

Criminalistical tasks of investigation of evasion of the customs duties payments associated with smuggling and the ways of their resolution

Abstract: Crimes' detection is a variety of cognitive activity and has methodological significance for investigative practice. It is a specific branch of investigative cognition.

There is disclosed necessity determination of primary and secondary, common and specific tasks, sequence of their resolution. In turn, formulation of the tasks presupposes conducting certain actions and forecasting the issues, which may appear in abnormal situations.

In course of investigation of contraband associated with evasion of the customs duties payments, there typical is solution of number tactical matters, which carried out through organization and conducting investigative actions, operational searching measures.

Keywords: investigative cognition; investigative actions; operational searching measures; customs payments; evasion of payment; crossing customs border; customs registration of documents.

Detection of the crimes is a variety of cognitive activity, which purpose, like any cognition, is an establishing of the truth. This assertion has methodological significance for investigative practice as it directs an investigatory process not only to establishing of the truth but also onto using of the reliable methods of detection. Crimes' detection is a specific kind of cognitive activity, which cannot be identified with scientific work, as the science has a goal to establish the regularities in nature

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phenomena and social life. In addition, this activity might not be considered as simple establishing of the facts [4, p. 10-12].

There are the following particularities of cognition in crimes' detection:

- It has a specific fragment of actuality as its object like a socially dangerous and illegal deed of a person, which often linked with using of complicated technique, transport means, industrial enterprises, and system of state management. The crimes like evasion of payments of the customs duties, smuggling are the complex interlacing of the facts, cognition of which cannot be only come to their ascertaining. It requires looking deep into their essence, to establish causal and other ties, to explain their origin.

In all cases, crimes' detection touches the interests of a man personality, connected with his/her psychology, studying of public links, social orientation, physical and moral state. Cognition of a man in detection of each crime depends on its nature and many other factors and always presents a specific sphere of investigative cognition;

- Cognition in detection is juridical, legal cognition, it associated with functioning of the of criminal law norms, which determine corpus delicti of crime, its legal construction, in frame of which should be defined a guilt of a subject in crime commission and other circumstances of the crime;

- Detection is regulated with criminal procedural law, CPC, determines terms, matter and bounds of proving, temporal bounds of whole process, its main and subordinate issues;

Before issues' resolution one should make clear the following:

- Character of criminalistical issues; their content in each concrete case depends on event particularities, and those consequences, which create them;

- All issues appearing in course of investigation should be linked each other;

- Each issue should be sufficiently formulated, and registered, if need, in order not to be forgotten;

- Any issue requires its resolution. There are numerous the ways of their resolution; they depend on their content, specific features of crime, an experience and abilities of an investigator;

At once there should be determined primary and secondary objectives, general and individual issues, priority of their resolution.

In any kind of activity – simple or complex, a man meets inevitably some obstacles at the way to goal's achievement. So, in course of crimes detection an absence of information, its deficiency, contradictions in testimonies of witnesses, accused person and victim is the main obstacle at the way to establishing the truth in a case. In order to remove these barriers and to achieve the main goal of investigation are put the interim objectives, resolution of which allow filling the gaps in information, to eliminate contradictions, to make clear arising issues.

In order to overcome these difficulties one should grasp the goal of an activity, to imagine the real ways its achievement in the frames of activity regulations (temporal, spatial, moral, technical, social and others). Thus, one should understand that necessity overcoming any difficulties at the way to the truth achievement creates criminalistical objective.

These matters in dependence of consideration aspect are named in legal literature in different way: legal, procedural, criminalistical, investigative, expert, operative etc. [5, p. 45-46]. In addition, first of all any task has informative essence as consists in deficiency of information and is resolved with the way of its replenishment and processing [10, p. 16-19]. Formulation of the task presupposes:

- Direct acquaintance with concrete situation or information about it, or the both this and that;

- Knowledge of a goal or complex of the goals of activity. In context of investigation – knowledge of its aims;

- Promotion to desired result of activity;

- Knowledge of the conditions of activity, normative instructions of criminal and criminal procedural law, subordinates acts

Task formulation is cogitative procedure. In dependence on an experience, special knowledge of an investigator, operational employer, complexity of situation and other factors the formulation of a task might be relatively simple procedure and might be caused of difficulties. In order to avoid the difficulties, criminalistics works out the special model tasks, which may appear in typical situations.

