

**Criminalistical model of evasion from payment
of customs duties linked with smuggling**

Abstract: It is considered the material and mental models evasion from payment of customs duties associated with smuggling, their structural elements.

It is analyzed the stages of criminal activities committed on them action.

It is noted the cyclical nature of the study.

Keywords: criminalistical model; evasion from payment of customs duties; smuggling; way of committing; way of concealment.

Criminalistical model is an artificial system reproducing with certain extent similarity an object that replaced by it. Studying and checking of it gives an opportunity to get new knowledge about original and use them for solution of searching, cognitive identificational, management and other tasks in criminal process and also scientific criminalistical research.

Criminalistical models are divided into material and thought.

As rule, in searching-cognitive activity are used thought models, which give an idea about the tasks subjected to clarification, forthcoming actions, and next steps on the cognitive way. These models are represented before the subjects of search-cognitive activity as judgements, image that providing “open way” to the creative imagination and purposeful activity.

According to V.A. Obraztsov, there are three types of thought models: a) event’s models of the past; b) event’s models of the present; event’s models of the future (12, p. 69-70).

During construction of the thought model is used different knowledge: trustworthy and hypothetical ones. The models can be designed in respect of an event, object in whole or separate sides, parts or elements of it.

As material model, the thought one is a system and consists on intellectual components. In knowledge, it is doing the reflection function, interpretation of the facts and visual expression of an imagination about passed crime event. The thought model can be designed as scheme, figure of formula, drawing and description. The important particularity of this model, as a form of thinking, is a feature to be analog of not yet investigated circumstances, hidden ties, and non-identified relation.

On our opinion, the criminalistical model of the passed event of evasion from payment of customs duties connected with smuggling can evaluate from the time when it begins detecting and disclosure of crime or from starting time (when criminal activity is begun) until it development and completion (5, p. 99-103).

In methodological issue we are on the position of a system and activity approach, which explains a substance of passed event of smuggling connected with evasion from payment of the customs duties, as a system of activity one man or a group of people who conceived, prepared, done, hid crime, and also organize and carry out counteraction to investigation. From this position the crime is always a real existing activity on conceiving, preparation, fulfillment and concealment of an illegal action, i.e. as a criminal activity.

It is well know that criminal activity is a kind of human activity. Basically it differs from other kinds of human's activity only that it carries in conditions of limited time and mental stress and connected with overcoming of various negative emotional states (agitation, fear, doubt, the desire to escape from responsibility). Following to the goal to be unpunished, prolong criminal activity and use its results, criminals carefully disguise their footprints, trying to create a feigned alibi, fabricating false evidence etc.

In any volitional behaviour, in spite on it lasting, can determine a few stages linked with thought activity of a man about in what way and method he can achieve his result. This preparatory stage includes determination of the goals, fight of the motives, estimation of the situation, choice of the means, planning of the actions, connected with completion to make a decision. The next step is a stage to execute accepted decision. The named stages are manifested quite clear under smuggling linked with evasion from payment of the customs duties.

Thus, criminal activity is characterized with awareness, purposefulness, duration and planning. It has two sides: external and internal ones. External side is a real behaviour of a smuggler and internal one – psychical activity and mechanisms, which give a direction to the real actions. From the point of view of criminal-legal valuation, the evasion from payment of the customs duties linked with smuggling can be considered the following: criminally can be all activity in whole; criminally can be only some actions carry out in frame of activity; criminally might be the fragments in whole legal activity (5, p. 99-103).

Unconditionally, resolution of these contradictions should be of sphere of applied criminalistical developments, and through them affect positively on the practice, in which these contradictions are manifested and made difficult a resolution of practical issues of the detection, disclosure and proving of the crimes.

Substance of the process of investigation of evasion from payments of the customs duties connected with smuggling from the position of system and activity approach can be adequate understood only from a certain methodical positions, i.e. on the base of some aggregated ideas. Here, it should put at first place an idea of the reflection as the universal property of matter. For the first time, this theory of criminalistics was formulated on the works of R.S. Belkin at the end of 60-70th, and the further it was developed in the works of N.N. Luzgin, V.P. Lavrov, V.A. Obraztsov, M.K. Kaminsky, N.N. Lysov, A.F. Lubin and other scholars (8, p. 46-48; 10, p. 26-29; 11, p. 66-68).

Consequently, to detect considered crime is to recreate all sides, constituent parts of the criminal activity in an informational model.

