

# Summary

## Illegal and criminal practices in the housing sector

An analysis of twelve police investigations

### Background

The political attention given to slum landlords and the degeneration of residential properties in older areas of cities gave rise to Parliamentary questions directed towards the Minister of Justice. On 23 June 2004 Members of Parliament Dijsselbloem and colleagues submitted a motion in which they wrote that ‘an effective approach to dealing with slum landlords in the major cities is urgently needed, and that there is still insufficient insight into these criminal activities (...) The exposure of unlawful real estate dealings and operations and the role of estate agents and civil-law notaries in these dealings would support criminal prosecution efforts’ (Parliamentary documents, 29 537, no. 6, 2004). They request the Minister of Justice to have a study conducted into unlawful real estate activities in the major cities and have the support of the full Lower House for this request.

The Research and Documentation Centre of the Ministry of Justice (WODC) decided to divide the investigation into two sub-studies. The first sub-study is an exploration of the different manifestations of unlawful activities in the real estate sector, the parties involved and the approach adopted in the different cities to combat the problems identified. The report ‘Unlawful activities in the real estate sector’, which was published in the spring of 2007, describes this first sub-study (Ferwerda et al., 2007). The second sub-study is based on the information contained in the police investigations that various police forces have conducted into illegality and criminality in the real estate sector. This report outlines the results of this second sub-study.

### Research question and method

On the basis of information from various police files, this report focuses on the nature of illegal and criminal practices in the real estate sector, and the associated networks. We analyse and describe the actions of the persons involved and the interactions between them, as well as their collaboration and interaction with various professional groups. The central question in this study is:

### *What is the nature of illegal practices in the housing sector?*

This study does *not* provide quantifying statements with a broader scope than the studied cases. The objective of this study is to make empirically based statements about the *nature* of the illegal practices in the real estate sector: what illegal practices occur in the housing sector? Which actors are involved? What is their relationship towards each other? What acts do they commit? How does the collaboration between the different actors involved function? What role do service providers and professionals such as intermediaries, estate agent-valuers and civil-law notaries play in the illegal practices?

### *Definition of terms*

In this study the terms *housing sector* and *real estate* are, in principle, limited to those criminal cases associated with *private housing*, with the function of *accommodation*. Police files involving other types of real estate (hotels, nightclubs, holiday parks, brothels, shopping centres etc.) are therefore not included in this study. The accommodation aspect can relate both to the purchase and sale of homes and to the letting of homes. Following on from this selection criterion this study focuses on the illegal practices of *private* home owners and *private* traders in real estate, and not on the fraudulent practices related to large companies, project developers and pension and investment funds.

### *Method*

For this study, information was studied from twelve major police investigations in the four largest cities in the Netherlands. Initially we focused on cases where slumlords played the leading role and where living conditions and the degeneration of residential properties were the focal point. However, during the fieldwork our focus broadened and shifted in the direction of cases with a stronger financial and economic component, as this financial and economic crime appears to be characteristic of many illegal practices in the housing sector, including in the cases in which problems related to living conditions gave rise to the criminal case. We focused on investigations that were initiated by the police between 2000 and 2005, and ideally completed investigations that the police had handed over to the Public Prosecution Service for further processing. After all, in such cases it is likely that the 'hard' material collected by the police is sufficient to proceed with criminal prosecution. Ultimately we selected twelve large-scale, completed investigations in the four major cities, which could be studied intensively: three cases in Amsterdam, three in Rotterdam, five in The Hague and one in Utrecht. In our selection we looked for variety in the investigations (city, types of parties, types of criminal behaviour). Incidentally, there were not all that many investigations to choose from. It became clear that by no means were

dozens of investigations being conducted in this field; rather, there were just a few investigations per city.

After selecting the investigations, we interviewed investigators and/or public prosecutors dealing with each individual criminal investigation. Next, we prepared a summary per case, based on the interviews and police files. With regard to the files, we studied police reports as well as reports from telephone taps, suspect interviews, witness interviews, observation reports, seized administrative documents and valuations of items confiscated. Each of the investigations consisted of several sub-studies (several case files and files on individuals).

