PECULIARITIES OF CONDUCTING INVESTIGATION (SEARCHING ACTIONS) OF NARCOTIC DRUGS SMUGGLING BY ORGANIZED CRIMINAL GROUPS

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Abstract. An attempt is made to distinguish the specifics of conducting investigative (searching) «public» and covert activities during the investigation of smuggling of narcotic drugs, psychotropic substances, their analogues or precursors by the organized criminal groups. Initial procedural, operative and investigative platforms used for investigation of this type of criminal violation are defined.

Keywords: investigative (searching) actions, narcotic drug substances, smuggling, organized criminal group, detection, investigation.

Introduction

Problem statement. International criminal organizations make active use of the «favorable» geographical position of Ukraine for transit traffic of narcotic drugs, including Afghanistan, and Russian Federation, from the countries of the so-called "Golden triangle" (South-East Asia) to European Union. Moreover, prof. Kantsir V. claims that vast profits of terrorism centers are also received through drug business, racket, smuggling, trade of weapon and people. Terrorists cooperate with the organized crime and corrupted state institutions in this field [1].

Complexity of modern social and economic state of the society, intensive migration of population, including its criminal-active part, expansion of intergovernmental relations, when having powerful regional sources for illegal narcotic drugs production and considerable profit on their illegal turnover, create pre-conditions for emerging and functioning of the organized criminal groupings, that are engaged in the drugs trade and have, in many cases, close interregional and international relations. Active penetration of the international drug business on the territory of Ukraine is going on, that is considered as a huge promising market of narcotic drugs as well as a transit point for their smuggle transportation [2].

Consequently, a number of criminal procedures, under investigation of this category of crimes, has increased. This, in its turn, set new issues for scientists and practitioners, to improve existing and creation of new methodologies of conducting investigations, to provide recommendations regarding detecting and carrying out investigative (searching) actions during investigation of narcotic drugs smuggling [3].


**Purpose of the article.** To find out peculiarities of detecting and conducting procedural, investigative (searching) «public» and covert activities during the investigation of smuggling of narcotic drugs, psychotropic substances, their analogues or precursors by the organized criminal groups.

**Presentation of basic material of the research.** Social and economic changes in the state, establishment of democratic institutions in Ukraine, granting of broad rights and freedoms to the citizens during its independence go along with intensification of negative processes, such as: the development of shadow economy, spread of corruption, rooting of organized and professional crime. Transformation of social relations had an impact on criminalization of various branches of the economy, reduction of social protection of the population, boosting of number of people taking forbidden substances.

Illegal turnover of narcotic drugs, «drug addiction» of population are the direct threats for the nation’s gene pool, principles of the existence of the state itself and acquire global scales. Transnational nature of the drug business implies smuggling transportation of narcotic drugs for long distances and embraces territories of various countries. Smuggling of narcotic drugs, psychotropic substances, their analogues or precursors holds a significant place in the structure of the drug business as well as in the system of other drug-related crimes. Crime detection, disclosure and investigation of narcotic drugs smuggling faces substantial complications due to the improvement of criminal mechanisms, use of modern armament and choice of different forms of counteraction to law enforcement bodies by criminals. It is meaningful, under such conditions, to set up and solve the task regarding the working out of criminalistics recommendations aimed at optimization of the pre-trial investigation and efficiency growth of the disclosure of criminals [4].

The peculiar feature of detection of narcotic drugs is that the information about the commitment of this crime is received, in most cases, through an independent disclosure by an investigator, a prosecutor, or other authorized officials from any source of information that can prove its commitment. «Any source of information» assumes getting an information about some criminal violation during the pre-trial investigation of another criminal case by an investigator or a prosecutor, or by the officials of operational divisions, by the results of carrying out of measure aimed at identification of a person that committed a crime, receiving of information from other state power bodies, mass media, or during performing their duties set by the law [5].

In most cases, the detection of narcotic drugs smuggling fully relied on the law enforcement officials while fulfilling their professional activity, as a rule, on certain public officials during the Customs control by:

1) checking documents and information;
2) Customs inspection (inspection and over examination of goods, transportation vehicles of commercial purpose, inspection and over examination of hand baggage and luggage, personal search of citizens);
3) oral questioning of citizens and officials of enterprises;
4) inspection of the territories and warehouses of temporal storage, Customs warehouses, Customs free zones, duty-free stores and other places where goods and transportation vehicles of commercial purpose liable to Customs control are located [6].

In case a law enforcement official directly detects crime evidences, prescribed by the article 305 of the Criminal Code of Ukraine, then a report is drawn out, and if it is detected by someone else, then this person writes a statement, where s/he indicates data that are further passed to the Unified Register of Pre-Trial Investigations (Part 5 Article 214 of the Criminal Procedure Code of Ukraine (CPC)) [7].

