



Corruption-Related Crimes as a Form of Counteraction to Crime Investigation

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Abstract. *This study considers the formation of corruption-related crimes as a form of counteraction to crime investigation, features of its pretrial investigation, and the formation of certain theoretical provisions of the forensic doctrine about overcoming the counteraction to crime investigations.*

Keywords: *corruption-related crimes, mechanism of crime, counteraction to crime investigation, forms of counteraction to crime investigation, overcoming the counteraction, criminalistics methods, and forensic doctrine about overcoming the counteraction to crime investigation.*

Receipt of state benefits by persons not authorized to receive them or provision of benefits by persons not authorized to perform state functions at the federal or city district levels of Moscow, St. Petersburg, or Sevastopol, as well as those municipal districts, urban or rural settlements, fully qualifies as corruption offenses or even crimes.

At the moment, the list of corruption breaches includes the following acts: Fraud with use of official powers (Article 159 of the Criminal Code); Embezzlement (Article 160 of the Criminal Code); Obstruction of lawful business activities (Article 169 of the Criminal Code); Registration of illegal land transactions (Article 170 of the Criminal Code); Abuse of authority (Article 285 of the Criminal Code); Abuse of one's office (Article 286 of the Criminal Code); Illegal participation in business activities (Article 289 of the Criminal Code); Bribe receipt (Article 290 of the Criminal Code); Bribery (Article 291 of the Criminal Code); Forgery and entering false information (Article 292 of the Criminal Code and Article 285.3 of the Criminal Code); Misappropriation or other misuse of budgetary funds (Article 285.1 of the Criminal Code and Article 285.2 of the Criminal Code); Negligence (Article 293 of the Criminal Code);

and Provocation to bribery (Article 304 of the Criminal Code)¹.

A significant list of crimes and an analysis of law enforcement practice not only confirms the presence of corruption in the country and its constant growth but also defines the problem as one of the most acute and topical issues of state administration. The detection and investigation of crimes of corruption, because of the complexity of the problems and circumstances, impose a great responsibility and require the maximum concentration of law enforcement agencies.

A separate set of problems facing investigators pursuing corruption-related crimes comprises those encountered during the course of the investigation. This is because detection of this crime type and the subsequent investigations almost always concern subjects authorized to perform state functions at various levels of federal, regional, local, and municipal significance. It is clear that in the subsequent investigations of corruption-related crimes, the relevant actors invariably apply all possible types and methods of countering them.

¹ Criminal Code of the Russian Federation of 13.06.1996 N 63-FZ (ed. of 27.10.2020).

The Russian founders of foreign and domestic criminalistics — G. Gross, V.I. Gromov, S.N. Tregubov, and I.N. Yakimov — repeatedly draw attention in their works to the methods of criminals' concealment of their crime traces, and the various options that contribute to their evasion from criminal responsibility. The works by I.E. Bykhovskiy, E.V. Baranov, A.N. Vasiliev, A.V. Dulov, N.I. Porubov, A.A. Zakatov, and A.A. Schmidt, among others, all contain accounts of widely used methods of counteraction, such as interrogation, searches, giving false testimony, refusal to give evidence, reservations or self-incrimination, exposure of dramatizations, etc.

All this puts before law enforcement agency investigators a separate, independent task—that of overcoming the opposition to their crime investigations and the use of various methods by the criminals to the use of special knowledge to ferret out the truth about the tasks of criminal prosecution.

A significant place in the criminologists' works is occupied by the analysis of the crime's concealment, as one of the most common ways to counteract the crime investigation. The works of G.G. Zuikov, V.N. Karagodin, V.P. Lavrov, I.M. Luzgin, G.N. Mudyugin, V.A. Ovechkin, I.B. Filonov, V.G. Tanasevich, and others are devoted to this aspect of the issue. Forensic scientists have defined the essence of “countering the crimes' investigation,” the criteria for classifying actions to conceal socially dangerous acts and, on this basis, have developed practical recommendations for investigative bodies [1].

The issues of overcoming the opposition to criminal investigations have been specially considered since the end of the last century. Works by the following authors included: V.N. Karagodin, “Overcoming counteraction to preliminary investigation” (1992); E.U. Babayev, “Fundamentals of Criminalist Theory of Overcoming Counteraction to Criminal Prosecution” (2006), “Theoretical and Practical Problems of Overcoming Counteraction to Criminal Prosecution” (2010); I.V. Tishutin, “Overcoming Counteraction to Organized Criminal Activity: Organizational, Legal and Tactical bases;” (2013) [2]; I.V. Verenich, A.M. Kustov, and V.M. Proshin, “Criminalist Theory of the Crime Mechanism” (2014) [3].