Based on the general structure of activity, it can be determined the ties of the following elements of crime: criminal, motive, goal, object, means, process (mechanism) and results of crime (traces and results of committed). Total combination of the elements of crime (as analog with criminal-legal combination) might be determined as criminalistical corpus delicti.

Currently, there are two main approaches to the designing of criminalistical model of the criminal activity. One of them is linked with description of the elements

of criminal activity and is named as element, other one – with description of the stages of criminal activity.

An issue of the model idea of the criminalistical essence of criminal activity had been developed as in theoretical direction in the works of R.S. Belkin, M.K. Kaminsky, A.F. Lubin, I.M. Luzgin, N.N. Lysov, M.N. Khlyntsov so in applied one – G.A. Gustov, S.P. Golubyatnikov (2, p. 61-69; 8, p. 3-15; 10, p. 11-14; 11, p. 9-12; 15, p. 11-14; 7, p. 78-84).

Analysis of criminal cases has shown that evasion from payment of the customs duties linked with smuggling, as rule, is committed by the group of people (95%), but it has been the facts when an individual committed himself single-handed. The crime committed by one person has characteristic features. Even, being acting alone, a person has to have a short communication with some number of people. Therefore, for detection and disclosure of the crime, establishing and identification of criminal's personality is a guarantee of successful disclosure of such kind of crime (6, p. 326-330).

Motive and goal is the most important component of the evasion from payment of the customs duties linked with the smuggling. The author has studied 100 criminal cases, 99 of which the mercenary was an official motive of committed crimes. The final purpose of the evasion from payment of the customs duties connected with smuggling is a receiving of money to satisfy his and group's needs. From this position the goal is simultaneously an object, acting in kind of subjective image of the object, for the sake receiving of which a smuggler directs his intellectual and practical activity. Purposes of separate members of a criminal group can be the same or differ.

It seems that a goal is formed in dependence on the following conditions:

- ideas, views, estimations, which are in a person;
- the situations, in which is a subject;
- the means, which are possessed a person (they can be as a gun or instrument so knowledge and skills);
- the features of primary objects, on which a subject has to affect in order to achieve a purpose.

Resolution of contradiction between a desire to satisfy needs and real takeover of the object is caused a motive of criminal activity, made the latter move to achieve desired result. Therefore, it is very important for an investigator or customs officer to distinguish accurately a real motive and real goal (6, p. 326-330).

It is possible only one way to achieve a goal during resolution of the tasks. This is influence of a subject onto initial states of the objects of various kinds (people, animals, flora, and the objects of nature and products of human culture) through ex. preparation of hiding places, fabricating of the goods accompanying documents etc. Since, any action is done in specific conditions of a place, time, and situation so it can be realized with various operations, which, in turns, is required combination of these of those motion body's parts of a man and his thoughts.

Establishing of the way of concealment of considered crime has an important significance. As rule, a concealment of crime is considered to be as element of the way it committing. Recently, there are research works, in which is allowed an existence of the way of concealment of crime as a separate element of criminal activity not depending on way of it committing. Accordingly, as an element of criminal activity, it is situated in correlation dependence on other elements of this activity, including with features of smuggler's personality. Thus, M.P. Guterman found interdependence of concealment way with such features of personality as sex, age, a criminal record check, educational level (9, p. 66-69).

The research made and also studies of other authors show that a choice of the concealment way of the crime correlates with such elements of criminal activity as: a) an object of criminal encroachment; b) a way of passing through the customs boarder (by a smuggler himself, with using auto, railway, air and sea transport and postal items); c) features of a smuggler personality.

As correct notes M.G. Abayev, the main structural elements of the smuggling linked with evasion from payment of the customs duties (as a kind of criminal activity) are: subject activity, motive and purpose, a way of committing of an act, object activity, means and procedures of activity, context (time, place, conditions and others), traces (1, p. 111-112). It is existed a certain ties and relations between mentioned elements. They are caused a structure of criminal event, possibility of it

functioning; a system of crime is reflected through them. This allows considering a mechanism of functioning of criminal activity as a special case of manifestation of the laws of materialist dialectics; and reflection of the results of it functioning into the external environment – as a special case of manifestation of the reflection's features, which is inherent to all objects of material world.

“Crime event, - writes R.S. Belkin, - is one of the material processes of the reality, which is in the link and inter-conditionality with other processes, events and manifestations; is reflected in them and become itself as a reflection of some processes” (3, p. 4).