There is more complex to forecast the tasks, which appear in non-regular complicated situations. Formulation of the tasks in such situations depends on ability of investigator, operational officer to evaluate correctly the situation and nature of appearing problems in it. For this, one is necessary to have professional and life experience, knowledge of criminalistics, law social environment of region.

Under smuggling investigation associated with evasion of the customs duties payments, typical is solution of number tactical tasks of investigation appearing from the situations formed.

1. There found a fact of the goods legalization in territory of Azerbaijan. It is necessary to establish place and time of the customs border crossing and the persons, who deliver the goods in order to establish exact time of the customs duties payments.

2. The goods found and seized. Here, one should prove the fact of delinquency in customs payments for the goods. This task might be solved the following way:

- Through investigation of mechanism violation of the terms of the customs payments privileges or the requirements of the customs regime;

- Through investigation of the mechanism of the customs registration, in course of which a size of payments was reduced;

- Through investigation of the features of the goods, from which depend a size of the customs payments.

3. Availability of data indicating to a way of evasion of the customs duties payments; there is no the goods available. One should reliably determine exact size of unpaid customs duties. According to I.P. Vorobyov, this matter might be solved:

- if can be found and investigated the goods;

- being investigated the status of persons who transposed the goods through the customs border;

- being seized and investigated the documents about the goods moving between external and home market [7, p. 201-202].

4. There is information about unpaid customs duties and the way of crime commission. Guilty person conceals his/her attitude to the goods delivering. It is necessary to establish a person who really delivered the goods, and a person who arranged the deed. According to A. Berg and K. Stanford, there necessary solution of the following tasks for that: to find the goods' carrier; to establish a person who received the goods from warehouse of temporal storage; to determine a person who paid for the goods; to define the fact and mechanism of using of name and requisites of existing legal entity; to establish the fact and mechanism of illegal set up (registration) of legal entity [2, p. 161-164].

5. Person who committed with certain way a payment evasion of the customs duties is established, it necessary to search him.

The solution of the following tactical objectives from the listed are more actual, typical and often repeated:

a) Establishing of a place, time and a person transporting the goods through the customs border of Azerbaijan;

b) Determination of exact sum of unpaid customs duties;

c) Establishing of the way of commission and concealment of payment evasion from the customs duties through documents' analysis;

d) Disclosure and seizure of the goods, for which the customs duties unpaid;

e) Overcoming of crime contraction.

Necessity of collection of criminalistically significant information about offence, under commission of which computer or e-mail etc. is used, might be a separate problem

Enumerated objectives are solved through organization and conduction of investigative actions, operational and searching measures, and tactical operations. V.E. Kornoukhov justly notes that due to commonality of the objectives of

preliminary investigation exists a system of the tactical tasks, common for all classes – checking of initial materials about crime under solution of a matter on institution of criminal case; studying of personality of accused person; neutralization of contraction of interested persons. The ways of solution of typical tactical tasks of investigation are often repeated. Gained in this matter experience should be creatively used [11, p. 19-26].

Determination of place, time and a person transporting the goods through the customs border is often a key objective of investigation because the customs legislation ties the time of the customs duties payment and submission of the customs declaration with moment of the goods providing to the customs body at point of delivery, period of which depends on place and time of the customs border crossing. According to L. Winter, this matter should be solved even when the customs documents contain information about place and time of the border crossing, i.e. they can be falsified through forgeries [6, p. 196].