### *Findings of the study*

A total of 211 suspects were involved in the twelve police files we studied, of whom 24 were prime suspects. These 24 prime suspects act as leaders and fulfil an active, initiating role in organising the illegal practices. They are the brains behind the illegal activities, so to speak.

The number of suspects per criminal case ranges from two to forty-one persons, and the number of prime suspects ranges from one to four per case.

### *Fraud*

People who work in the real estate sector and, in addition to their legal activities, also try to make money illegally, use a number of different arrangements. Despite the different methods, preferences and specialisations, they have one thing in common: they abuse the trust of others by pretending to be something they are not, or by presenting the situation differently to how it really is. In other words: they are committing *fraud*. Swindling people, companies or authorities is an activity that forms part of the illegal practices in virtually all the criminal cases we studied. In over half of the cases fraud is one of the 'basic facts' in the criminal case. But even if the person has not been formally charged with the crime of fraud (for instance in the cases that focus primarily on renting property to illegal aliens or marijuana growers) we find some sort of fraud in the files, sometimes occurring prior to the core activity, sometimes in parallel. Successful fraud appears to be an essential part of the process of making extra profit in the housing sector.

The fraud focuses on financial institutions, citizens and the government. A mortgage is obtained to purchase one or several houses with the aid of forged pay slips and employer's statements. Sometimes this mortgage fraud is committed to help people who are looking for a home to buy one. Sometimes the main objective is to generate illegal rent revenue with the fraudulently obtained property, for instance by renting to illegal immigrants or marijuana growers.

Often, however, the documents forging is part of more complex illegal arrangements and the main objective of the leaders is to earn a relatively large sum of money in a relatively short space of time through trading in property. They do this by finding buyers who are not too worried about the relatively high purchase price, buyers who are prepared to sign and pay quickly. The criminal files show that suspect property traders use different strategies to find 'buyers' who fit this profile. In short, it means that the buyer is being misinformed or not completely informed, and being misled. This can be done in different ways.

One of the strategies is to find someone who is prepared to purchase the house 'on paper' – in return for a small fee – but who, in reality, has nothing to do with the house or with the repayment of the mortgage. He will not be particularly interested in the price of the house, because the purchase contract is only signed as a formality. A job with an existing or fictitious company is invented for this so-called 'straw man', who is usually someone with limited income of his own. Forged documentation is drawn up, so that a mortgage can be applied for. An adviser or intermediary involved in the illegal transaction organises the forgeries and the purchase contract. Once the bank has approved the application, the excess value ends up in the hands of the illegally operating property trader. This way, he has made a profit in a short period of time. The house remains in the actual possession of the property trader, who will then generate income by renting it out. He will collect the rent and remain invisible to the Tax and Customs Administration.

In addition to recruiting relatively less well-off 'straw men', the criminal cases also show that suspect property traders use yet another strategy for attracting house buyers who are not too concerned with the purchase price. This involves recruiting persons with a regular job who also want to benefit from the profits that can be obtained in the real estate market. The fraudulent property trader gives them false information and convinces them to purchase one or more homes as 'investments'. These buyers will initially willingly cooperate with the fraudulent property traders. They agree to the use of forged property evaluations, which state that the house is being sold in a vacant condition when in fact it is rented out. This allows them to get the highest mortgage possible which enables them to buy more than one property. These buyers therefore knowingly collaborate in defrauding the bank on the assumption that it will make them rich. Ultimately they themselves are duped by the fraudulent practices; the property proves to be worth considerably less than what they paid for it.

In the studied criminal files, the defrauding of the bank is therefore often accompanied by the defrauding of citizens of the public. These individuals are prepared to pay an exorbitantly high price for a house

because of the misleading information supplied by the prime suspects. They are *able* to pay this higher price thanks to the forged documents on the basis of which the financial institution grants a loan.

