

**Condition a commission of evasion of the
customs payments associated with smuggling**

Abstract: Condition a commission of evasion of the customs payments associated with smuggling as an element of criminalistical characteristics might be determined like a data's system on the factors at which a crime has been prepared, committed and concealed and their interconnection between each other.

All criminal activity on evasion of the customs payments conjugated with smuggling associated with situations appearing with commodity in course of passing various stages from circulation of the goods in external market up to home one.

Successful investigation of such crimes is possible upon right diagnosing and determination at what stage the actions (inactions) an evasion of the customs payments, linked with smuggling, was happened or concealed.

Keywords: condition; event of a crime; customs payments; concealment; evasion of payment; smuggling; stages of commodity circulation.

An event of crime in all stages and concealment of the traces and other objects committed deed are flowing in concrete conditions of place with its material environment, time, lightness, manifestation of certain climatic factors, production activity, everyday life etc. These conditions in different extent influence on condition of crime commission. They are formed independently or on will of crime's participants and mainly characterized certain external environment and some other factors of objective reality [6, p. 15]. We should note that in the most cases of

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considered crimes an element of concealment precedes to the event of evasion of the customs payments.

I.P. Vorobyov notes that a basis of condition of the customs payment's evasion is an existing order and rule of the commodities' transmission through the customs border, territorially spatial factors of the customs borders' and transport ways disposition, an order of the customs registration and paying of the customs payments, and procedures of the customs control. These factors are formed in the basis of geographic particularities, legislations and existing practice of the customs bodies' activity in concrete region [4, p. 110-111].

An idea of the fact that besides of material environment in situation of crime's commission are also played other factors has been formed by degrees. So, R.S. Belkin pointed out: "Condition of incident or crime is a concrete real-life situation. Besides of material environment of occurrence place it includes also other elements: behaviour of an event's participants, various circumstances, which assist or impede actions of participants, chronological characteristics of an event, psychological relationships between its participants etc." [1, p. 111-112].

V.A. Obrazstov marked by the following way a role of these factors in crime disclosure. "In our opinion, notion of condition of crime commission (criminal situation) has a wide content. It includes territorial, climatic, demographic and other specifics of region, in which crime committed, and also circumstances characterizing a place, time, conditions and other particularities of indicated life situation. Being collected "on hot traces" information, which characterize the condition at occurrence place, is acting as indirect indicator of motives, way, mechanism and other significant for case circumstances, and also a person who committed crime" [10, p. 94].

Subsequent studying of social states and relationships, which constitute a condition of crime commission, indicates at their determining significant for a way of crime's commission. This circumstance was emphasized by V.E. Kornukhov, who

studied regularities of crimes' reflection committed in area of professional activity. In particular, he pointed out that factors of environment of crimes' commission are closely tied with mechanism and way, which mostly substantiated with peculiarities of process of production, management and document circulation [7, p. 68].

N.P. Yablokov and V.N. Koldin name the following groups of the elements characterizing external environment of crime's event: 1) material; 2) spatial and constructive; 3) natural-climatic; 4) physical and chemical; 5) temporal; 6) production and everyday life; 7) behavioural and psychological [8, p. 331-332].

Gogayev A.R. notes that for criminalistical characteristics of condition of the customs payments' evasion associated with smuggling is more actually: 1) material objects (commodities, documents their origin and movement; documents of the persons delivering the goods); 2) technological process (legislatively determined and really formed order of the actions, which carried out at certain stages of the commodity circulation, between internal and external market, i.e. formed order and rules of commodity transmission through customs border, their customs registration, an order of customs payments and customs control); 3) spatial constructive factors (customs border crossing point, place of consignee and consignor's disposition, place of declaration, territorial disposition of transport ways, zones of the customs control, warehouses of temporal storage, customs offices etc.); 4) temporal indicators (time of the customs border crossing, dates of delivering the commodities in the customs office and dates the customs payments, actual time of producing actions at certain stages of commodities' movement and their correlation between each other etc.) [5, p. 201-202].

Consequently, condition committing of the customs payments' evasion associated with smuggling as an element of criminalistical characteristics might be determined like a system of information about objects, phenomena, processes

characterizing material, technologic, spatial, temporal conditions of environment, social, economic, legal, psychological relationships between people in these conditions and other factors of objective reality, interconnected between each other and determining the circumstances of crimes' commission in course of their preparation, commission and concealment.

Objective factors of condition upon commission of the customs payments linked with smuggling are the stages of commodity movement between external and home markets. Mentioned notion might be used in course of description of the condition any crimes, which connected with transmission of the goods, means, items between subjects in different states, therefore it wider than notion of the stages of the customs registration. Applicably to importing, the stages of commodities' movement are the following.

