Ways of evasion's commission of the customs payments associated with smuggling

Abstract: Way of evasion of customs payment associated with smuggling is concluded in falsification or evasion of normal legal order of passing of the commodity established by legislation the stages of commodity's motion between external and home market through concealment of duty to pay, personality of payer or underreporting of customs payment's sum.

The signs of evasions of customs payments associated with smuggling can be determined with comparison of presence or absence of the signs remaining in documents in various stages of commodity's motion with typical, individual features and actual usage of the commodities.

Keywords: way of commission and concealment; mechanism of crime; social situations; subjective factors; skills; customs payments; smuggling.

Under the mechanism of crime is understood a complicated dynamic system including a subject of crime, relationships to its actions, their consequences, accomplices, subject of encroachment, way of commission and concealment of crime, criminal result, environment of crime, behaviour and actions of persons happened to be unintentional participants of an event and other circumstances [9, p. 11].

System of mechanism of crime is an element (subsystem) of the system of crimes' investigation and in turn it consist of the elements (subsystems) of a way of crime's commission, ways of crime's concealment, behaviour of criminal and others.

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In doctrine on crime's mechanism are used provisions of criminology, criminal law, criminal process, psychology, psychiatry, forensic medicine, sociology, theory of information and a number of other sciences.

The doctrine on mechanism of crime has a complex nature that is determined with complicated structure of the mechanism and, first of all, that a core of the mechanism of crime is a man, his/her actions or inactions, from which in certain conditions are also depended consequences of crime.

The ways of commission and concealment and correlations between them are the main elements of crime's mechanism, which determine a system's character of its investigation.

Professor Zuykov G.G. determines a way of commission and concealment of crime like a system of joined with single intention of actions of a criminal on preparation, commission and concealment of crime that determined by objective and subjective factors, actions conjugated with usage of appropriate instruments and means [15, p. 92].

Systemic approach to consideration of the way of crime is obliged an investigator to distinguish, study and assess from criminalistical positions its actual elements, searching the means of overcoming the obstacles, techniques of discovering and seizing of values, their packaging, concealment, means of transport, actions on sale of thieved and others.

All eliminated elements create a certain consequences (traces) entering in mechanism of crime. The elements of crime's way are initially studied and evaluated separately as finding and studying of the traces and other consequences of a deed, but systemic approach requires also their total studying. The systemic approach is obliged to consider a way of commission and concealment of crime as unity of all its elements determining with number of the factors. Solution of this task is provided trough designing and checking of the versions on the way of commission and concealment of crime and other methods of investigation.

System of crime's commission, in turn, being an element (subsystem) of more complex system - mechanism of crime, should be researched in conjunction

with these elements – with particularities that characterize a subject of crime, environment, an object of encroachment and others. R.S. Belkin points out that wherein there should be taken into account regularities of formation, choice and performance of crime's way, regularities appearance and development of the links between the elements of crime's mechanism [4, p. 362-363]. Regularities of interaction of the elements of crime's mechanism are the primary regularities that determine a link of the way to other subsystems of mechanism of crime. Subject impacts on environment with choosing way, makes alterations, and interacts to victim, witnesses, behaviour of which, in turn, impact in criminal and way of his/her actions.

There are also important the regularities of reflection, by virtue of which the actions that are forming crime's way are reflected in consciousness of participants of crime and on material objects, create alterations in external environment. Together with that some fragments of the environment (e.g. soil particles on clothes and footwear, dust, paint etc.) are reflected on the subject and instruments of crime. Objective characteristic of the way might only be given on the basis of studying all combination of the traces-reflections established by investigation [15, p. 96].

Reflection's regularities are manifested in each concrete case according to crime's nature, particularities of its mechanism, way of deed. In one case it will be regularities of reflection received at mechanical interaction, in other one – traces of chemical interaction, and in third one – traces of biological interaction etc. With provision for that there is formed a judgement on the way of crime, place, time and other circumstances of its commission.

Studying of way's structure shows that its formation and performance determined by external objective and internal subjective factors. To the first, we should attribute all environment, all concrete conditions, in which man lives. However such interpretation of external factors is too generalized. Criterion of limitation of external factors should be its direct impact on choice and performance

of crime' way. With provision of that to external (objective) factors determining the way should be attributed the following:

- -Social situations and negative manifestations influencing on formation, influencing on formation, dissemination and iterance of crime's ways. They may include the following:
- social situations (historical background) under impact of which is formed an intention and the ways of crimes;
- everyday official (manufacturing) situations that characterizing interpersonal, most often conflict interrelationships between members of collective;
 - alcoholism, drug addiction as a social manifestations;
 - propaganda of a cult of cruelty, violence, erotica;
- dissemination of books, video and cinema films where are shown in details the ways of commission of serious crimes;
 - Professional criminality as a source of criminal experience.