In studying the problems of overcoming counteraction to criminal investigations, the author in 2018 prepared a monograph, “Theoretical Foundations for Overcoming and Neutralizing Counteraction to Criminal Investigations” [4].

The large number of criminal cases studied, especially crimes of corruption, offer a basis for identifying the most typical and common errors at the initial stage of the investigation.

The most common errors at the initial stage of the investigation require more careful consideration

for several reasons: an analysis of investigative and judicial practice in cases of corruption crimes has shown that in most cases, criminal penalties are imposed at the lowest possible sanction of the criminal article. In some cases, a suspended sentence is imposed. There are obvious facts of not just investigative and judicial errors but also those of judicial arbitrariness. These problems entail the failure to apply the appropriate punishment to the guilty. Worst of all are the more serious consequences, such as the conviction of absolutely innocent persons.

The system of recommendations and the development of appropriate methods by forensic scientists and practitioners is an integral part of the forensic support for investigation of crimes and overcoming the above shortcomings.

The structure of such methods includes models of crime mechanisms and programs of investigative actions at the initial stages of investigation. To achieve the goals set forth in this article, we will consider the formation and implementation of corruption-related crime mechanisms.

The mechanism of corruption crimes is a complex of three constituent elements formed in the following stages: a) the initial stage formation, b) the implementation of the main offense phase, c) the final stage in the offense onset.

The initial stage of the mechanism of corruption-related crimes—Russian criminal law defines the deliberate creation of conditions for the subsequent criminal act's implementation (the adaptation of various means and tools) as the initial stage of preparation for the crime, i.e., the initial stage of the crime mechanism formation.

“The stage preceding the commission of a socially dangerous act is in the form of the intent formation or the crime plotting. The intent formation is a mental activity of the subject aimed at creating a mental model of the future crime: setting goals and objectives, choosing means and ways to achieve them, considering the consequences of concealing crime traces, activities to counteract the crime investigation, etc.”².

“At the initial stage of the crime mechanism formation, in certain situations, the subject verbally informs other persons about the desire to perform an action in favor of the interested person, although the criminal has not yet begun to carry out the planned criminal actions. Intent can manifest itself in the commission of not only non-criminal actions, but also aimed at preparing for the crime. Preparation for a crime is expressed in the commission of active actions aimed at ensuring the possibility of carrying out the planned crime, as

² Belkin R. S. Criminalistics. History, general and private theories. Vol. 1. M., 1978. p. 125.

well as in the search for accomplices and collusion to commit the crime”³.

The crime subject in this case is an employee or representative of state authorities, state and municipal institutions, commercial organizations, or other structures that are endowed with administrative and other powers in accordance with the established legal procedures.

“In the regulatory documents prepared by the heads of organizations and institutions, inaccuracies, distortions or gaps may be allowed, which in the future will become provocative and the basis for corruption. Practice analysis has shown that in recent years, such provisions have been introduced into the adopted regulatory legal acts that subsequently provoke or ensure the commission of corruption-related crimes. Legal entities — institutions, organizations, enterprises, etc. — in their production or organizational and managerial activities, allow defects or gaps that are studied by future criminals and are further taken into account when preparing and committing crimes. At this stage of the crime formation mechanism, the role of the victim is also significant. The actions of the future victim can be purposeful (provocative or risky) or unintentional (careless or unintelligent)”⁴.

The main stage of the mechanism of corruption-related crimes—By definition, based on its name, this crime mechanism stage is the main and most critical. At this stage of the corruption crime mechanism, the criminal act is carried out, the criminal takes all possible ways to conceal or erase the crime traces, actions are undertaken by various participants in the criminal event to counteract the crime investigation, the criminal can be counteracted by the victims, etc.

The main distinguishing feature of corruption-related crimes is the fact that a government employee violates or exceeds his official position in order to achieve some commercial or other objective, whether in his own interest or those of another person, possibly in the criminal community. The criminal subject at this stage of the crime mechanism may use various methods to violate or exceed their official duties. They depend directly on the official rights and obligations of the person performing them. For example, the employee might alter the management system and organization, violating the relevant rules of procurement or sales or changing the technological rules of processing and construction, management and distribution, documentary accounting and display systems, or any number of schemes.

³ Belkin R. S. The course of criminalistics. Textbook. Moscow: Law and Legislation, 2001. pp. 22-28.

⁴ Ibid.

