

## **Subjects of criminal evasions of customs payments linked with contraband**

**Abstract:** It is given criminalistical characteristics of subjects of criminal evasions of customs payments linked with contraband.

Results of questionnaire poll of criminal cases are provided.

It is given recommendations of practical nature.

**Keywords:** criminalistical characteristics; subject; customs payments; contraband; evasion.

Subject of crime is an important element of criminalistical characteristics that closely interlinked with other elements of it. According to the right idea of I.F. Panteleyev, there are two determining subsystems in order to understand a role of personality's features in commission and investigation of crimes - features of personality and external nature, interaction of which leads to motivation, and from motivation to planning, crimes committing [8, p. 22]. As rule, all criminalistical information about person is used to decide the tasks of two main directions. The first direction decides tasks of crime disclosure and includes a combination of actions of an investigator and inquiry body on collection and examination of information indicating who committed crime on. The second direction of criminalistical aspect of a person's studying, accused person found. It should answer to question, what is he, who is accused on [3, p. 67].

Subject of evasion of customs payments that connected with contraband is characterized by the following way.

1. Relatively high social status in society: high level of education, sufficient life experience, strong financial position that allows him to carry out foreign economic activity, cross customs boarder.

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2. Wide social communications as in criminal world and "shady" business so and in law enforcement and controlling bodies, executive and local authorities.

3. Strong motivation to achieve a goal, strict distribution of role functions and fight for general interests in criminal chain.

Our research showed that big number of the subjects, brought to responsibility, are evaded of customs payments for the goods, which are registered to them (306 men), but the goods are moved through the boarder not by these declarant. The rest 69 subjects registered the goods to name of other men, trying to evade customs payments. The fact his direct attitude to the customs clearance goods as an owner had been hidden by more the half subjects who were brought to criminal liability. But in the most cases to evade the customs payments had been used non-existence or illegal established companies that seriously damaged the budget. As rule, such kind of evasion is connected with railway customs clearance.

Motive is an important aspect of criminalistical studying of personality. According to just notice of V.E. Kornoukhov, "sense of action is reflected in the motive, consequently this studying helps to know a notional nature of the actions, ...needs, interests, sense, emotions lay in the basis of motives, and dreams, desires, ideals, goals - in the basis of future forecast. At the same time, knowledge, abilities, experience, habits, characterizing features - in the basis of action or concealment act that has criminalistical significance" [7, p. 29].

The goal of crime considered has also important criminalistical significance. As rule, this is receiving a profit or over-profit from a sale (resale) of the goods through evasion of customs payments. This goal has always existed and concerned not only evasion of customs payment but contraband also. Criminal law has always prosecuted non-controlled receiving of over-profit [6, p. 16-42]. This circumstance show that the subjects of crime are often in local wholesale-retail trade, touristic charter business, tobacco and alcohol goods.

Accurate determination of the motives of subject's actions is also an important. So, V.E. Kornoukhov writes "motivational mechanisms (needs, interests, habits, value orientations etc.) are doing two functions in mechanism of criminal behavior:

reflective and motivational regulative. The first is linked with rework of information of external environment and inclusion of it in structure of personality; the second one disclosure a nature of management with volitional processes, which might be fulfilled in form of simple act (criminal behavior) or complicated one (criminal activity)" [7, p. 29]. It is important to determine the action motives of persons, figuring in case, in order to establish an individual, committed crime. One should distinguish the motives and purposes of persons, assisting to evasions of the customs payments (carriers wish to earn), from the motives and purposes of crime commission (a person desires to be used with the goods and received a profit from resale of it, and do not want to pay customs duties). In addition, it is important to define whether this deed is one time result of the motives to be evaded the customs payments for the goods delivered for personal needs or investigated fact is only one of the chains of business, motivation of which is to receive over-profit through contraband and evasion of customs payments. These deeds are very danger, and consequently, they are required other method of investigation; in particular, production of tactical operations on neutralization of contraction to investigation. But, one should take into account that one is evaded of the customs payments in economical and criminalistical sense those, who, without payment of the customs duties, receive profit from sale of the goods or benefits using them. Therefore, when is analyzed the events and behaviors of individuals participating in the goods motion, one should accurate establish the motives their actions as the elements of criminal motivation system in order to determine who is probable criminal. Information about age, sex, education, profession, social and financial status etc. are the means for that.