The external objective factors that determine a way of crime should also be attributed the factors directly conjugated with preparation, commission and concealment of concrete crime. They are the following:

- An object of encroachment, its particularities;
- -Environment previous to crime, accompanying it, forming after crime. This environment are: place, time, weather condition, visibility, lie of the ground, availability and character of communications, vegetation cover, location and kind of buildings around place of incident or their remoteness, distinguishing characteristics of an area;
- Character of facility, where crime committed, its functional assignment (enterprise, shop, warehouse, living construction, apartment, railway, other kind of transport, other facilities);
- Presence (or absence) in a place of occurrence third persons (strangers, witnesses, accomplices, victims), their attitude to crime.

Subjective factors include the following:

- Purpose and motive of crime. Purpose is ideal presentation of man about final results of activity. Motive in psychological plan is inducement to activity.

Way of commission and concealment of deed depend on aim and motive. They determine irritation of cerebral cortex that in turn influences on physiological mechanism of actions that reflected in crime's way;

-Mental features of a person, of which are depended an assessment of external factors of decisions made and particularities of their performance. Mental features are manifested in character of man, in his/her attitude to the reality, volitional features (strong and weak will), ability consciously direct his/her activity to achievement of goal and realization of the motive. Thus, character acts as one of the basics of man's behaviour.

Great role in way of crime play signs of education, which were formed under influence of mental factors, that is the elements of activity brought to automatism, e.g. skills of letters, car driving, fulfillment of other labour operations. Skills are an individual, relatively stable for long time, variable under impact of situations, can be fixed through criminalistical means and methods since they are reflected in environment in result of criminal's actions. Traces of these actions have the signs of skills and correspondingly information about man possessing with these skills.

With skills closely tied habits that rid under control of conscience not only technique of actions' performance, but also the fact of actions. Habits are involuntary and individual like skills therefore it gives especial significance to the traces, in which habits are reflected. Under influence of habits can be determined distribution of functions in criminal group, time, and place of crime, applied professionally habitual instruments. As Hajiyeva N.G. notes, addiction to alcohol or drug are also reflected in the way of crime [9, p. 66].

There is harmonious relationship between objective and subjective factors determining a crime's way. It would be mistake to overestimate only a role of objective or subjective factors. Mutual influence of them on a way is very individual in each concrete case.

At committing of some crimes the ways of their commission are repeated what are explained by some criminalists, mainly, with coincidence of objective factors, in which criminal acts [16, p. 61].

Comprehensive studying of repeatability of the ways was undertaken by G.G. Zuykov. He came to the following conclusions: repeatability of the way is determined not only by frequency of external factors, but also all combination of determining of these factors' way – objective and subjective ones. By virtue of that, repeatability of the way should be considered like sustained trends having a nature of regularities; repeatability of the way has situational character. Since vital situations, in which are committed by one person the same type crimes, dynamical, can be suddenly changed under influence of accidental circumstances. Registration of these circumstances and associated with it alterations situations predetermine behaviour of crime: changing of way, failure of intentions to commit crime, attract compliances, break of crime's instruments or their modernization and other decisions [15, p. 201].

Criminal activity on evasion of customs payments associated with smuggling depends as on the stages of commodity movement between external and internal market of country so and flow of documents in customs and other state bodies, forming order of customs registration and control. Analysis of criminal cases allowed o distinguish the following signs of the way of commission of evasion of customs payments associated with smuggling.

