the social pressure, the land office administration of affairs has become stricter, more accurate and correct on a number of points after the year 2000, more safety elements make the work of the crime perpetrators more difficult, including among others the safety paper, the overstrapping label and the safety seal label, which is an obligatory accessory to the copy of each authenticated proprietorship register sheet. In addition to these, other rules of guarantee, to provide for the safety of the real estate owners. These, however, defend against the impostors only in the case of the circumspect conduct and rule-abiding management of affairs of the owners involved in the real estate transactions. As a matter of fact, until the real estate is the misappropriable object of the greatest value, there will be persons who will try to acquire it unlawfully.

József Sztranyák

Tasks of the Real Estate Agency Trade in the Suppression of the Real Estate Frauds

Since the political transformation the Hungarian real estate trade has undergone a significant development. This important branch plays a determinant role in the operation of the whole of the economy, at the manpower market, even in the everyday general feeling of the citizens. Thus, it does matter how we perform our everyday duties, not merely from the viewpoint of our own professional and financial promotion, but also from the angle of the citizens either. It is the interest of every honest citizen and real estate specialist to strengthen our expert activity and to provide for the activity of our colleagues meeting the professional conditions in our professional field. Not long ago a special subcommittee dealt with the phenomenon of the real estate mafia in the Parliament. As stated by the body, the abuses of the real estates are committed not by classical mafia organizations, but by smaller groups insulated one from the other. As asserted by the subcommittee, the perpetrators make use of the help of such specialists as well, who know the statutory back doors. The current unregulated market working without a professional chamber requiring the compulsory membership can be a hotbed of the mafia activity, since in the lack of the obligatory registration it can name itself a real estate agent. Presumably, not genuine specialist participated and aided or abetted in committing organized criminal acts, but such persons of trickery who can be spotted only by the establishment of a chamber resting on transparent, obligatory membership. This is the most important objective of the Hungarian Real Estate Council, the largest association coordinating the Hungarian real estate trade organizations.

Tamás Parti

Responsibility and Possibilities of Notaries Public and Notary Chambers in Suppressing the Real Estate Frauds

The notary public is a determinant player of the modern continental legal life. His/her activity shows a different picture from country to country, at the same time there is markedly shown a permanent element in all public notary activities, namely the official role of the notary public, the sphere of authority of public credit derived from the State power. In our country the regulation applicable to the notaries public is restrictive. The notary public may perform definitely and exclusively official tasks, he/she is excluded by a law from every market activity. The study explains the essential elements of the notary activity, the place and role of the notary public within the administration of justice and in the system of the legal professions. It draws an exact borderline among the legal service activities directed to an identical area. At the same time the writing analyses also the material and procedural devices existing and implementable in the future suitable for putting into the background the abuses connected with the real estate matters.

Dénes Dobrodinszky

Responsibility and Possibilities of Lawyers engaged in Real Estate Business in Suppressing the Real Estate Frauds

I was called up in an emergency situation by my acquaintances living in the other half of the country. Their child, who is otherwise intelligent, of major age, graduated from college, concluded a sales contract and along with a contracting agreement. Both contracts were disadvantageous to him. I could not do much about this, he already signed the documents. As a buyer, he bought an invaluable real estate portion, in the other contract he entrusted the seller, as a contractor, with the construction of a condominium. And the contractor undertook to do that in an agreement, in literal citation: "under the approved plans". As it turned out, there had not been and there is not available any approved construction plan up to this very day. Both contracts were drafted and countersigned by the lawyer of the seller and of the contractor at the same time. If both parties had been represented by lawyer, the contract would not have been established, or could have been concluded with other content and serious guarantees. If my client suffers a damage, he will apply to the court and undoubtedly will win the legal process, but only in a few years, by the time when the contract concluding enterprise, the owner of which is on paper a homeless person, got already long ruined or disappeared in the fog. Do you know the story, do you not? Therefore, the opposition of the Chamber of Lawyers to the natural and honest demand is incomprehensible for me that in the case of a contract drafted by a lawyer the two clients should be represented by his/her own lawyer. Of course, in this case the lawyer's remuneration would also be shared. My study and the criticism formulated therein were written not against the Chamber of Lawyers, but in defense of the clients. In spite of this, I am afraid that by criticism will not be heard and my proposals for reform will not be implemented either, until it is not forced by the circumstances or the regulations adopted with peremptory decision.

Ferenc Császtí

Possibilities of the Court Bailiffs and their Professional Bodies in Suppressing the Housing Mafia Activity

Upon the invitation by the Editors of the book the Author undertook to insert a study in the present volume of studies, in which he outlines the organization, supervision, conditions of the exercise of the profession of the court execution, the standpoint of the Bailiffs Chamber on the current situation of the real estate execution, as well as the amendments to law deemed by the court bailiffs to be necessary. In the framework available he endeavored to meet this demand with this writing. The study touches upon the conditions and scopes of exercising the executor's profession, expounds the substantial elements of the legality and administration supervision of the executors organization. Finally, it addresses the point of the court execution, which arouses the sharpest interest in the topics concerned: and this is the real estate sale. In connection with the topic the Author did not evade to set forth the bill No. T/16338 and the critical position of the court bailiffs connected with the amendment to law realized as a result of the former. The Author outlines the actual solutions, which can give answer to the problems arisen in connection with sale of real estates.

Kornélia Biró

The Role and Possibilities of the Prosecutors Office in Suppressing the Real estate Frauds

The study summarizes with some historical retrospection the activity of the attorney organization related to the housing mafia phenomenon since 1999, examining the possible causes of the dissatisfaction of the public opinion and mainly of those affected it looks over the possibilities of the Prosecution and the frameworks of the application of law by the Prosecution. It touches upon the experience of the penal procedure, the difficulties of evidence, the area of limited authority of other attorney specialties – particularly the private law. On the basis of practical conclusions facilitating the perpetration it calls the attention of the citizens to some simple ways of prevention, as well as to what it is worth-while taking heed in order to safeguard their interest and to prevent the damage. Pursuant to the conclusion, the total social lessons of the housing mafia phenomenon show that the more understandable, more cooperative attitude towards one another of the State institutions, the press and the interest safeguarding organization, their reaction given in time and the formation of consciousness on the prevention can facilitate the more efficient handling of the new modes of crime commission and perpetration emerging in the future.

Péter Szabó

Qualification Issues in the Field of Real Estate Frauds based on the Penal-Civil Law Unity Decision 1/2005

With its above law unity decision the Supreme Court took up position that the perpetration object of the embezzlement crime under § 317 of the Criminal Code may be exclusively a movable thing and that apart from additional damage, in case of misappropriating the real estate of others by fraud the aggrieved party of the fraud crime under § 318 of the Criminal Code is the original owner suffering the

damage. The adoption of the law unity decision was justified by the judgments containing opposite legal interpretations observed in these questions and it was necessitated by the further improvement of the legal practice as well. The law unity decision deducts with law history retrospection why the criminal acts in question cannot be committed for a real estate. Analyzing the cumulative questions, it underlines that the behavior causing damage to the buyers during the further sale of such a real estate constitutes merely an apparent agglomeration - except for the additional damage, the unlawful profit exceeding that already realized. It confirms the law interpretations as well, under which it is justified to state the crime of intellectual public document forgery in agglomeration with the real estate frauds and delimits the completed and experimental forms of these acts.