Primary information about transportation of all goods is registered in the registration journals of the customs body. Record of the goods is carried out mostly on transport means, in which they transported. Therefore, according to A.I. Ugryumova and I.S. Ugryumov, for correction and checking of the exporting-importing fact, it is a reasonable to request the customs body at the border checkpoint, transport company (the customs carrier, motor transport, railway or air company), other state bodies, which conduct control functions in border checkpoint (bodies of transport inspection, border service, sanitary control etc.), companies serving the customs businesses (the customs broker) [14, p. 119-120]. Depending from the stage of criminal process informational interaction with listed subjects can be carried out in various forms: common correspondence; request on providing of documents, seizure. It is more preferable to seize the originals of all documents relating to required goods, transportation means, persons who delivered them. Being compared all received documents, studied the signs of forgery one can determine serious contradictions concerning to quality, quantity, time, personality, and also to receive the samples of handwriting of the persons involved in crime, hidden by

another's name. The same task is considerably become complicated by time and form during interaction between the bodies of the CIS members. In this case, it is necessary to prepare immediately and send a request about legal assistance.

Applying to electronic bases of data often does not give result because processing of great information cannot exclude failures and inaccuracies. Therefore, receiving of orienting information has the great significance. It includes all necessary information about exporter, importer and the customs checkpoint.

Tactically correct and timely conducted interrogations of the witnesses will help to make clear enumerated circumstances and to establish a person who transposes the goods. It is very important to determine false testimonies.

Establishing a person who delivers the goods, one should define a person status in subject of proving on this kind of the crimes.

According to the Customs Code, a person who actually transposes the goods is not always the person transposing the goods, and this means that he/she is not always a declarant. The customs duties should be paid only by a declarant. Therefore, formulating an instruction to other body, one needs correlating a volume of requested information with number of the persons, figuring in the case. One cannot neglect by friends, spouses, cohabitants, business-partners, colleagues, managers and administration of a shop where the goods was bought, etc. Studying of motivation of these subjects, one needs to bring and check a version about accompliceship in crime of these persons. Establishing of an issue who gained a benefit from happened transposition of the goods through the customs border of Azerbaijan and which exactly, is the main idea in understanding of the situation.

Inspection of the goods and means of transport may give significant information about a person transposing the goods, and the customs checkpoint. For example, during inspection of the cars one should pay attention to various small documents in the cabin (receipts, references, notes, piece of paper etc.), using them one may bring and check a version about country, in which a car has been used, personality of a man transposing the goods, route of deliver of the goods to Azerbaijan.

It is very important to engage a specialist during a car inspection; it requires some procedural execution of the inspection results.

In 2004, four “Mercedes” cars were imported by a citizen ‘A’ to Azerbaijan. In course of the customs registration he indicated in the customs declaration that engine volume was 1.600 cubic centimeters, reducing such way a size of the customs duties, which calculated from engine volume per cubic centimeter. One month later, during repeated customs inspection it was established that a volume of the engines of the cars are no less 4.500 cubic centimeters. ‘A’ said that on his request a volume of the engines of the cars before deliver in Azerbaijan was reduced up to 1.600 cubic centimeters, and after the customs registration restored up to 4.500 cubic centimeters. Under this, ‘A’ presented a receipt of a third person about the work done. It follows from information received that on-board computers control an engine volume from the moment of manufacturing (1990), the volume of the engines have not been changed from that time and have been 4.500 cubic centimeters. Specialist explained that re-equipment of the engine would come inevitably to breaking of the on-board computer and changing his testimonies. The fact of underreporting of the customs duties was proved [1].

In addition, particularities of the documents inspection are concluded in the method of information analysis containing in it. The more complexity calls an issue, which documents should be studied by an investigator, and which information should be checked in them, first of all. In our opinion, we should distinguish the primary, secondary and derivative documents of the customs registration and control. The primary documents contain information about initial intention or the fact of transposing of the goods through the customs border and contain the notes of the customs body concerning border crossing or acceptance of this document. The secondary documents have no attitude to border crossing, but submitted with the primary ones they influence in a size of the customs duties as contain information about status of a person transposing the goods, or the quality, quantity of the goods. The derivative documents are prepared upon providing the primary and secondary documents to the customs and other state bodies.

It is reasonable to build an order of the documents analyzing in order to detect and investigate evasion of the customs duties payment. First of all, it is carried out determination of the factors, which might be the reasons of underreporting of the customs payments.