- 1. Ways concerning forgery of documents. In opinion of O.A. Berzin, there in less extend are characteristic the traditional signs cleaning up, writing up, etching, washing up etc. [7, p. 11-16]. Elements of intellectual forgery and high-tech forgery are inherent to them, such as:
 - documents, which could not be filled in by one person, one handwriting;
- information about person and commodity in one declaration form one person done with other handwriting;
- number of customs' officer seal releasing the commodity does not exist or belongs to an employee of subdivision, who had not or could not put it;
- in documents, in which are two and more seals of different customs offices, all of them are only the seals of boarder customs offices or only their internal seals that does not coincide with the route of movement:

- document, which has to contain an original signature, does not contain it or is a copy;
- documents with grades of security have the same number (certificate on registration, a passport of transport mean);
- customs documents has a code of the customs office, which does not exist (customs cargo declaration, customs, customs credit slip);
- series and number of document with degrees of security done with different print forms or fonts (invoice, certificate etc.);
- stamp content on registration in passport given for customs purposes does not correspond to the reality, passport is considered to be lost or had been issued other person;
- in documents on crossing the border indicated a passport, according to which border service could not permission for crossing the border;

In documents on purchasing abroad instead of international passport indicated internal passport.

- 2. Ways relating to quality of commodity:
- declared commodity, which customs name is in doubt, very close on external feature to the commodity imposed with high customs duties;
- indicated commodity weight, which, in actually, impossible to weigh [10, p. 84-88].
- 3. Signs of social relationships are concerned to those particularities of material and social status of people, their place of location:
- commodity is used by other persons than those to who have been done customs clearance; the goods was at once passed to other person;
- material position and social status of person does not correspond to commodity registered to him at customs office or state traffic police (expensive car on alone, old man);
- persons and enterprises in actually are not those addresses, which were indicated for customs purposes;
- often placing the goods under special customs regime by the same persons, when minimal customs payments are paid;

- persons, who have privilege on customs payments, are not listed in organizations on identity certificate of which were provided the privilege (refugees, internally displaced persons);
- person physically could not be abroad and import commodity, though about that there are documents on his name concerning customs registration;
- person could not be in institution, in which are kept documents ostensibly submitted by him in person;
- person had not lived in place in connection with resettlement of which the privilege was provided;
- the goods, which deliver term expired, is registered in other customs office with providing of privilege or on decision of court;
 - legal entity does not registered in competent body, i.e. does not exist;
- legal entity registered on forgery identity card, which was lost; photo reglued in it [12, p. 161-166].
 - 4. Signs of temporal discrepancies:
- date of purchase and sale in document on commodity (invoice, contract) is earlier than the date of power of attorney to person who had to be commit this deal abroad;
- legalization of commodity (purchase and sale, registration in a competent body, court's decision etc.) was before the goods had first time crossed the customs border of Azerbaijan;
- natural person ,on behalf of whom done the customs registration or crossing the customs border, was at that time dead.

Signs of evasions the customs payments associated with smuggling can be grouped by varieties this or that way. For instance, signs of the way "false transit" are the following:

- Registration of big number of auto transport with expensive industrial goods by sender company from abroad as transit goods via Azerbaijan, as rule, in address of companies of Georgia;
- Availability of big number of business trip of employees of the sender company in regions where located the customs posts, facts of meeting with former

and acting employees of the customs office (established by checking of advance statements, international telephone conversations, air and railway tickets);

- -repeated appearance in border customs posts the same persons without registration their visits in registering books on matters not associated with customs registration;
- absence of contracts to companies from near abroad on shipment of the goods by transit via Azerbaijan;
- absence of information on passing (gone in other countries) auto transport in other state bodies located in checkpoint;
- use by sender company of counterfeit seals for registration of fictitious contracts for shipment of commodity by transit through Azerbaijan;
- appearance to the employees of border customs checkpoints big amount of material values [6, p. 16-17].

According to A. Berg and K. Stanford, most clearly the signs of the way are manifested at application of comparative method, when an activity on serial commission of the crimes has become an object of investigation. Probability of discovering the way depends on quantity of combination of social, qualitative, documentary and temporal signs [5, p. 31-32].

Being discovered listed signs, one should design the two groups of versions answering on the following questions: 1) at what stage of commodity movement were committed the actions on evasion of customs payments associated with smuggling; 2) what place and time of crossing of customs border and how can exactly it be established? Establishing of causal links between the fact of border crossing and appearance of eliminated signs dives an opportunity to determine provably a way and size of unpaid customs payments, to resolve an issue about person who is obliged to pay them, forms sufficient information for beginning of criminal prosecution [8, p. 99-100].

It is necessary to note that the way of this kind of crimes is distinguished by that almost always associated with actions on concealment of crime like such. An element of concealment of crime often precedes on time and intention to the crime (at search of forgery documents, stamps, seals, commission of mock deal, statement of false or non-statement of necessary data at crossing of the customs border). Main sphere of evasion of the customs payments associated with smuggling became an export of the goods in Azerbaijan that caused with growth of welfare of the citizens of the Republic.

