

**Investigatory situations under investigation evasions of
customs payments associated with contraband**

Abstract: Main purpose of the crimes committing in the customs field is to receive uncontrolled by the state an extra-profit from sale/resale of the goods, which are moved through a boarder. Those, who not paying the customs duties, always receive the benefits of the goods' possession are evaded of customs payments and commit contraband.

Primary investigative situations on the cases about evasion of customs payments linked with smuggling objectively depend on the way of commission and concealment of the crime in its proportion with circumstances subjected to be proved on specific case. Therefore, designing and construction of the actions of an investigation's subject objectively depends on the ways and person who committed crime and also which evidence of crime might be obtained. Under this, it is possible to attach the programmes of crimes investigation, i.e. scientifically grounded correct stated of sequences of the investigative, operation-searching and other organizational technical actions of an investigator, their complexes, combinations applicable to forming investigative situations, which execution provide a resolution of the tasks on disclosure and investigation of the crimes.

Keywords: investigative situation; customs payments; contraband; evasion; a way of commission; a way of concealment; typical investigative version.

Appearance and resolution of the criminalistical tasks, like whole investigation, have a situational nature. This means that no one criminalistical task is resolved without consideration of the concrete situation. In this is manifested неразрывная tie of objective (situation) and subjective (tasks), which inherent to any kind of human

activity including crimes' disclosure.

Investigative situation is considered in different ways in criminalistics, there is no yet a united scientific conception in it. So, R.S. Belkin characterized investigative situation like some combination really existing conditions and circumstances, in which an investigation is carried out. These conditions are included information about crime event also [2, p. 139]. Other researchers believe that investigative situation is informational model, reflection of the real situation, and L.Ya. Drapkin gives more complex definition of the investigative situation [8, p.24-26].

Assessing of the definition of L.Ya. Drapkin, who is considered the investigative situation as a model of the situation and O.Ya. Bayev rightly indicates that an investigator works in real conditions, collides with real difficulties, studies real information and event, i.e. first of all, he works with original, with real situation [1, p. 8-11]. Model and modeling are the toolkits of reality cognition, ways of its representation, in particular, in brain of an investigator studying the real situation. As justly noted A.L. Gati, it would be wrong to separate the model of situation from its real base, but it would be much more wrong replacement of the real situation by the model [5, p. 34-39].

The main elements of the real investigative situation are:

- information about an event containing signs of crime;

This information inseparably linked with its sources - the traces, another material evidences, documents, experts' conclusions, testimonies of witnesses, suspected (accused), victims;

- objective conditions, characterizing a mechanism of crime (scene, time, climate conditions, crime situation etc.), from which information on an event is depended;

- behaviour of a suspected (accused) person, witness, victim after crime, their relation to investigation, in particular, actions on concealment of crime or, on the contrary, the actions favouring to investigation;

- health state of these persons, their ability to evaluate events and give testimonies about them;

- reaction of people and mass media at crime, their activity to disclose the crime;
- factors impeding to disclosure of a crime, e.g. loss of documents, material evidences, death of witness, victim, suspected (accused) person, long business trips etc.

Classification of the investigative situations is given in the works of R.S. Belkin, L.Ya. Bayev, I.F. Gerasimov and other criminalists: simple and complex, primary, interim and final. Complex situations are subdivided on problematic, conflict, disordered, and mixed. The conflict should be considered such situations, which are characterized with negative attitude to the investigation process by a suspected (accused) person, victim, witness; it impedes establishing the truth on a case [2, p. 139-148].

Disordered situations appear under absence of effective interaction between an investigator and other police departments, lack of time, weak material technical maintenance and other objective and subjective reasons. In our opinion, a problematic situation is any one, in which are contained contradiction between knowledge one facts and non-knowledge other one, correlation between known and unknown, when sought is not contained in available data about it and therefore it should be built new versions.