Clarification of the primary documents identity helps to make clear the two main circumstances: 1. whether the goods imported in the customs checkpoint, which stamps and seals have on the primary documents, if so, by whom? 2. Are the primary documents authenticity or not, which submitted to the border customs office? The first task is easily solved through written request to the border customs office. If these goods and documents did not crossing the border then the documents submitted at the customs office were false. This case, one should receive the samples of the stamps and seals for comparative investigation and to question of the officials – owners of the seals and stamps, appoint trace evidence expertise in order to make clear an issue: a print of the original and counterfeit seals and stamps put at the documents, which were submitted to the customs office.

It is more complicated is a solution of the second task, which is required to prepare a request about legal assistance to the country, where the document was issued (an invoice, commercial invoice, certificate, technical passport etc.). According to P.I. Yazov, in some cases this task might be solved through questioning of an owner after technical-criminalistical expertise of the documents, if they are authenticity [15, p. 112-113].

Clarification of the ties of the primary and secondary documents consists in resolution of an issue about the fact whether entailed the submission of the secondary documents (on status of the persons or quality of the goods) lawful solution of the customs body about release of the customs duties payments or reduction their size, with considering of the fact of authenticity or false of the primary documents about the border crossing.

Detection of the traces of a person committed an evasion of the customs duties payments, when the documents were registered, carried out through handwriting expertise of the documents. A list of the documents accepted to the customs

registration is the most significant document, which may indicate to a person committed crime. It contains a signature of a person who submitted the documents, and the list of these documents. If a person denies his/her signature in the documents, than should be assigned and conducted the handwriting expertise to make clear an issue – who signed the list and submitted the documents to the customs, which contain false information.

The secondary documents can be absence when the goods did not deliver from the customs checkpoint to the internal one. This case, the primary documents might be only obtained at the customs checkpoint.

Consequently, under investigation of the documents it is very important to concentrate attention to studying of the primary documents about initial intention or the fact of transposing of the goods through the customs border, which contain marks of the customs body about border crossing or acceptance of the document [3, p. 16-19].

Analyzing the name and signature in the documents about transposing of the goods through the border and its customs registration one should pay attention – whether the signatures are done by the same person or not.

Forged forms are distinguished with typical signs of forgery: substandard type font, roughness of the lines, irregularity of the spaces between lines, words and letters, presence in the words of the letters on various sizes and graphical writing, replacement one letter by other one, presence of inversed signs, deviation of the letters from vertical or irregular gradient of them. There is often appeared availability of the numbers with quantity of the figures, which do not coincide with original, the signs inherent to colourful Xerox devices – grained structure of strokes, presence of the defects (intermittence of the thin strokes, roughness of the edges of strokes, pollution between strokes and fields of a document) [12, p. 248-253]. Sometimes, forged blank is distinguished from the origin on the type of print (high, plane, deep), which is inserted number and series of the document. Enumerated signs might be established under inspection of the blank with a magnifier.

In the context of investigation of the prints of seals and stamps one should study the following signs: 1) Correspondence of writing of the letters to writing of typographic writing of a font; 2) Absence of grammar mistakes in the text; 3) Uniformity of the interval between letters and words; 4) Symmetrical disposition of a seal fragments relatively its base; 5) Presence of the geometrically correct circles and other figures, a center of which is at one point; 6) Location of lengthwise axis of the letters towards direction of the external circle's radius.

It is reasonable under inspection to use a criminalistical ruler or any special ruler, e.g. officer, which made from transparent plastic sheet with inserted concentric circles and correct geometrical lines. Under overlapping of such ruler to forged document the geometrical distortion of the seal form come to incompliance with the ruler's pattern. This case disputable document and samples of the origin seals send to an expert examination. There is provided a few samples of seals with different degree of pressure. It is purposeful, and often necessarily, to provide a reprint of the origin seal on original document same time. For this, one should conduct a seizure of the documents about customs registration in the archive of the customs office if inspected persons declared the goods there. The samples of original documents of appropriate time producing might be obtained there.

Under inspection of the documents from Arabian countries (as rule, certificates of the goods imported from United Arab Emirates) desirable to be used an assistance of an interpreter from Arabian language. Persons who forge the seals of the state bodies of these countries if they are not citizens of these countries cannot observe calligraphy of the letter, which is noticeable for specialist and at once shows a forgery.