On opinion of P.I. Yazov, evasion consists of non-reception of financing in budget and the way to conceal this fact or duty to pay that might be expressed as in action so and inaction [17, p. 59-60]. Way of evasion of the customs payment associated with smuggling is concluded in evasion of normal, legal order of commodity passing established by state stages of the goods' movement in market of the country through various combination of knowledge, skills, equipment and instrumental techniques, aim of which is to conceal the fact non-payment of due sum [11, p. 66-69].

Way of commission is more actual basis to classify crimes. On sign of applied technique of evasion of the customs payments associated with contraband at certain stage of commodity movement at the basis of studying of empiric material, we suggest their following classification.

- a) Ways linked with violation of terms providing privilege at the customs registration include the two varieties:
- transmission of the goods by natural persons in violation of the terms of privileges to other persons through a power of attorney without notice of the customs office and payment of due customs payments;
- sale of the goods in violation of terms of privileges to other persons with registration of purchase and sale contract, through forgery in documents.
- b) Non-observance of the requirements of the customs regime, i.e. collection of the provisions determining a status of commodity and transport means. Similarity of these ways consists of those actions that form obligation to pay customs payments, i.e. non-performance of requirements of the customs regime or conditions provision of privilege, is committed after release of the goods, placing at certain regime, well then, at stage of its circulation after customs registration. Varieties of this way is formed at using by criminals so named non-fiscal customs

regimes at placing the commodities in it, under which are paid minimal sum of the customs payments:

- registration of regime of refusal from the goods in favour of state with further purchase of this commodity through figureheads;
- registration of the goods in regime of re-import, when earlier shipped Azerbaijani commodities send back, and instead of them are given foreign goods;
- registration of commodity in regime of re-export, which is not actually executed, and the goods is sold in home market;
- registration of the goods in regime of transit, which actually is not fulfilled, and commodity is actually remained in Azerbaijan;

Registration of commodity is performed in a regime of customs warehouse, from which the goods are given without permission of customs body and customs payment [13, p. 44-47].

Astara enterprise "Shaid Asif" received a license for opening of the customs warehouse and a license of the customs carrier. A head of the enterprise Z. entered into collusion with the management of "Mars" company, who had offered the next scheme of criminal activity. Commodity, according to the documents, is sent from Iran to Kazakhstan, followed to the customs terminal in Astara town, and from there by trucks of the customs carrier of "Leila" company deliver to Baku into the customs warehouse the same company. There plumbs on the containers have been replaced, are drawn up new waybills in name of phony legal entities and commodity has sold without the customs payments. For striking the goods off the customs control in border's customs checkpoint from Azerbaijan in Kurgan was sent a manager of "Mars" company, who through the close people has handed the documents and bribe to the customs officers in order to register the certificate on confirmation the goods' delivering under the customs control. These certificates have lifted the goods off the customs control, ostensibly delivered to Kazakhstan. Actually, the commodity was sold in Azerbaijan without customs payments. The sum of loss was more than 1.5 milliard old manats [1].

Similar way can be used other non-fiscal customs regimes, for instance, processing under the customs control, free customs zone, free warehouse, however this point is not observed in works studied. It might be explained with difficulties of discovering of these crimes due to complexity of identification of the goods, e.g. those, that were allegedly destroyed. It is easy to identify numbered thing or item requiring state registration while commodity is placing under certain customs regime [14, p. 66-68].

- c) Conducting the actions directed to reimbursement of paid customs payment.
- d) Distortion and falsification of data on receipt of the payments or its volume.
- e) Actions connected with providing of wrong information, which were ground to charge the customs payments:
- providing of wrong information about the country of the goods' origin; on the customs name of commodity, inaccuracy its classification in compliance with the commodity nomenclature of foreign economic activity (hereinafter, CN of FEA);
- delayed presentation of the goods to the customs body that caused to changing of the Code of CN of FEA and reduction of the customs payments;
- providing unreliable data about status of the persons who imported commodity in order to receive the privileges on the customs payments.

Citizen A. submitted to State Customs Committee of Azerbaijan (hereinafter SCC) with petition to deliver car model "Mercedes-200 C" and requested to provide privilege on the customs payments as a refugee. Together with declaration he presented a certificate on registration of the car in Germany, customs declaration, act of technical inspection of the car and identification card of a refugee. According to listed documents the car was registered in the customs office without payment of the customs duties. However, in really A. was not recognized by established order as a refugee that was confirmed with a letter of the State

Committee on Deals of Refugees and Internally Displaced Persons of Azerbaijan Republic [1].