Typical and specific situations depending only from the crime and conditions its investigation is met in disclosure of each crime.

Situations have a certain sequence in its development; it might be presented with following:

- criminal situation, i.e. the situation characterizing a process of crime commission; in full extent it might be established in result of investigation;
- post-criminal situation, i.e. the situation, reflecting objective sequences of crime;
- preceding to investigation pre-investigative situation reflecting in some cases pre-investigative checking of facts or receiving information about crime, e.g. by operation policeman on duty of Region Police Department, post-patrol group;

primary investigative situation, characterizing initial accumulation and studying of an event information, containing features of the crime, acceptance of a decision about institution of criminal case. This situation might join with post-criminal or pre-investigative situation, or to be their logical development. Usually its content is an urgent investigative actions - search, interrogation of a victim, eye-witnesses etc.;

- searching situation, which is characterized with a search of criminal on hot traces;

- situation of detention of suspected person with barehanded; it might coincide with post-criminal situation and primary investigative situation;

- situation of acknowledgement of guilt;

- situation of studying and assessment of accumulated information, preparation of evidences for interrogation as a suspected person;

- situation interrogation of suspected person;

- situation of brought accusation to a person, his/her questioning;

- following investigative situations;

- situation of completion of preliminary investigation.

Main purpose of the crimes committed in the customs field is to receive non-controlled by the state extra-profit from sale-resale of the goods moved through customs boarder. Those, who not paying the customs duties, always receive the benefits of the goods' possession are evaded of customs payments and commit contraband. Due to legal nature of imposed by the customs authorities' indirect duties (value added tax, excises) and customs duties; they are included in the goods price and as result are paid by a buyer. Purchasing the goods imported out of the customs control, i.e. by illegal way, the citizens actually are paying money to criminal society, but not at the state's budget [7, p. 11-12].

An issue about initiation of criminal case is formed from combination of the occasions and reasons, which should be checked on some positions. It is necessary to obtain actual information about possible evasion of the customs payments. Then this data should be concretized with calculation of unpaid customs duties all constituents, which influence in a sum of total customs payment or the payment on the uniform

rate. It is an important correct to determine a subject of responsibility, i.e. a person who is obliged to pay customs duties in compliance with the Customs Code (the CD), or a person, who's deliberate actions is caused that the customs duties have not paid. It should be found those persons and bring to solidarity responsibility for non-payment of the customs duties, who knew about illegal movement of the goods, participate in this action and also those persons who knew about illegal nature of the goods and purchased them. It is reasonable preliminary resolution of an issue about sound mind of these persons, sort of their guilt, possibility of its proving. These data are established from the explanations, applications, records of the customs inspection, records of the scene inspection, references, information and other documents received in process of production about violation of the customs rules. The stage of preliminary checking should be completed with initiation of criminal case, and also with decision of an issue on dismissal or institution of the cases about violation of the customs rules (administrative productions) in respect of the persons who are suspected in this offence.

A way of crime commission forms a primary investigative situation, which in turn puts the tactical aims and allows defining an optimal method of investigation, bring and check typical investigative versions. Investigative situations play an important role under acceptance of the tactical decision and using of possibilities of investigation's method of the crimes.

Practical books on investigation of contraband are considered three types of the situations, when there are the following sufficient data: 1. On an offence, under absence of information concerning a person committed of it. 2. On an offence and person without information about his/her location. 3. On offence, person and place of his/her location [14, p. 61]. The situation listed above look like much at the stages of crime's disclosure [6, p. 5-25]. Disadvantage of this approach is seen in absence of specificity; similar situations can be presented in investigation of any crime.