Government agencies are also a target for the fraudulent practices of illegally operating property traders. The traders try to circumvent government intervention and avoid responsibility by remaining uninvolved on paper. They can do this by failing to properly maintain their records about profits from sales or rentals, or by hiding their name and identity in transactions, for instance through the use of straw men. In this way they try to avoid administrative interventions and municipal notices, particularly when they concern the refurbishing of badly maintained homes or remedying housing-related nuisances. Corporation tax can also be avoided in this way: according to the paperwork the profits the property trader makes from the sale of a property have ended up in the pocket of the private straw man (the so-called B in the ABC arrangement). After all, private individuals do not have to pay taxes on these profits.

*Mortgage fraud, quick profits and the linking of illegal practices*

In some of the criminal cases mortgage fraud is committed in order to earn a lot of money in a short period of time. But what happens to the house in these cases once the mortgage has been granted and the network leaders have taken the profits? This varies per case and sometimes even per real estate transaction. Sometimes the (defrauded) buyer rents out the property to help him pay the monthly mortgage payment, sometimes the leader of the network will retain and sublet the property. Sometimes the straw man ends up in the role of sublessor and sometimes the mortgage payments are never made right from the start and the house is offered for sale by the bank at a liquidation auction after a period of time. This latter process, forced sale at auction, is a less natural result of the mortgage fraud than is often presumed in the literature and policy memorandums. The Dijsselbloem motion, for instance, (Parliamentary documents, 29 537, no. 6, 2004), assumes ‘sales merry-go-rounds’ as an inextricable part of mortgage fraud and improper ABC arrangements.

However, once the purchase has been finalised and the profits have been pocketed in the criminal cases we studied, the affairs surrounding the property are usually not as well planned and organised as people assume. There is usually no systematic ‘sales merry-go-round’ and both at the start and the end of the ABC arrangements the auction is not a natural place for the purchasing or selling party. Mortgage fraud and ABC arrangements for the purpose of quick profits are therefore not necessarily linked to ‘sales merry-go-rounds’ and to price-fixing agreements at liquidation auctions. In the criminal files, we see that houses are being kept by members of the

criminal network after their sale in order to generate extra income and to use this to pay off the mortgage. The illegal subletting of houses obtained through fraud is an element that frequently recurs in criminal cases. This also shows us how different illegal practices on the part of property traders and intermediaries overlap each other in the area of development and speculation.

#### *Interest in illegal subletting*

The defrauding of banks and members of the public can proceed thanks to the cooperation of yet other parties who have an interest in the illegal subletting. On the one hand these may be people who are looking for a place to live, but who have no rights and no appreciable chances of finding affordable living space, such as first-time buyers, students, illegal aliens or single-parent families who are urgently looking for independent living space. On the other hand these may be persons who want to hide from the authorities and, for this reason, are looking for anonymity; this could include, for instance, members of a criminal organisation who are looking for (temporary) accommodation or marijuana growers. They have a particular interest in the lack of records and registration. Because of the marginalised or criminal position of varying groups of people looking for accommodation, it is possible for the property trader to rent out living space without keeping proper records of tenants and rental income.

At the same time the lack of prospects and/or illegal status of people looking for homes – and the associated lack of freedom of choice – makes it possible to demand relatively high rents for what are mostly run-down properties. If, despite their marginalised position, the subtenants dare to complain about the high rent or the overdue maintenance, intimidation is a means that is often used by key members of the criminal network. Threats and destruction of property are frequently used as a means of intimidation. Physical violence rarely occurs, but we regularly come across the threat of violence against ‘uncooperative’ subtenants in the criminal files studied, as well as the destruction of subtenants’ possessions. There are no indications of ‘gangs of thugs’ in the criminal files.