- submitting of wrong information about quantity and quality of the goods, its customs cost;
- presentation in the customs office one commodity instead of other one or concealment of the goods at time of inspection.
- f) Non-deliver of commodity at time of transportation between the customs bodies:
- non-deliver of the goods from border to internal customs office with further non-declaring;
- receiving of unfixing for registration in other customs body with further non-delivering there or registration there with evasion of necessary payments;
- completion of procedure of international road transportation (IRT) without placing of the goods in warehouse of temporal storage.

While gave a bribe, citizen K. entered in agreement with an employee of Astara customs office about issuing of certificate on completion of transportation on procedure of the IRT, without placing of commodity in warehouse of temporal storage. As result the goods was sold in Azerbaijan without declaring and customs payments [2].

- -forgery of documents on completion of procedure of international road transportation without placing of commodity in a warehouse of temporal storage;
- confirmation of deliver at the customs control without real shipment of the goods from Azerbaijan.

In 2002-2004 an inspector of Bilasuvar customs checkpoint P. had repeatedly registered forgery customs declaration without conducting of customs control and without bringing commodity to the customs checkpoint. Thereby he registered documents about confirmation of deliver of the goods under customs control and their shipment from Azerbaijan, certifying these documents by original seal of the Bilasuvar customs office. These actions had carried out in interests o citizen of L.

who is a head of "Babek" enterprise, and had committed with purpose of evasion of customs payments [3].

- g) Ways connected with temporal storage of the goods.
- illegal disposal of huge and perishable goods, which have been at responsible storage.

Citizen D. being a president of "Shain-S" company, receiving parties of apples and eggs delivered from Iran, simultaneously had in written addressed to Astara customs office with request to send the goods in responsible storage under obligation about conducting of the customs registration as the customs office had not had warehouse facilities with necessary temperature regime. But, despite availability of funds in a bank account of his enterprise, while received apples and eggs D. did not declare the goods and pay customs duties, instructed his employees to sell applies without customs clearance [3].

- non-placing commodity in warehouse of temporal storage;
- receiving the goods in transport company for placing in warehouse of temporal storage, which has not happened;
- stealing of commodity from warehouse of temporal storage is one of the difficult disclosed ways.

It is difficult to discover information about this way as stealing from warehouse is considered to be by law enforcement bodies as theft, and is carried by criminals, when there is no information that allows calculating the customs payments. Therefore, crimes committed such way are not actually registered in the customs bodies. Right sign of evasion is the fact at which quantity and the customs cost of commodity that stolen from warehouse exactly unknown;

- receiving of the goods from warehouse of temporal storage without payment of the customs duties.
- h) Movement of the goods passing the customs control with further non-declaring and non-payment of the customs duties.
- i) Movement of commodity with deceptive using of documents in basis of which declaring later happened with reduction of volume of the customs payments.

k) Inspiration of detention by the customs office of smuggling with purpose of further its purchase like confiscated commodity at low price than a size of subjected to payment of the customs duties.

In our point of view, mechanisms of evasion of the customs payments associated with smuggling depends on its dialectic basis – the stages of commodity's movement between external and home market of country and in actually established usages of document circulation at these stages. While stages ordered in a system, the ways of criminal activity are easily systematized, is appeared an opportunity of forecasting of the places of discovering trace pictures of crime.

Thus, the way of evasion of the customs payments associated with smuggling is concluded in falsification or evasion of normal, legal order of commodity's movement between external and domestic market through concealment of obligation to pay, personality of payer or reduction of the sum of the customs payments.

It follows from foregoing classification that it is possible to discover the signs of evasions of the customs payments associated with smuggling through comparison of presence or absence of the traces that remained, as rule, in documents, at various stages of the goods' movement between external and home market with common, individual signs and actual using of the goods.

The ways of evasion of the customs payments associated with smuggling might also be classified on other signs, i.e. on connection with other crimes, on subjects, on commodities etc., their core is not changed.

While analyzed a way of concealment of investigated crime one should proceed from point of view of R.S. Belkin about that actions on concealment of crime might be linked with single intention with preparation and commission of crime or such connection is absent [4, p. 57].

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