Primary investigative situations on the case about evasion from payment of the customs duties associated with the smuggling objectively depend on the way of committing and concealing of the crime in its correlation with the circumstances,

which are subjected to be proven on a concrete case. Therefore, designing and content of the actions of investigation's subject depends on who and what way a crime was committed, and also what evidences of the crime can be received. Under this, it is possible to apply the programmes of the crimes' investigation, i.e. scientifically grounded exact statements of sequent investigative, operation searching and other organizational technical actions of an investigator, their complexes, combinations applicably to forming investigative situations, fulfillment of which provide decision of the tasks on disclosure and investigation of the crimes [3, p. 217]. Since, a corpus delicti of the crimes considered is very capacious, under their investigation might be applied different programmes. V.E. Kornukhov names this as use of the methods of various classes. For example, in course of investigation of the evasion committed at the stage of circulation of the goods in the internal market (after the customs clearance), it is reasonable to apply the method of class "...Causative relations" – consistency of cognition consists in that the first consequences are examined (signs and facts of violation of the terms of the benefits on the customs payments or requirement of the customs regime), and then – situation, preceding of the crime (who, when, at what stage of the goods' movement, at what the custom body and at what terms, at what the customs regime is produced the customs registration of the goods' storage), and after that – a mechanism (on which subject intention, what sequence of which offences, at what exact time (term), form corpus delicti of evasion from payment of the customs duties etc.)" [13, p. 215].

But, stated is not applicable for evasions from payments of the customs duties committing mostly at the stages of the goods' delivery and the customs clearance, where an optimal is presented application of the method class "Spatiotemporal relations", in which "... other consistency of the investigation process – search of a person who committed crime, checking suspicion etc. (who in actual moved the goods through the customs boarder, at what place, from whose name, where the goods should be sent and where the goods in actual is), and strategic task connected with identifying of a person, crime's instruments, because the fact of identity allows proving the spatial or/and spatiotemporal tie of a man, an instrument with scene

(proving of the fact of the goods movement through the customs boarder and obligations of the specific person to deliver and declare the goods at a certain customs body in combination with information about the fact that the customs payments for sought goods was not paid and consist of exactly established actual sum)” [13, p. 215].

Following the opinion of V.E. Kornukhov, we may suppose that it should be existed the method one more class: “Qualitative and quantitative relationships”. It is studying presentation of unreliable data, which is resulted the ground to calculate the customs payments. Under this it examined the quality of the goods or its qualitative features or the qualities characterizing the status of subject, which gives the right to benefits and directly impact on the size of the customs payments. Found incompliance of the stated and actual allows resolving a matter about intention, and a content of the application (handwriting in the columns of a document, signature) allows establishing a person who committed an offence.

Tactical situation is determined with the investigative situation, and their system is based on primary situation. The task is resulted with attitude of the situation and goal. Formation of certain tasks on investigation of the evasions from payment of the customs duties, primary investigative situations might be led to a certain types [4, p. 38].

Variety of social relations, ways and forms of criminal activity, and also the methods of crimes’ disclosure come to the fact that an investigator in practice is met with not the typical situations, and with different combinations and elements of them. In this connection, it is important significance has an ability to classify the signs of situation: the data relating to the elements of criminalistical characteristics and circumstances, conditions of investigated event of crime [4, p. 228]. On the basis of the situation’s signs an investigator should come to determination of the situation’s type, and then to acceptance of decision about use of volume of the actions, containing in itself a features of this or that programme, or to development a new inductive heuristic strategy, which does not fit to typical procedures of investigation [4, p. 270].

Let's consider typical primary situations of the crimes considered and the programmes of their resolution.

An investigative situation. It is found a fact of legalization of foreign goods in territory of Azerbaijan.

The signs of the situation are the following.

Initial ground of circulation of the goods inside of the country is forged documents. For instance, registration of a car in the office of State Traffic Police on a false passport of a transport, invoice, certificate of the customs office, cargo customs declaration; forged invoice, consignment note on the consumers' goods.

Based on the goods' quality and the customs legislation, there is grounds to suppose that the goods has the foreign origin and exported and it should be cleared and paid all customs duties.