Crime is a certain type of human activity with its means and procedures, which are recognized illegal from position of criminal law. An investigator should know a priori human life in many of its manifestations. Under this, the measure of appropriate knowledge is systematized in scientifically substantiated criminalist model on intention, preparation, committing and concealment of the crimes. Mechanism of criminal activity as system forming factor is a heart of crime. Law-governed natures of the mechanism create in combination the criminalist model of criminal activity.

The stated is determined necessity considering a model of criminal activity on evasion from payment of the customs duties connected with smuggling.

M.K. Kaminsky and A.F. Lubin found that crime appears and develops on the level of activity, and normally passing through four stages: informational-searching; preparation and organization; activity and operation, i.e. realization of criminal intent; continuation of the criminal activity and providing of concealment of crime's traces (8, p. 17-19).

Basing on an analysis of the criminal cases on smuggling linked with evasion from payment of the customs duties, one can concretize a content of separate groups of rules, principles and reference points, in accordance of which is formed criminalist model of the criminal activity on evasion from payment of the customs duties connected with smuggling.

It seems that the first stage (informational-searching) includes the next activities of smugglers.

Initiator of smuggling considers all ways designing of system of the arguments “yes” and “no” of smuggling execution, studies special books and meets with people who are able to assist him anyway (5, p. 99-103). On opinion of V.M. Galansky, it is required collecting information:

- what item or the good is required to pass through a boarder (volume, mass, packaging, storage, price etc.) and where;
- is there any demand on these goods in any region;
- who will be done by transport, paperwork, payment of customs duties etc.;
- terms of payment between interested persons;
- choice of the way of smuggling, type of transport;
- route direction through customs points;
- date and time of customs clearance of the goods and who of customs officers will be worked at the customs point at this time etc. (4, p. 82-88).

Second stage is a creation of the conditions for realization of criminal intent which includes the following:

- acceptance of measures to the choice of the most optimal and safety place, time, way of passing, type of the transport, way of concealment of the smuggling items etc.
- determination and preparation of the storage places of the items, stuffs and other means;
- search of the routes of passing and sale of smuggling production;
- an order of payment with buyers and agents etc.
- preparation contracts and invoices on deliver of the goods, customs and accompanying documents (5, p. 99-103).

On opinion of S.R. Udarov, a head of smuggling designs a system of arguments to continuing criminal activity and determines possible unfavourable consequences (14, p. 51-54).

Third stage is realization of criminal intent and it includes the next actions:

- coming into contact with manufacturers and sellers;
- purchasing or misappropriation of the items of smuggling;
- passing them through the customs boarder;

- usage of observers, agents and militants guards;
- application of the technical means, transport and guns (if necessary);
- sale of the smuggling items;
- payment between seller and buyer;
- subornation of the officials in the state law enforcements bodies;
- conspiracy of criminal activity;
- focusing to committing regular and bulk smuggling deals (9, p. 117-126).

As I.F. Tuzin thinks, each chain of the organized group fulfill own task; the functions of the chains clear distributed. One of them purchase of misappropriate the goods and deliver to appointed place; second one prepare the goods and document to shipment through a boarder; the third – passing through boarder etc. (13, p. 41-44).

On opinion S.M. Yardanguliyev, if the circle from first of third stages of the smuggling criminal activity was not stopped on detection and disclosure of the crimes then forth stage is connected with continuation of criminal activity and includes the following actions of the criminals:

- contemporary cancellation of criminal activity;
- search new and development former sources of receiving of the smuggling items;
- increasing of the scale of a group's criminal activity;
- arranging of constant supply and selling of the smuggling goods;
- division between members of criminal group money and other values, which received by criminal way;
- analysis of the mistakes of the past criminal activity;
- preparation and committing other crimes;
- studying of situation on safety of criminal group and opportunity to begin new circle of criminal activity, etc. (16, p. 32-36).

Each stage of criminal activity on evasion from payment of the customs duties linked with smuggling has a certain tasks on implementation of the criminal intent, but it is necessary to note that at all stages of criminal activity is decided the task having an essential element of each stage – disguising of the criminal activity and it final results.

From our point of view, establishment of corruption ties with the customs' officers who are mostly active participants of the crime is mandatory attribute of this task.

Anonymous surveys of the participants of foreign economic activity have made by us showed that the customs officers actually made them artificially reduce cost of the goods, appropriate the main part of concealed criminal profit; in case of refusal create obstacles for customs clearance of the goods. All these is accompanied with forgery of the documents, artificially overstate an amount of revenue (profit), which is hidden later.

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