D.A. Mezinov, who made the last research of criminal motivation as an object of cognition in criminalistics, justly emphasizes limited set of definitions of some kinds of crimes motives provided in the law, like "self-interest", "revenge", "hooligan motivations" and appropriate concept of crime motive, worked in science of criminal law [9, p. 13]. Motivation diagnostics is an important in criminalistics. Psychological motivational picture of a person, brightly reflected in professional features of the character, has significance. So, former and acting sportsmen committing mentioned

crimes are, as rule, persistently and ambitiously, they are often relied on the persons of "team", wrongly thinking that they are also persistently and ambitiously. State officials committing official crimes, linked with evasion of the customs payments, are cautious, suspicious, good knowledge in laws, motivational and value orientations of them are mercenary. Motivation of criminal group organizer is also caused by self-interest, particularity of which is purposeful orientation to achieve benefits from criminal activity.

Director of "Bina" PLC some Mr. L. was an organizer of criminal group on evasion of the customs payments through receiving of original customs certification about cars registration. Documents had been registered to figureheads, who presented themselves as refugees. Being found accomplices, he forged documents for them, sent these persons to the customs and received from them original certificates issued by the customs. Then he sold cars and obtained profits nothing paying in the customs. Three such certificates were lost in result of theft his house. Later he received reference in the police department about the theft of the documents with specific names. Mr. L. sent three figureheads with copies of one the same reference to the customs in order to get duplicates of the certificates. Mercenary motivation of Mr. L. was caused the fact that the customs body had been interested with reason why the certificates of other men had been kept him and as result he was brought to criminal liability [1].

Purposeful orientation of the subjects of criminal activity is explained with high level of material interests, especially if during investigation is confiscated the goods, money, arrested property. In these situations the subjects of crimes, in most cases, are trying to contact in person or indirectly with investigator or customs office. Information about such persons might be received to the specialists: customs brokers, lawyers-consultants on customs issues, representatives on the matters on the customs rules violations. Information on the subject that do foreign economic activities might be found at the customs offices. These are copies of orders on appointment of responsible employees of an enterprise for work with the customs,

registration documents, records data about the customs investigations and the facts to liability brought for violation of customs rules.

Results of studies show that information about location of search persons might be found in registration documents on behalf of companies and organizations they acted. These documents are registration and other documents, which were a ground for state registration. Copy of passport of a person applied for registration; reference on taking in a record in department of statistics; reference of a bank on account opening; certificate of taxpayer registration etc. Addresses, contact details, names of representatives included in registration documents are the most valuable.

V.M. Galansky distinguished two types of persons involved in contraband: "dealers" and "common contraband" [4, p. 95]. Typical social and role groups of men, connected with crimes, have psychological and social particularities, which should be considered and used during investigation. So, for example, we may distinguish the following types of social and role groups on criminal cases, which connected with importing and registration of cars in Azerbaijan.

"Racers" are men, who, as rule, have university or college education, repeatedly crossing boarder of various countries. They know well the customs formalities of Azerbaijan, CIS countries and other states. The main business of the racers between trips is trade with spare parts of cars, their repair, and transportation business in country. "Racers" are closely involved in business with men from the former USSR who present live in other countries. They assist them in car trade business and receive some money for that. Typical motivation of a "racer" is mercenary motives associated with obtaining of benefits for work done. Being known about essence of the business, they never talk about true buyers of the goods. They try to present themselves to law enforcement officers like law-abiding citizens. In case documents show their illegal actions, they can tell true everything. The task of investigator is to show such persons importance to give true testimonies [5, p. 117-120].