The inspection of a crime scene, in urgent cases, can be conducted before passing data to the Unified Register of Pre-Trial Investigations. Detection of narcotic drugs smuggling must be considered an urgent case, that is why the inspection of a crime scene can be carried out before data supply to the Unified Register of Pre-Trial Investigations, information is passed immediately after the inspection. Inspection of a crime scene during the detection of narcotic drugs smuggling is an urgent and obligatory investigative (searching) action. It is explained by the necessity to get information about the circumstances of the crime in their initial, unchanged conditions, as any delay causes...
the loss of material proofs, instruments, and ways of its commitment, as well as the loss of information about persons that committed the crime. An investigator can inspect the crime scene himself or assign it to an official of the operational division by drawing up a written commission. Implementing investigator's or public prosecutor's commissions, the employee of the operative division is authorized with the investigative officer powers. Inspecting the crime scene, in the manner prescribed by law, information regarding the circumstances of narcotic drugs smuggling is recorded, witnesses are found, the detected narcotic drugs, other things and documents significant for criminal procedure are withdrawn, the withdrawn narcotic drugs are weighed. The withdrawn items, things, and documents have to be packed in a proper way to avoid damages and unauthorized access with the attachment of labels certified by relevant signs and signatures of persons, that took part in the inspection, and sealed by the relevant body with the indication in the protocol. If it is impossible to examine the withdrawn narcotic drugs, things, and documents right on the spot, they must be temporarily sealed up and kept as such until they are finally sealed. Examining the crime scene an investigative officer has the right to forbid to any person to leave the place of investigation until it is over as perform any actions that hinder to carry out the inspection. To conduct the inspection in order to get assistance on issues that require special knowledge, it is reasonable to invite a specialist that is authorized by the investigator to conduct measuring, take photos, take audio and video records, draw plans, charts, images of the examined place or its separate parts, make impressions and casts, examine and withdraw narcotic drugs, things, and documents significant for criminal procedure, weigh narcotic drug substances [3].

The protocol about the inspection of the crime scene is drawn up, in accordance with the requirements of the Article 104 of the CPC of Ukraine, in which the investigative (searching) action is recorded by means of technical equipment. After the protocol has been drawn, the participants, who took part in the procedural action, are given the possibility to get acknowledged with the text. Remarks and supplements are added to the protocol above signatures. The protocol is signed by all participants of the procedural action. Besides, after the scene has been inspected, it is worthwhile conducting a personal search in order to detect and withdraw narcotic drug substances. A personal search is conducted, if there are sufficient grounds to consider that a person hides materials or substances significant for criminal procedure. This personal search belongs to the urgent investigation actions and is carried out without a preliminary decision of the investigative judge or the investigator himself. The personal search is carried out with obligatory participation of not less than two witnesses of the same sex. In this case, a personal search is not a part of the scene inspection, that is why a separate protocol about personal search is drawn up, according to the requirements of the Article 104 of the CPC of Ukraine [8].

When the narcotic drug substances are withdrawn directly during the personal search at conducting Customs inspection by the respective officials, then in this case, as a rule, it is not reasonable to conduct the scene inspection, because it will be of rather formalized nature and will not give any positive results for obtaining evidentiary information, except the cases when a person, who has narcotic drug substances, will try to get rid of them.

With the purpose of a rapid, complete and impartial investigation of narcotic drug smuggling, it is efficient for an investigator to determine the conduct of urgent investigating (searching) actions. In addition to examining the crime scene and a personal search, the urgent investigating (searching) actions during the investigation of narcotic drug smuggling should include the examination of material evidence, the expert examination appointment, the search, the interrogation, the property arrest.

The most common investigating (searching) action for obtaining the evidence is the interrogation, as a rule, and it is conducted by an investigator immediately after the detention, a personal search, an examination of the crime scene at the pre-trial investigation area or elsewhere in agreement with the person to be interrogated. During the interrogation of a suspect, first the personal data are identified, which are checked according to the identity document (passport, birth certificate, etc.). After that, the rights, duties and the procedure for the interrogation are clarified to the person. If the person does
not speak the language of the criminal proceedings, an interpreter may be involved in the interrogation. The suspect may refuse to testify. Photographing, audio and/or video recording may be used during the interrogation. If the suspect agrees to give the testimony, he is asked to tell about the circumstances of the crime. The main task of an investigator during the interrogation of the suspect is to clarify and record the testimony of the interrogated person in the full extent of his awareness, concretization and detail, so that each of the circumstances may be verified and supported by other evidence.