#### *Legal actors and illegal activities*

Virtually all 24 of the chief subjects in the twelve criminal files studied operate primarily from a legal position: the majority work in the real estate sector as a property trader. A proportion of the chief suspects also works in the financial administration sector as a consultant or an intermediary. These are people who therefore – originally – have a presence as legal market parties within legitimate business. In the networks we studied, there was virtually no evidence of the main players operating exclusively illegally and in an illegal market. The link

between illegal and legal is therefore primarily created by the chief suspects themselves. Their illegal professional position in the business world constitutes the base from which illegal activities are developed. Practising their profession has given them the opportunity to become informed about illegal arrangements through which additional financial advantages may be obtained. Through their profession they are also given the opportunity to meet persons who are prepared to facilitate them in their illegal practices: (other) intermediaries, estate agent-valuers and civil-law notaries.

The criminal cases also show that the illegal activities have a structural place in the operations of the network leaders. The illegal practices are not incidental in nature but take place systematically and routinely.

In light of the recent political attention given to the link between 'underworld' and 'upper world', it is important to understand that *legal* parties are usually the ones who take the initiative with regard to the illegal practices in this area. For the greater part these are legal professional groups who perform illegal activities in a structured manner in order to increase their financial rewards.

#### *Two network types and their facilitators*

The cases studied show a complex interwovenness between legal and illegal practices. The illegal practices of leaders go hand in hand with legal activities in legal commercial sectors and, because of the many combinations, a strict classification into corporate crime or organised crime is difficult to make. Nonetheless, it is possible to make a classification based on the type of network. On the basis of the empirical material from the police files, we have come up with two types of network: a simple network and a complex network. In both network types the leaders are property traders and financial administration intermediaries. Both of these network types are the extremes in a continuum.

The simple network focuses on one or a few illegal activities that are repeated over and over again by one or a few persons. They specialise in a limited number of illegal activities, for instance illegal subletting or forgery of documents for the purpose of mortgage fraud. The leaders are service providers around whom the network is built. As part of the service industry they can also play a facilitating role for members from criminal organisations and, in this capacity, form part of a larger-scale criminal network. The simple network type consists of one leading service provider accompanied by a limited number of co-suspects. 'Straw men' and ABC arrangements are not used. Valuers and civil-law notaries do not play a facilitating role in the activities that take place in a simple network. The revenue of the leader of the simple network is limited to several thousand to tens of thousands of euros per year. We do not see fraud against

members of the public in this network type. However, threats of violence can play a role for the purposes of intimidating subtenants.

The complex network focuses on a multitude of activities, in which varying parties and specialists are involved. The leadership of this complex network consists of several persons and the network includes dozens of co-suspects. Together they conduct their activities in the area of mortgage fraud, illegal subletting, fraud, forgery of documents, tax evasion and facilitating the production of and trade in drugs. Threats and destruction of property are means used to intimidate subtenants. The profits vary from several hundreds of thousands to several millions of euros per year for the leaders of a complex network. They use ABC arrangements to conceal their profits and activities, employing straw men. Estate agent-valuers and civil-law notaries are also involved in the activities of the complex network. They act as service providers for leaders of the network in regular legal transactions, and this service is continued in the illegal activities that actors from the real estate sector undertake.

#### *Estate agent-valuers*

In police files in which major profits are made in a short period of time, the suspicion arises that misleading valuations are being used, prepared by a valuer who consciously supports the illegal practices. Frequently this only remains a suspicion, because in big cities with a tight housing market the price of a house can increase strongly in a short period of time, without there necessarily being any fraudulent action. The sale of former council houses by housing corporations contributes to this: the purchase prices of such properties are usually below the average market price, which means that purchasers of such properties are able to resell the property a short time later for a considerably higher price. It is therefore not always necessary for there to be culpable involvement of estate agent-valuers in the case of rapid price increases – with or without the use of ABC arrangements. However, in three studied investigations in which buyers were deliberately and consciously defrauded by property traders, the conscious and culpable involvement of estate agent-valuers is explicitly highlighted. In the first place, in these criminal cases – each of which provide an insight into several real estate transactions – incorrect information is often provided about the designated use and condition of the property in the valuation report. For instance, the house may be rented at the time of the sale and purchased as an investment property while the valuation report states that the property is sold in vacant condition and will be owner-occupied. This allows the buyer to get the maximum mortgage. In the second place the conscious cooperation of the valuer is demonstrated by the fact that the valuation order is issued by the property trader, whereas the valuation report consistently lists the name of the buyer. In the third place, the conscious cooperation of valuers

is shown from the fact that in incidental re-valuations by mortgage companies the value of the properties is appraised to be considerably lower. And finally, the active cooperation of the service providers in one of the criminal cases is explicitly highlighted in a police interview. During this interview an estate agent-valuer declares that, pressured by property traders, he deliberately cooperated in illegally driving up the price of residential properties for the purpose of defrauding the buyer.