"Privileged person" is an individual who has a chance to get a privilege of the customs registration. For example, seamen, fish men, diplomatic carriers, refugees, participants of Chernobyl APS breakdown elimination etc. Legislation, as rule, ties

this customs privilege only with usage of the importing goods in personal needs. Knowing this fact, criminal through various forged documents create visibility that the goods imported by a privileged person. As result of persuasion or deception a privileged person visits for fictive register customs office himself or passes a power of attorney to criminal. Privileged persons are trusting men, not knowing customs rules or having no high profits and are needed “to earn using their status”. Usually, privileged person does not hide happened criminal event. During interrogation an investigator can form to privileged person an image that he has enough evidence about this event.

“Figurehead” has, as rule, low social status and incomes. He is ready for small money to provide his passport or other document, visit an appropriate state body to put signature. The situation is getting hard if figurehead does not have permanent residence. During interrogation these people are also frankly as they are not able to evaluate happened fact from legal point of view. They can provide required operative information about crime, but they are reluctantly agreed to participate in identification or confrontation, not believing in ability of law enforcement bodies to protect them in further.

“Client” is man of means, desiring to purchase prestige car on low price and ordering a specific model of a car. These men do not go any troubles with formalities of this deal and due to the fact they are often cheated. Being involved in criminal business, they do not say true information about the subject, who offered the goods, and try to “clear up a mess” with subjects themselves, parallel with apply to the lawyers to protect their rights in the customs offices.

“Organizer” is a person from criminal world. He has wide ties in criminal environment and state bodies. Intention of an organizer includes all separate deeds on moving the goods through boarder, legalization of it without customs payments, concealment of activity and persons involved in this business. He rarely do some crimes therefore cannot be brought to legal liability.

“Holder of car salon” – former “shuttle trader” or “racer” – arrange legalization, storage and sale of cars. He has original forms, accounts and ties with producers of different false and forged documents.

“Painter” is a producer of forged documents. He does professionally fake business only or fulfills also a role of organizer. He is skilled with computer work in order to do fake documents and, as rule he was sentenced in the past.

There are the following typical members of subjects evaded of customs payments.

“Shuttle trader” characterizes numerous social stratum of our society, activity of which is to do regular purchasing trips. Not having enough money, “shuttle traders” often work for an owner or in debt. They know well particularities of the market and often do specific buying on order of organizer. The weak place of “shuttle trader” is in mercenary personal motivation. He is ready to sacrifice with much in order to get his goods, money and opportunity to do such trips further.

“Touristic club” – can be presented by director or representative, former “shuttle trader”, who has good ties and switch on organization of business. The main intellectual wealth of his is knowledge of weak sides of customs clearance and control at a certain region, criminal organizational ties on arrangement of the goods motion.

“Attendant” is a person who arranges the “shuttle traders”, collects money, through figureheads registers the customs documents, has strong ties with customs officers, who commit official crimes.

“Cargo custodian” is used by criminals when is required to justify by falsification discrepancy in freight documents of dispatch country and destination one. As rule, he knows “an attendant” and lives close to the customs control zone. Like a figurehead, he is ready to confirm that some quantity of the goods is kept, reloaded at his shed or yard, for storage of which he got small money.

The following members of criminal subjects are under evasion of customs payments for the goods importing by railway

“Director of fly-by-night company” can be credit founder or recruited man.

“Representative of consignee” has the most risky role; he has to present to railway employees the freight documents with false customs notes and seals.

“Owner, representative of consignor” begins to act if the goods are stopped by the customs. He presents fake documents in order to take the goods back, to register the goods in re-export regime.

“Reseller of confiscated goods” begins to act if owner could not prove his rightness. The only way is to buy confiscated goods at customs office. This way is always cheaper than to pay customs duties.

It seems that above listed psychological and social particularities of the subjects having attitude to evasion of customs payments linked with contraband should be taken into account in course of investigation [2, p. 14-16].

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