In the customs is applied so named "encircling" (when customs officer notaries with his/her signature and seal this or that information, he/she encircles the text in declaration blank and certifies with personal number seal). General and special signs of "encircling" are individual like signs of a signature, and can be identified. Nonconformity of the listed signs indicates on using of forged cliché. It is reasonable to apply a magnifying glass and portable ultraviolet lamp when prints are inspected.

One should pay attention in all documents submitted to the customs office whether a content encircling under the stamp filled by handwriting one person or not [3, p. 19-22].

Under inspection of the goods one should pay attention at transportation and packaging of them, to indicate registration numbers of the transports and their distinctive features, to seize all available seals, samples of the labels, packaging markers, and to describe the packaging in the details. It is very important at this stage to discover and seize individual traces indicating the persons: fingerprints on packaging, traces of footwear, pieces of clothes, i.e. to receive evidences of causative tie between the actions of persons and transposing of the goods through the customs border. The next stage of tracing fixation is concluded in receiving of samples of the goods, items, substances. Under this, one often should observe special rules, e.g. under taking of liquid samples from cistern one should take it from the bottom, middle and top levels in volume not less than one litre of each. In opinion of P.I. Komlev, one must indicate an air temperature in a record under inspection of the cisterns with alcohol and liquid. All seized is packed so that to exclude an external access to the samples and damage of the signature of inspector and eyewitnesses. This is necessary for providing pertinence and admissibility of these items as evidences. The items not seized under inspection should be also packed similar way [9, p. 201-202].

Determination of exact sum of unpaid customs duties as a task is mandatory. It is necessary to qualify an offence i.e. for corpus delicti of crime needs to be considerable or great size of unpaid duties. This matter might be solved in investigative practice with few ways. One of the key issues of this kind crimes investigation is a time of calculation of the customs payments. It depends on the way of crime committing. There are possible the following variants:

1. Calculation of the customs payments at time of expiry date of the customs declaration submission. Time of calculation should be done before submission or simultaneously with acceptance of the customs declaration, if the declaration was not lodged then at the last day from the time of declaring of the goods to the customs

office. If the goods transposing through the customs border is illegal then the days should be calculated from a day of this transposing.

2. Calculation of the customs payments should be done at time of declaration acceptance upon earlier customs registration made if the registration was made with deliberately reduction of the customs payments or without payment for the goods. This case new calculation should be done without considering of illegally providing privileges, wrongly applied the customs tariff, without considering of provisions of the customs regime, without considering of false data about the goods and their owners.

3. Calculation of the payments at time of violation of provided privileges on the customs payments. According to V.F. Takhmazov, there is necessary the following data for correct calculation, which could be justified in court. Code of the commodity nomenclature of the foreign economic activity, which depends on the goods quality (e.g. for cars, it depends on time passed from manufacturing date, the customs cost; country of origin of the commodity, a status of a person transposing the goods through the customs border (legal entity or physical person, commercial purpose or personal usage, availability of the privileges etc.). It is mandatory to checking of the fact of the customs registration at the customs office where the commodity had been sent and if so, establishing an exact sum of underpaid customs payments [13, p. 200-202].

When become to be known a date of the payment calculation and circumstances influencing them, it is reasonable the following order to define the sum of the customs payments. 1. Inspection of the commodity, receiving of its samples, if it needs to be done. 2. Seizure all accompanying documents of the goods, including invoices, certificated of the origin. 3. Obtaining response from a country manufacturer exact information about commodity nomenclature of foreign economic activity of investigated goods. 4. Obtaining of a response concerning to the customs cost and the way its determination. 5. Forwarding all documents to the department of the customs payment for recalculation of the customs payments that should be paid.

If any doubts occurred all parameters for calculation of the customs payments and their sum would be defined by specialists of the customs authorities [8, p. 211-214].

Overcoming of contraction to investigation of criminal evasions from the customs payments is a task, about which should also remember. High level of material interests of criminals provide active contraction to investigation directed, first of all, to taking back of the commodity seized. There are often used deception, adaptation, false evidence, forgeries and fakes of the documents, soft and strong forms of pressure, ties in the law enforcement and other bodies.

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