

PROBLEMS OF IDENTIFICATION AND DISCLOSURE OF CRIMES IN THE FUEL AND ENERGY COMPLEX OF THE REPUBLIC OF KAZAKHSTAN

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ABSTRACT

The fuel and energy complex is an important part of the industry. Therefore, the authors studied the question posed. The main goal of the work is to examine the main problems of identifying and solving crimes in the fuel and energy sector of the Republic of Kazakhstan. It is established that the main crimes are related to tax evasion, illegal business activities, lack of a license or violation of it. These illegal actions do not refer to obvious crimes, but are uncovered with the help of operational-search activity. As a result, it was investigated, the authors established that the system of initial investigative actions should include the inspection of the scene of the incident and in case of establishing the motor transport where the transportation of petroleum products was carried out, the examination of the detained vehicle, the establishment of the planned transportation route, inspection of documents and items of illegal turnover of petroleum products, appointment of audits and audits, obtaining certificates, copies of documents, expert opinions.

Keywords: Operational Measures, Theft, Illegal Business, Taxes, Pre-Trial Investigations.

INTRODUCTION

The fuel and energy complex is an important industry, which contributes to the stability, independence, economic security of the country. This sector of the economy provides the country with various types of energy, a wide range of petroleum products, raw materials for the chemical industry and is a combination of geological exploration, production, transportation, storage and sale of energy resources and products of their processing (Ganglmair, 2017). The complex retains a stable economic position due to its complex diversified structure and high profitability, it includes the coal-mining, oil, gas and electric power industries, which are the main sectors of the economy and provide the vital activity of the state (Esenova, 2008).

Entrepreneurial activity is one of the main segments of the replenishment of the budget of the Republic of Kazakhstan, the activities of business entities of which are protected, at the same time, to ensure the protection of the legitimate rights and interests of citizens, constant monitoring of compliance with the established procedure for conducting such activities (Sraubaev, Serik, Erdesov & Shintaeva, 2014).

A crime in the fuel and energy complex for many years remains a challenge (Jourdani, Mounir & Marjani, 2017). In spite of the measures taken by law enforcement agencies, especially those related to the circulation of oil and gas products, remains under the control of

organized criminal groups; Tax evasion, misuse of tax benefits, illegal oil and gas production, theft of money, bribery and other economic crimes are widespread (The Criminal Code of the Republic of Kazakhstan, 2017).

All this testifies to the need to intensify the fight against economic crime at the facilities of the fuel and energy complex, to improve the theory and practice of criminalistics support for the prevention and detection of crimes.

PUNISHMENT FOR COUNTERACTION IN THE SPHERE OF FUEL AND ENERGY COMPLEX

The fuel and energy complex of Kazakhstan is one of the sources of replenishment of the state budget; accordingly, the welfare of citizens of Kazakhstan depends on the security of this sphere.

According to Art. 26 of the Constitution of the Republic of Kazakhstan, each citizen has the right to freedom of entrepreneurial activity, free use of his property for any legitimate business activity. In order to engage in entrepreneurial activities, it is necessary to obtain an appropriate permit (The Constitution of the Republic of Kazakhstan, 2017).

As part of the protection of the country's fuel and energy complex from illegal activities by the state, certain types of criminally punishable acts are envisaged, to which the acts provided for in Art. 197, 214, 245 of the Code of Criminal Procedure of the Republic of Kazakhstan, which in the overwhelming majority are committed and violated by the restrictions established by law.

In the course of counteracting illegal activities and protecting the fuel and energy complex of the country, there are a number of problems associated with the fact that the data do not refer to obvious criminal offenses.

When you receive information about the commission of unlawful actions, in the fuel and energy complex it is required to conduct checks on the information received, as well as audits. At the same time, law enforcement bodies in accordance with Art. 2 of the Law of the Republic of Kazakhstan "On Operational-Search Activity" have the right to conduct operative-search activities aimed at identifying, preventing and suppressing crimes. The fixed formulation presupposes the protection of citizens from unreasonable involvement of them in the orbit of the criminal process.

It is necessary to take into account the specifics of the possibility of carrying out operational search activities that can only be carried out before the registration of a crime report in the Unified Register of Pre-Trial Investigations, respectively, when information on illegal activities by citizens in the fuel and energy complex is received on operational sources, applications that can only be carried out for crimes (The Code of Criminal Procedure of the Republic of Kazakhstan, 2017). Accordingly, the legislator does not provide for the prevention and suppression of criminal offenses, in particular, criminal offenses.