The subjects themselves choose the time, place, and method of committing the crime, but at the same time they are limited by the situation, which either creates an objective opportunity or makes it difficult or even impossible for criminal activity. In the process of committing a crime and afterwards, the criminal, as a rule, performs actions to conceal the crime: destroying, in whole or in part, the material evidence, such as clothing, dishes, or cigarettes; disguising their actions by changing the perception of the crime preparation or commission, as well as the perception of one's identity or information sources; falsifying documents and facts; creating false information; consistently changing actions or means in different places and at different times; or staging another crime, etc.

In the course of committing the criminal act, the situation may change, often as a result of the criminal's or the victim's actions. The criminal, as a result of a possible change in circumstances, can make significant adjustments to the model of the crime mechanism. The subject changing the actions of the crime depends on many factors, among which it is necessary to distinguish the following: the personality characteristics of the criminal — his moral, psychological, demographic, professional, intellectual, role-playing, and other characteristics; features of the victim's personality and his characteristics; the specifics of the department, institution, or organization where the criminal works; the uniqueness of the situation that develops during the commission of the crime (whether favorable, unfavorable, or neutral for the crime continuation and then bringing it to the planned conclusion); the specifics of other circumstances that prevent or facilitate the commission of criminal actions, etc. [5].

All the criminal's actions are performed compactly; they are not “broken” in time. The methods of corrupt crimes are infinitely diverse: from primitive and obvious (in the form of receiving bribes) to complex and veiled (in the form of officials' participation, including their relatives and friends; they may participate personally or through proxies in various business activity spheres. It may involve the corruption of top-level officials involved in lawmaking or be in the form of lobbying laws for remuneration, etc.).

Thus, official crimes are characterized by the following signs: temporary borrowing or use of state or public funds for other purposes, including the misuse of budget funds; “scrolling” them in commercial banks; using advantages not provided for by legal acts in obtaining loans; the acquisition of securities, real estate, and other property; assistance and support in the creation of commercial structures at federal and municipal enterprises to transfer the funds of these enterprises

to the accounts of certain firms; transferring of federal and municipal property at low prices to business structures, bypassing the sale through auctions; concluding contracts that are unprofitable for the state; unjustified use of advantages for oneself and one's relatives, including the use of official premises for personal or group purposes; means of transport and communication; electronic and computer equipment; money and other state or municipal property, in particular illegal leasing for low payment; illegal use of official position in the process of state privatization or municipal enterprises for the purpose of acquiring them into private ownership or seizing a significant number of shares by the official, persons close to him, or other private persons in whose interests the official acts; participation in the activities of commercial enterprises as founders or managers, thus providing protection in solving production problems; provision of unjustified benefits and profits of a material nature, such as bonuses, allowances, increased pay rates, etc. to individual employees; exploitation of subordinates' labor for personal interests (for example, in the repair or construction of apartments, houses, villas, etc.); appropriation of the results of subordinates' work; poor decision making, publishing illegal acts, unreasonable use of disciplinary, administrative, material liability against individuals or legal entities (e.g., repeated orders to disciplinary responsibility with the purpose eliminating unwanted employee, the issuance of orders for the reduction of states with violations of the established order, etc.); failure to take measures against violators, which creates an atmosphere of permissiveness in the collective and the commission of even greater violations; connivance, assistance, or failure to take measures against offenders; refusal to register competitors of interested parties, to issue them licenses for the right to engage in certain activities, granting a corrupt civil servant structure a monopoly right to trade, as for example, gas weapons, petroleum products, rare earth elements, etc.; promotion of unfair competition methods in the consumer market, which is expressed through the legal and economic suppression of competitors for persons who have bribed officials (tax, arbitration, investigative and judicial suppression) [5, 6].

The crime subject at the main stage of the criminal act mechanism is in two states: either he is passive, due to ignorance of the actions taking place or other circumstances; or he is in a state of active resistance. One of the dangerous ways of concealing a crime used by the victim is not reporting or informing about the facts of criminal encroachment on their rights and legitimate interests to law enforcement agencies.

Some of these actions during the main stage of the crime mechanism formation can be

committed by persons who are accidentally involved in a criminal event and do not realize that they are its indirect participants. Any actions within this stage affect the environment, the processes of production, distribution, the relationship of people, their conditions, and also introduce defects in various systems — primarily social, mental, economic, technological, or moral and ethical ones. At this stage, material changes in the objects of interaction naturally occur. They capture the individual characteristics of the subjects, both direct and indirect, of the criminal event. It may also include information about the means of achieving a criminal result or about the content and methods of performing camouflage actions, etc. The resulting system of changes allows the investigator to restore the components of the main stage for the formation of the committed crime mechanism.