It is possible the following programme of the actions:

a) It is necessary to make clear whether possible identification of the goods or not, and just whether this goods was moved through the customs boarder or not. This is possible when the goods have numbers or marking, which registered during of passing the customs boarder, and also when the identification signs have not changed or destroyed yet – seals, stamps, marking etc. For instance, when sealed wagons, cars, trailers etc. Are on the way, and the origin documents have been ever replaced onto forged ones. If no, there is senseless the following investigative actions [7, p. 6].

b) Detection and search of the goods with mandatory fixation of identification signs, seizure of the seals, description of packaging, recalculation and description of the goods, repackaging, sealing, fixation of each item listed in a record. If this is not done then the inspection records would not correspond to requirements of pertinence and admissibility as evidence on this case.

c) Determination of a point and time of crossing of the customs boarder (about the ways of resolution of this task will be talked below). If the customs bodies have not confirmed a fact of the customs boarder's crossing, then it is forms a new situation, in which one needs either to establish the fact of movement of the goods out of the customs control or to dismiss production on the case.

d) Detection of the persons who have moved the goods through the customs boarder. To do this, it is produced the seizure of the documents about crossing the customs boarder of Azerbaijan, obtained the samples of the persons who are accessorial to the case, assigned handwriting expertise [9, p. 44-47].

e) Establishing a fact, whether were presented the origin or false documents on the goods during the crossing the customs boarder, whether linked this crossing with deception usage of the documents, non-declared or wrong declared or not. The conclusion about that might be done on the grounds of the conclusion of technical criminalistical expertise of the documents, comparison presented documents and received texts of acting technologies crossing and the customs registration of the goods at any customs office. Originality of the documents might be checked after seizure their originals and second copies in the bodies, which issued them, receiving from these bodies in order of written response about authenticity or false examined documents, through expertise of the seals, handwriting expertise of the handwriting and signature.

Investigative situation. Detected and seized the goods produced in other country. It is necessary to prove the fact of evasion from payment of the customs duties for it.

Situational signs are the following.

As result of the customs control after clearance of the goods and transport means, production on the case on violation of the customs rules, it was found and seized the goods registered in the customs like having a reduced tariff or placed under the “non-fiscal” customs regime, requirements of which has not fulfilled.

This circumstance follows from the documents seized together with goods (registration certificate of the transport means with sealed limitation of the customs, sold goods, which placed under the regime of destruction etc.) [11, p. 49-52].

Possible programme of the actions:

a) Detailed interrogation as witnesses the persons, from whom were seized the goods for clarification their origin, the way of receiving by these persons, fixation of the violations of privileges’ terms or requirements of the customs regime. Seizure all documents of the goods from the persons who are actually owners of the goods.

b) Examination of a matter, possible identification of the seized goods and the goods, which customs clearance has been done.

c) Detection and seizure in the customs office of the original documents about the customs registration of the goods seized.

d) Handwriting expertise with purpose to establish, whether a person submitted and signed himself the documents about the customs registration, declared the rights to privilege on the payments, read and knew appropriate terms, restrictions, requirements of the customs regime.

e) Questioning of these persons to make clear a mechanism of an event happened and the forms of guilt: whether they familiarized with restrictions and bans, why and how they violated them [10, p. 66-69].

Investigative situation. There is available a situation indicating the way of evasion from payment of the customs duties linked with providing wrong information, which is caused the ground to impose of the customs payments, the goods has not found.

Signs of the situation.

It if found falsification of the documents about customs registration of the goods.

The goods is not seized, circulated in home market or irretrievably lost (consumed, destroyed).