1. Circulation of the goods in external market. Commodity is produced, packed, loaded, registered its accompanying documents, invoices etc. The purchasing contract is often signed abroad. This stage is very significant for establishing of a fact – who is a real person importing commodities.

2. Crossing of the customs border. According to A.N. Kozyrin, “Customs border is a legal fiction unlike state border, which presents real line on the land... Customs border is remained an ideal line... is kept an opportunity to change its contours” [9, p. 54]. For example, customs border can be appeared in any place inside country if the free customs zone is established there – on perimeter its territory. Article 17 of the Customs Code of Azerbaijan is understood under crossing through the customs border in course of importing of actual movement of commodity through customs border, in process of delivering the goods from territory of free customs zones, from warehouses and territories other countries. Commodity is delivered in customs territory of Azerbaijan by land (railway, vehicle, pipelines and power

transmission), by sea (on ships), by air (in planes). Commodities for the customs control are delivered to the customs offices located in railway stations, sea ports, airports and truck crossing points and after stamped they are sent to internal customs offices.

3. Delivery of the commodity. At this stage the goods should be delivered to internal customs office and placed in warehouse of temporal storage for its customs registration (declaring). Commodity is delivered to the customs office for customs clearance by an importer or in compliance with contract by a carrier (transporting company).

4. Temporal storage. Procedure of the goods delivering is completed with placing them in a warehouse of temporal storage under customs control till finalizing of customs clearance.

5. Customs registration is conducted in customs office where a consignee or consignor of the goods is located. Consignee (or consignor) or customs broker provides declaration and all accompanying documents of the goods and information of its owner, including necessary papers for receiving benefits on the customs payments. Customs registration is completed by placing commodity under certain customs regime.

6. Receiving commodity in transporting company, from warehouse of temporal storage, registration the goods in state's bodies, it is required by law.

7. Circulation of commodity in home market. This is sale, re-sale, consuming, destruction etc. Primary ground for alienating and accounting of commodities are the documents, which received or certified in previous stages. The goods might also be circulated in violation of benefits provided on customs payments or requirements of the customs regime.

All criminal activity on evasion of customs payments conjugated with smuggling linked to the situations appearing with commodity in course of movement

through listed stages. The situation of commission of criminal evasion of the customs payments is understood as combination of objective and subjective factors, impacting on a way of criminal activity at certain stage of the goods movement. It is determined with established order of the goods movement through the customs border and its customs registration [11, p. 33-36].

In addition, place and time of crossing of the customs border and also place of presence of a person delivering the goods have a great significance in nature of condition (environment) as just depending on these factors a lawmaker puts establishment of the customs office a time and place delivering and presenting the goods, and also time of declaring and payment of the customs duties. The situations might be grouped in dependence on what stage actions on evasion or concealment of customs payments are produced. Each stage of commodity movement might be characterized with one or few criminal situations in dependence of particularities of a crime's commission or concealment way. Own condition of crime's commission, its criminal situations exist for each stage of commodity movement.

There should be differentiated a notion of criminal situation from investigative one, though the last studying in this area are showing that a core, formation, appearance, genesis, management and diagnosis of criminal, criminal procedural and criminalistical situations are described and systematized by one studies – criminalistical situational modeling [3, p. 12-27]. The elements of criminal situation are material and socio-psychological conditions creating with individual combination of the elements of criminal activity in those spatially temporal frames, in which this activity is carried out by a subject of criminal. Term “situation”, from semantic point of view, means a combination of the conditions and circumstances creating those or other relationships, condition, position [3, p. 28].

Commodities' movement stages are forming the condition, establishing at each of them, which objectively determined with appearing criminal situations. Research made are showing that the condition of this kind of crimes' commission form a

concrete described stages of commodities movement, where deeds on evasion and concealment of this fact are committed. Whereas, deeds on evasion and concealment might be carried out as at one so a few stages, forming hereunder pre-criminal, criminal and post-criminal situations [2, p. 161-162].

In order to investigate successful this kind crimes there is an important to diagnose correct, at what stage the actions (inactions) were committed, through of which happened or concealed evasion of customs payments associated with smuggling. Furthermore, using probabilistic ties one should build typical versions and determine of investigation's direction. The first purpose should be correct establishment of place and time customs border crossing. This will allow establishing a person delivering the goods and to calculate accurately a size of non-paid customs duties. Dependence on certain condition at concrete stage and forming situation there might be offered some complexes of investigation actions, production of which is mandatory at this case.

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