In the course of the investigation of narcotic drug smuggling, witnesses can be divided into three groups: a) persons who directly detected narcotic drug substances and arrested the suspect - the relevant officials during the Customs control, the employees of the State Border Guard Service of Ukraine, the officers of the National Police, SSU, etc.; b) witnesses who were present at the time of smuggling (witnesses of the crime); - service staff (train conductors, stewardesses, workers of the railway, bus stations, airports, river and sea port); drivers and passengers of a vehicle used by a smuggler to commit a crime; the chief of the train crew, the captain of the vessel, the head of the tourist group, etc.; c) witnesses who, although they did not participate in the detection and detention of a smuggler, may provide the information about the events preceding the commitment of the crime or after it, - the suspects' relatives, his friends, acquaintances, and colleagues [3].

When interrogating the witnesses, the investigator finds out what exactly they know about committing narcotic drug smuggling by a detained person, the information about the detained person, what exactly they have seen or heard. A protocol of the interrogation is drawn up in accordance with the requirements of Article 104 of CPC of Ukraine [8].

The search is conducted in order to identify and record the information on the circumstances of narcotic drug smuggling. The search of a house or other property of a person is conducted on the basis of the decision of an investigating judge, to which the investigator requests the petition, agreed with the prosecutor. The reasons for the search should be sufficient, otherwise the investigating judge will refuse to satisfy the relevant petition. The implementation of the decision of the investigating judge on the permission to search a house or other property of an individual can be entrusted to the relevant operational units of the National Police of Ukraine by the investigator. An expert may be invited to help with questions that require the special knowledge to participate in the search. The search of a house or other property of a person should be carried out with the obligatory involvement of not less than two witnesses, regardless of the use of technical recording devices, at the time when the least harm is caused to the usual occupations of the person who owns them, unless the person conducting the search will not come to the conclusion that the fulfilment of such a condition can significantly harm the purpose of the search. Before the implementation of the decision of the investigating judge, a person who has a house or other possession, and in the absence thereof another person must be provided with a resolution and its copy must be handed. The authorized officer entrusted with the conduct of the search has the right to prohibit any person from leaving the place of the search until its completion and taking any action that hinders the search. In the absence of persons in the house or other possession, a copy of the resolution must be left in sight in the house or other person’s property. At the same time, the authorized official conducting the search is obliged to ensure the security of the property in the house or other possession of the person and the inability to access by third parties.

During the search, it is necessary to detect and withdraw: 1) narcotic drug substances, psychotropic substances, their analogues or precursors or counterfeit medicines; 2) money and other valuable objects obtained from illegal actions with narcotic drug substances, items and objects prohibited for free circulation; 3) equipment and their parts, dishes or other items that have been used for the illegal producing of narcotic drug substances, including those on which their traces are left (bowls, pans, flasks, sieves of meat grinders, etc.); devices for packaging of narcotic drug substances (scales, containers, empty ampoules, etc.); 4) documents indicating the connection of the suspect to other smuggling participants (notebooks with addresses and telephone numbers, photographs of joint offenders, letters, telegrams, draft records containing the information on smuggling operations, etc.); 5)
travel documents (tickets), reports on international postal deliveries; 6) other objects and documents that may be relevant to the case. The scope and content of searches, in particular those related to the disclosure of closed premises, caches, secret places, disassembling of technical equipment or devices, etc., must be consistent with the achievement of the purpose of the search. An authorized officer conducting a search may decide to conduct a personal search of persons if there are reasonable grounds to believe that the persons present at the time of the search carry substances, items or documents relevant to the criminal proceedings and refuse to present them voluntarily. The information about the search of a person and its results are reflected in the search protocol, which is drawn up in accordance with the requirements of Article 104 of CPC of Ukraine [8].

An examination of narcotic drug substances, psychotropic substances, their analogues or precursors or counterfeit medicines is an investigating (searching) action, which is carried out in order to identify and record the information about the circumstances of the commission of a crime under Article 305 of the Criminal Code of Ukraine, which consists of the examination of the withdrawn substance and the description of its external features: type; quantitative and qualitative characteristics (composition, consistency, colour, smell, size, volume, weight). In the case of withdrawal of ampoules, tablets: the presence of inscriptions on ampoules, tablets, the level of ampoule filling with liquid; the colour of the liquid and the presence of a precipitate; packaging method and packaging material, digital marking and name of the manufacturer, etc. are recorded. The examination should be of a research nature. The speed and completeness of the pre-trial investigation depends on the knowledge of the investigator, his experience and the ability to carry out such an examination.