The current mechanism, in our opinion, does not sufficiently contribute to the activities aimed at suppressing and preventing criminal offenses in the fuel and energy sector, respectively, the lack of effective mechanisms for suppressing and preventing these acts adversely affects the investment climate in Kazakhstan.

ANALYSIS OF CRIME IN THE FUEL AND ENERGY COMPLEX

Considering crime in the fuel and energy sector, we believe it appropriate to note the fact that both illegal entrepreneurial activity and tax evasion do not fall into the category of obvious crimes. In the overwhelming majority of these acts were disclosed with the use of operational-search measures provided for by the Law of the Republic of Kazakhstan "On Operational-Search Activity".

First, these acts do not relate to obvious crimes and can be identified only if business entities or false objects do not comply with such activities if certain requirements of the law are not observed.

Secondly, for the commencement of pre-trial proceedings, it is necessary to have such a sign of the objective side of the crime-the receipt of income from illegal business-a large amount and in case of tax evasion-the failure to pay taxes and (or) other mandatory payments in large amounts. Accordingly, in the commission of the act of Art. 214 receiving income in the amount of 1000 monthly calculated indicators and under art. 245-causing the organization, the state of damage in the amount exceeding 50 thousand monthly calculation indicators.

At the same time, the system of initial investigative actions should include the inspection of the scene of the incident and in the case of the establishment of motor vehicles on which the transportation of petroleum products was carried out, the examination of the detained vehicle, the establishment of connections, the planned transportation route, inspection of documents and items of illegal turnover of petroleum products, the appointment of audits and audits, obtaining certificates, copies of documents, conclusion of specialists.

We believe the presented scheme of actions is quite democratic, in order to collect actual evidence of the composition of criminal offenses and based on the realities of our time, the prevailing judicial and investigative practice; it is advisable to apply for amendments and additions to the legislation (The Law of the Republic of Kazakhstan, 2017).

At the stage of pre-trial proceedings, the person conducting the proceedings in the case has to deal with various initial data-an information element of investigative situations.

Thus, to start pre-trial production, the following types of input data are required:

- Whether there is an application, message or other information about the illegal entrepreneurial activity and (or) the production, storage, transportation, storage of oil and oil products by a private entrepreneur or a legal entity or oil refining without documents confirming the legality of their origin;
- Whether there is information about the commission of these crimes by a business entity or a legal entity whose criminal activity is terminated;
- Is there information on the economic activities of the business entity?
- What are the volumes obtained during the implementation of entrepreneurial activities?
- Information about the distorted data;
- Information about the hidden objects of taxation.

From the moment of commencement of pre-trial proceedings, the person conducting pre-trial proceedings faces the construction of versions about the consequences of the audited entity:

Typical versions of the audited entity when investigating illegal business, evading taxes to the country's fuel and energy complex include:

- Whether illegal business activity in the fuel and energy complex caused significant material damage and whether it involves the extraction of income in large or especially large damages;
- What activities of the business entity entailed tax evasion?

- These typical investigative versions can be detailed on the basis of the content of the criminal offense of the country associated with the fuel and energy complex (Cato and Ishihara, 2017).

At the time of the decision on the commencement and production of pre-trial investigations are composed of typical investigative situations:

- Whether there are documented facts of illegal business activities that caused significant material damage to citizens, organizations or the state associated with the extraction of income on a large or very large scale;
- Whether there are facts of carrying out entrepreneurial activity without the presence of a state registration required for such activity, without a license or with violation of the licensing conditions stipulated by the state;
- Whether there are documented facts of evasion by a business entity from paying taxes and (or) other compulsory payments to the budget by failing to declare a declaration when the submission of a declaration is mandatory;
- Whether there are documented facts of evasion by a business entity from paying taxes and (or) other mandatory payments to the budget by entering into the declaration knowingly distorted data on incomes and (or) expenditures, by concealing other objects of taxation and (or) other obligatory payments;
- Are there documented facts of evasion by the business entity from payment of tax and (or) other obligatory payments to the budget, if this act entailed non-payment of tax and (or) other mandatory payments in a large amount.