Possible programme of the actions:

a) Seizure without exemption originals all documents about customs registration and the documents about how they were received by the customs office (list of the documents attached to the cargo customs declaration, signed by a person submitted it and accompanying letter about providing additional documents etc.).

b) Clarification of a matter, determining the size of the customs payments, which was evaded. Determination of possibility of receiving information about the true factors impacting on reduction or release from the payments of the customs duties.

c) Seizure of the originals of the documents about crossing the customs boarder of the goods sought and persons who actually moved the goods.

d) Checking reliability of the factors, which allowed reducing the customs payments. In dependence on a core of the factor might be carried out: checking the originality of accompanying documents of the goods through sending a request about legal aid, and also checking of a person having a privilege to movement of the goods; checking of the goods' quality, if it is available, is produced after detection through inspection, consumer expertise. This is applicable to the cars classified with wrong commodity code in order to evade from payments of the customs duties [12, p. 111-116].

e) Establishing a person, accused in evasion from the customs payments. Through interrogation of witnesses are determined participants of the customs registration, "drivers" of the goods; through handwriting, documents – is established a person arranging a purchasing, movement, customs registration of the goods on the basis of false documents.

Investigative situation. There is information indicating non-delivery under transporting the goods between the customs bodies or illegal receiving of the goods from the warehouses of temporal storage.

Situational signs are the following:

- It is known the customs body, through which the goods was delivered to Azerbaijan, and the customs body where it was transported;
- The customs registration is not completed, the goods is absent: either not delivered in internal customs body or illegal received from warehouse of temporal storage or in transport company.

Possible programme of activity:

- a) Seizure in boarder customs point originals all documents confirming crossing of the goods the customs boarder, procedure of delivery etc.
- b) Seizure of appropriate documents in the transport companies about transportation of the goods, persons- consignors and consignees, carriers, attendants.
- c) On the basis of received document resolution of a matter: whether sufficient of the signs to calculate the customs payments for the goods and its identification? If no,

then there are no perspectives of evidence of the corpus delicti of evasion from payment of the customs duties in this situation.

d) Arrangement of a search of the goods and transport means, search of true consignees.

e) Through the request to make clear a matter: whether the goods was readdressed and registered in other customs office.

Situations listed and the programmes their resolution might be combined in practice.

Bibliography

1. Bayev O.Ya. Conflicts in activity of an investigator (issues of theory). Voronezh, VSU, 1981.

2. Belkin R.S. Course of criminalistics: V. 3. Criminalistical means, techniques, recommendations. M., Yurist, 1997.

3. Volzhenkin B.V. Service crimes. M., Yurist, 2000.

4. Gavlo V.K. Investigative situation//Investigative situation: Collection of the scientific works/ All-union Institute on studying of the reasons and development of the measures of crime preventing/Ed. by V.V. Klochkov. M., 1985, p. 38-41.

5. Gati A.L. Logic base of the criminalistical versions/Science and Education, no. 5, Baku, 2003, p. 34-39.

6. Gerasimov I.F. Stages of crimes' disclosure//Investigative situation and disclosure of the crimes: Scientific works. Issue 41. Sverdlovsk, 1975, p. 5-25.

7. Gonchan Yu.A. The customs as a body of inquiry. Surgut, Asma, 2000.

8. Drapkin L.Ya. Notion and classification of investigative situations/Investigative situations and crimes disclosure. Scientific works of Sverdlovsk Juridical Institute. Sverdlovsk, 1975. Issue 41, p. 26-30.

9. Dushkin S. Evasion from payment of the customs duties//Legality, 1998, no. 2, p. 44-47.

10. Zhbankov V.A. Features of personality and their use for establishing the persons committing customs offences: Monograph. M., RIO RTA, 1999.
11. Zhbankov V.A., Devyatkina E.M. Production of search and seizure by the bodies of inquiry of the State Customs Committee of Russia. M., RIO RTA, 2000.
12. Kozyrin A.N. Customs duties. M., Nalogovy vestnik, 1998.
13. Course of criminalistics. V. 1. Ed. by Prof. V.E. Kornukhov. Krasnoyarsk: Kn. Izd-vo, 1996.
14. Investigation of smuggling: Practical guide. M., Yurist, 1999.