Article 237 of CPC of Ukraine establishes a procedure for the examination, which stipulates that a suspect, his defence counsel, legal representative should be invited to participate in the examination, an expert is invited in order to receive the assistance on matters requiring special knowledge. It is efficient to take photos during the examination. A protocol is drawn up about the examination, in accordance with the requirements of Article 104 of CPC of Ukraine. The examined material evidence shall be immediately sealed with the signature of the persons who participated in the examination and shall be kept in the storage room prior to the decision of the case. An expert for conducting expert examination is involved. Conducting the expert examination is a procedural action, which involves the appointment of the expert examination, conducting the research and presenting the conclusion by an expert. An expert is involved if scientific, technical or other special knowledge must be used in order to clarify the circumstances relevant to the criminal proceedings. The investigator makes a decision on the appointment of the expert examination, in accordance with the requirements of Part 5 of Article 110 of CPC of Ukraine. A complete and comprehensive study of the withdrawn substances is carried out during the forensic chemical examination. Objects of the research are narcotic drug substances, psychotropic substances, their analogues or precursors or counterfeit medicines.

By means of a forensic chemical examination, the affiliation of the withdrawn substances or means to a definite type is established, which according to the Law "On the circulation of narcotic drug substances, psychotropic substances, their analogues and precursors in Ukraine" of February 15, 1995, are included in the List of narcotic drug substances, psychotropic substances and precursors [9].

The questions put by an investigator to an expert and his conclusion regarding them cannot go beyond the special knowledge of the expert. An expert's conclusion is not mandatory for an investigator who conducts a criminal proceeding. The disagreement of the investigator with the expert's conclusion must be motivated in the relevant resolution.

Sanctions of Part 2, 3 of Article 305 of the Criminal Code of Ukraine provides the confiscation of property. In these cases, the investigator has the right to impose an arrest on the suspect's property. The investigator shall file an application for seizure of property with a petition, agreed with the prosecutor, to the investigating judge. The application must be supplemented with the originals or copies of documents and other materials by which the investigator substantiates the arguments of
the petition. Taking into account the foregoing, we suggest the following algorithm of actions at the initial stage of the investigation of narcotic drugs smuggling: 1) registration of an application, notification or report; 2) an examination of the crime scene; 3) inputting the information in the URPI; 4) conducting a personal search; 5) an interrogation of a suspect; 6) conducting a search of a house or other property of a person; 7) conducting the examination of narcotic drug substances; 8) the appointment of forensic chemical examination; 9) the interrogation of witnesses; 10) the imposition of seizure on property.

Taking into consideration that every criminal proceeding has certain peculiarities, initially it may be necessary to carry out other investigating (searching) actions to investigate smuggling of narcotic drug substances in each case.

Conclusions

Narcotic drug smuggling, as a rule, is carried out with preliminary preparation, the direct relocation of the object of smuggling across the state border and concealing this criminal activity. The study of customs and investigative practices has allowed to highlight the important elements of the circumstances of narcotic drugs smuggling (the geographical location of Ukraine, the openness of its territory, the phenomenon of illegal migration, the shortcomings in the activities of the Customs service), as well as the specific conditions contributing to the implementation of this category of crimes (insufficient technical and technological level of staffing of Customs control and operational divisions; insufficient organization of labour of Customs officers; lack of proper experience of Customs officers; the presence of corruption relationships with Customs and other law enforcement officers, the lack of adequate international interaction to detect narcotic drugs smuggling) [4].

The peculiarities of the investigation organization of narcotic drug smuggling appear in the following areas: a wide range of interactions between different entities (bodies that oversee the compliance with Tax and Customs legislation, bodies of the State Border Guard Service, bodies of the Security Service of Ukraine, prosecutor’s offices of Ukraine, operative and investigative bodies, expert institutions and relevant departmental services, etc.); the feasibility of the formation of investigative-operational groups, the application of the group method of investigation; the need for regular exchange of information between interacting entities in relation to the disclosure and investigation of this category of crimes; working out joint planning of investigations and the coordination of joint activities.

Planning of the investigation and processing of the system of standard versions is significant in the system of organizational activity of the investigator, taking into account various grounds (an anticipated event, the mechanism of the crime, the subject of a criminal offense, the way of concealing the crime, the direction of the object of smuggling, the repetition of the crime commitment, possible counteracting to the detection of smuggling, etc.) [4].

Determining the situation of the investigation allows you to choose the right direction of the investigation and the tools that will be most effective. The relevant investigating actions include: an examination of the crime scene (an examination of the detection place of narcotic drug substances), an examination of smuggling object (an examination of narcotic drug or other substances), witnessing, interrogation of the suspect and witnesses, the appointment of forensic examinations.

References

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