CHARACTERISTICS OF OPERATIONAL-SEARCH ACTIVITIES

Previously, the legislator provided for the possibility of conducting operational search activities for all categories of crimes, i.e., crimes of small, medium, serious and especially grave crimes.

We support this approach to preventing and suppressing activities in the sphere in question, as illegal entrepreneurial activity and tax evasion can be obtained during operational search activities.

At present, this approach has changed the employee of the special operational units upon receipt of such information should the information received register it in the ERDR (Xin and Zhenquan, 2015). On the basis of the initial information, it is impossible to establish the presence of a crime and the lack of insufficient information leads to the early commencement of pre-trial proceedings, persons against whom a pre-trial proceeding is initiated in the appointment of inspections against them or audits stop the production of illegal activities.

In accordance with the amended legislative acts of the Republic of Kazakhstan dated December 11, 2017 "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Concerning the Modernization of the Procedural Principles of Law-Enforcement Activity," the legislator substantially reduced the scope of the operational search activities, on the application of these measures on crimes of small gravity, the scope for crimes of medium gravity is also significantly reduced.

In accordance with Art. 11 of the Criminal Code of the RK, the acts provided for in Art. 214 of the Criminal Code of the Republic of Kazakhstan, part 1-refers to a crime of small gravity, part 2-to crimes of medium gravity and the act provided for in Art. 245 CC RK Part 1 and Part 2 refer to crimes of medium gravity, Part 3 to serious crimes.

In accordance with the amended and supplemented in Part 4 of Art. 12 of the Law of the Republic of Kazakhstan "On Operative-Investigative Activities" the possibility of using special operational-search measures is extended to the act only as provided for by Part 1 of Art. 214 of the Criminal Code of Kazakhstan, while not taking into account the fact that the act provided for

by Part 2 of Art. 245 of the Criminal Code of the Republic of Kazakhstan also applies to crimes of medium gravity and considering that it contains a qualified type of act, the commission of a crime by a group of persons by prior conspiracy has an increased degree of public danger.

CONCLUSION

This approach is not supported by us, the legislator provides for a restriction on the use of operational-search measures in the sphere in question, which contradicts the policy of protecting the fuel and energy complex from criminal encroachment.

On the basis of the foregoing, we believe it appropriate to amend Art. 12 of the Law "On Operative-Investigative Activities" of the following content and extend the possibility of using operational-search measures for the following acts "h. 1, 2 tbsp. 214 and part 2 of Art. 245 of the Criminal Code of the RK. "

In the conduct of pre-trial proceedings in the fuel and energy sector, in cases of illegal entrepreneurship, tax evasion, proposals for improving legislation should be taken into account, which will have a beneficial effect on the protection of rights and the protection of the sphere of activity in question.

REFERENCES

- Cato, S. & Ishihara, A. (2017). Transparency and performance evaluation in sequential agency. *Journal of Law, Economics and Organization*, 33(3), 475-506.
- Esenova, G. (2008). Fuel and energy complex of Kazakhstan: Reforms, problems, prospects. *Central Asia and the Caucasus*, 5(59), 123-139.
- Ganglmair, B. (2017). Efficient material breach of contract. *Journal of Law, Economics and Organization*, 33(3), 507-540.
- Jourdani, M., Mounir, H. & El-Marjani, A. (2017). Latest trends and challenges in proton exchange membrane fuel cell (PEMFC). *Open Fuels and Energy Science Journal*, 10, 96-105.
- Sraubaev, E.N, Serik, B., Erdesov, N.Z. & Shintaeva, N.U. (2014). The state of the fuel and energy complex of the Republic of Kazakhstan and the main environmental problems associated with it. *Ecology and Hygiene*, 1, 18-20.
- The Code of Criminal Procedure of the Republic of Kazakhstan*. (2017). Almaty: Norma-K Publishing House.
- The Constitution of the Republic of Kazakhstan*. (2017). Almaty: Norma-K Publishing House.
- The Criminal Code of the Republic of Kazakhstan*. (2017). Almaty: Norma-K Publishing House.
- The Law of the Republic of Kazakhstan*. (2017). On Operative-Search Activity. Almaty: Norma-K Publishing House.
- Xin, H. & Zhenquan, W. (2015). Research on the optimization model of energy efficiency of industrial park. *Open Fuels and Energy Science Journal*, 8, 133-139.