The final stage of the corruption-related crime mechanism — The occurrence of a criminal result in the form of obtaining material or other profit or goal is the main task of the final stage for the mechanism of committing a crime. Basically, this stage of the crime formation mechanism is characterized by the onset of the criminal result, the occurrence of the material and/or other damage, acts of crime concealment (i.e., action crime concealment can include hiding not only the consequences but also the events of a crime), and the preparation and implementation of counteraction to crime investigations.

Basically, the actions of criminals are aimed at disposing of the received benefits, and hiding the traces of their activities. The resulting consequences of the crime are characterized as follows: the offender has benefited from the crime results; there have been external or structural changes in the organization of the activities at the department in the institution, along with changes to production technology, property rights, or other consequences; there have been changes in the structure of the legal entity: in the systems of organization and management, accounting and control, in technological or economic indicators, in document management and accounting, etc.

At the final stage, direct or indirect participants in a criminal event may commit criminal acts to conceal the crime traces, which may be qualified as independent crimes, as well as prevent their disclosure and actions to mitigate the severity of the criminal consequences; staging another crime; hiding or destroying the means of the crime; influencing the victim, etc. In some cases, this stage may be absent, as, for example, in situations where the criminal activity of the subject is suppressed or stopped at the previous stages of the formation and implementation of the crime mechanism [5].

Thus, the consideration of constructing a mechanism for committing corruption-related crimes allows us to state the fact and understand that there is a counteraction to the investigation of crimes in almost every available case. The question of the necessity and feasibility for developing a forensic doctrine of the resistance to investigating crimes as an integrated system of theoretical principles and practical recommendations can allow us to quickly and efficiently expose the criminal to justice.

References

1. Verenich I.V. Возникновение и становление криминалистического учения о преодолении противодействия расследованию преступлений. Сборник статей Всероссийской научно-практической конференции «Криминалистические проблемы организации расследования преступлений». Краснодар, 2020. (In Russ.).
2. Tishutina I.V. Преодоление противодействия организованной преступной деятельности: организационные, правовые и тактические основы. Moscow, 2013. 490 p. (In Russ.).
3. Verenich I.V., Kustov A.M., Proshin V.M. Криминалистическая теория механизма преступления. Moscow: Yurlitinform, 2014. 640 p. (In Russ.).
4. Verenich I.V. Теоретические основы преодоления и нейтрализации противодействия расследованию преступлений. Moscow: Yurlitinform, 2018. 256 p. (In Russ.).
5. Verenich I.V., Kustov A.M., Proshin V.M. Криминалистическая наука и теория механизма преступления. Moscow: Yurlitinform, 2016. 672 p. (In Russ.).
6. Verenich I.V., Kustov A.M. Исползование специальных знаний в процессе расследования преступлений, совершаемых в сфере строительства, эксплуатации зданий и сооружений. Moscow: Yurlitinform, 2013. 232 p. (In Russ.).

Преступления коррупционной направленности как форма противодействия расследованию преступлений

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***Аннотация.** Предметом настоящего исследования является рассмотрение вопросов формирования механизма преступлений коррупционного характера как формы противодействия расследованию преступлений, особенности их предварительного расследования, а также формирование отдельных теоретических положений криминалистического учения о преодолении противодействия расследованию преступлений.*

***Ключевые слова:** преступления коррупционной направленности, механизм преступления, противодействие расследованию преступлений, формы противодействия расследованию преступлений, преодоление противодействия, криминалистическая методика, криминалистическое учение о преодолении противодействия расследованию преступлений.*

Список литературы

1. Веренич И.В. Возникновение и становление криминалистического учения о преодолении противодействия расследованию преступлений // Сборник статей Всероссийской научно-практической конференции «Криминалистические проблемы организации расследования преступлений». Краснодар, 2020.
2. Тишутина И.В. Преодоление противодействия организованной преступной деятельности: организационные, правовые и тактические основы. М., 2013. 490 с.
3. Веренич И.В., Кустов А.М., Прошин В.М. Криминалистическая теория механизма преступления. М.: Юрлитинформ, 2014. 640 с.

4. Веренич И.В. Теоретические основы преодоления и нейтрализации противодействия расследованию преступлений. М.: Юрлитинформ, 2018. 256 с.
 5. Веренич И.В., Кустов А.М., Прошин В.М. Криминалистическая наука и теория механизма преступления. М.: Юрлитинформ, 2016. 672 с.
 6. Веренич И.В., Кустов А.М. Использование специальных знаний в процессе расследования преступлений, совершенных в сфере строительства, эксплуатации зданий и сооружений. М.: Юрлитинформ, 2013. 232 с.
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