#### *Civil-law notaries*

In addition to the services provided by the estate agent-valuers, the civil-law notary must also cooperate in the fraudulent transactions. In general terms, the leaders of the criminal network take two approaches to securing the cooperation of the civil-law notary. On the one hand we see the 'evasion strategy', whereby a number of different civil-law notaries are deliberately engaged in a single day for the transfer of real estate in an illegal transaction, in an attempt to avoid the civil-law notary becoming suspicious. In these cases it is quite possible that the civil-law notary is not aware of his facilitating role in the complex criminal network. He cooperates without being aware that he is doing so. The question to be asked here it is whether he *could* have known that his services were being misused for illegal purposes. Did he exercise due care to prevent the abuse of his professional services?

On the other hand there is the 'implantation strategy', whereby the leaders of the network keep using the same civil-law notary when it comes to illegal transactions. In these cases it is likely that the civil-law notary was consciously involved in the criminal network because the illegal nature of transactions should be perfectly clear to him. This is the case, for instance, if a straw man purchases several properties in a short time span, is accompanied by a leader each time, and claims to be using the purchased property for his own use each time. The illegal nature of the transaction should also be clear to the civil-law notary if a property trader buys several houses for the same straw man in a short period of time using a power of attorney, and also indicates each time that the houses will be used for the purchaser to live in himself.

#### *Local ties*

All the criminal networks studied have strong local ties. This applies both to the ties between the collaborating members of the network and to the locations where the illegal activities take place. The leaders meet each other, the professional service providers and other co-perpetrators in their own city, as colleagues, through legal work relationships or business relationships, through friendships and family relationships, and through local enterprises, neighbourhood shops or hospitality facilities such

as cafes and restaurants. The neighbourhood itself also functions as a meeting place for leaders and other employees.

We also see that the leaders hardly ever leave their own region when perpetrating their illegal practices; they focus on the housing market in the city where they live themselves. Sometimes the activities are limited to a neighbourhood or district.

However, there exist cross-connections within one single region between the criminal networks operating there, and on a number of points. In the first place, the leaders are property traders from the different networks within a single city are business partners. They occasionally sell houses or sets of houses to each other, the criminal files show. However, the files do not show any pattern or system in this mutual trade.

Leaders do business with other suspect property traders and also do business with many other, non-suspect property traders.

The existence of ties between the criminal networks is also seen in the way in which employees of the criminal networks refer to each other in the case of specific rent requests, for instance if a marijuana grower is looking for workspace.

In the second place we see that the leaders of different criminal networks in the relevant city help each other in providing fictitious employment.

The forged pay slips and employer's declarations that are needed to commit mortgage fraud, are sometimes provided by the leading property trader from another criminal network. Finally we see a connection between the criminal networks in a city because the same civil-law notary keeps reappearing in illegal transactions in different criminal files.

Different criminal networks in a single city use the services of the same civil-law notary.

### *Signes of abuse*

Different service providers have a financial interest in the – conscious or unconscious – collaboration in illegal practices. For the service providers in this study the commercial aspect appears to prevail over the moral aspect of their dealings. Even if facilitators do not consciously cooperate with the practices and only 'passively' cooperative with illegally operating property traders and fraudulent intermediaries; they do have the option to investigate further if they suspect fraud. For instance, the Land Registry already has relevant information about real estate transactions and market prices. However, judging by the criminal files studied, valuers, civil-law notaries, intermediaries and bank employees only make limited use of this investigation option in the case of indications of abuse.