

The importance and basic characteristics of the process of identifying criminal situations with economic characteristics

Professional paper
UDC: 343.98:343.353(497.7)

Muazam HALILI¹, Naser ETEMI²

¹Department of Criminalistic, Faculty of Law, University of Tetova, RNM

²Faculty of Law, University FON, RNM

*Corresponding Author e-mail: muazam.halili@unite.edu.mk

Abstract

History has proved that the identification of criminal economic situations with an economic and financial character is a complex process, which implies engagement from professional experts of concrete areas, continuity, dedication and seriousness at work, inter-institutional cooperation, and so on.

As a process, the identifying phase begins after we have discovered the case itself. The stage of the identifying the case means gathering material evidence to prove what we have discovered. Proof material means providing the relevant documentation, analysing the same and comparing it in the sense that it is compiled and regulated in accordance with the legal regulations set forth for the specific scope.

According to relevant statistics from state institutions, as most exposed criminal offense of economic and financial character is the offense "Misuse of official position and official authorization" foreseen in Article 353 of the Criminal Code of the Republic of Macedonia.

Starting from the above fact, this paper will mainly become the case for the identification of criminal cases with economic character where this crime is apparent.

Keywords: Identification of cases with financial and economic character, Abusing with the official position, Inter-institutional cooperation, Documentation, Legal regulation.

1. Introduction

With the discovery of the criminal act began the process of disclosure, that is, confirmation of what was revealed with appropriate material evidence. Disclosure is a complex process that involves taking away documentation, analysing and comparing it, to see if it has been prepared in accordance with the legal regulations envisaged for the particular area. Documents containing data and information on committed criminal act "Abuse of official position and authority" often are evidence in the further criminal procedure.¹

¹Николоска, С., Методика на истражување на економско - финансиски криминалитет, Факултет за безбедност - Скопје, 2013 година, стр. 433

2. Disclosure of the criminal act "Abuse of official position and authorization"

a. Operational - tactical way

One of the most important features of police work is the operational activity. The operational activity of the police incorporates in itself more legally prescribed operative - tactical measures carried out by the police as police powers in accordance with the Law on Criminal Procedure (LCP).²

Depending on the criminal situation, an operational plan is prepared with measures and activities envisaged, the implementation of which should be in accordance with the legally permitted measures provided for in the LCP.

The plan may consist of operational tactical measures, investigative actions, special investigative measures, or all these combined.

Regardless of which combination will be used in the process of clarifying the criminal situation, the practice shows that the best results are achieved when we have a planned take-up of measures and actions, which should result in providing quality evidence, which is considered as a basis for bringing criminal charges to perpetrators of criminal offenses with elements of abuse of official position and authorization.

Having in mind that the manner of execution and other characteristics of the criminal situation with elements of abuse of official position and authorization, mainly from case to case, differ among themselves, the same formula should not be applied, the same plan in their clarification and proof. The manner, the procedure for implementing each of the foreseen measures and actions will depend from conditions, the factors that characterize the criminal situation with elements of the criminal act "Abuse of official position and authority", for which it is necessary to select an appropriate tactical way which would result in the expected results of the implemented measures and actions.

When undertaking tactical measures and activities in the direction of clarifying a criminal situation, we can find ourselves in a situation to face new moments that were not foreseen in our plan and the tactical measures for its realization. That is why always in the prepared plan it is written that it, depending on the given situation, can be changed and supplemented.

The tactical way of acting primarily depends on the expertise, experience and competence of the police officer and this comes to light when planning and undertaking the planned measures and actions. In practice, we face criminal situations of any kind of elements that coincides it.

It is important to analyse all the elements that characterize the criminal act, above all the time period of execution of the work, and to consider the appropriate article of the Criminal Code in the specific case the crime "Abuse of official position and authority" and then decide on the manner of implementation of some of the measures envisaged.

This is of great importance because it can happen to us, the time period from execution to detection of the work to become obsolete, or there is a danger of destroying the traces and evidence, the memories of the persons who would contribute to the clarification of the criminal act, etc.

In criminal offenses with elements of abuse of official position and authority should not be hurried during the process of clarification, and proving the act, in the sense of providing only one fact and immediately going through a criminal charge and thus the object being closed i.e. finished. This is wrong due to the fact that criminal offenses with elements of abuse of official position in many cases are characterized by an organized form of action, which means that several persons are mixed

²Сл. весник на РМ бр. 150, 51/11 и 100/12

in criminal activities, which should be continuously monitored and provided evidence material, that is to keep an eye on many circumstances, because in the process of proving, the provision of some relevant fact (evidence) leads to another fact, in the interest of clarification and complete proof of the criminal event.

3. Review and search of business premises and insight into business documentation

Review or search of certain objects and premises of state bodies, institutions that perform public authorizations and other legal entities and insight into certain documentation thereof, the legislator foresees duty in the form of an operational tactical measure, to be made in the presence of the above mentioned persons, depending from the institution in which such measures are taken. This is regulated in Art. 60 of the Law on Police, and Art. 191 of the Law on Criminal Procedure.³

The clarification and proving of the economic - financial criminality relies on material evidence. Material evidence can be of a different kind, depending on the workplace, and legal regulations that regulate a particular matter. The Police, the Financial Police, the Customs Administration and other inspection services have the right and obligation to control the business documentation of certain entities that perform certain activities. Pursuant to Article 41 paragraph 2 of the Law on Criminal Procedure⁴, the Public Prosecutor can take any action necessary for detection of the crime and detection and prosecution of its perpetrator, for which the Ministry of Interior, the Financial Police and the Customs Administration have been authorized by law.

Often times in practice, when inspecting a particular document, the police officer finds forged or fictitious documentation, which served as a means of committing or concealing the already committed criminal act.

Through personal experience, we will emphasize one example⁵, where during inspection of the documentation, was found falsified documentation, i.e. orders for payment of a pension. Namely, by a group of citizens (pensioners), in the premises of the Police Station (PS) Gostivar, a complaint was filed in the form of a complaint against Postenska banka, that the pensions they received through Postenska Banka - Gostivar branch had been delayed and that for a certain period they didn't received them with an explanation from the person in charge of payment of pensions for that region, that they had some problems and that they would arrange the problem. After the reported case, a contact was established with the director of bank, who said that he did not know such a thing, and at the same time, with his presence was inspected the documentation that the particular employee was in charge of. From the performed inspection, it was established that the payment orders had already been announced that they were paid, they were signed by the particular employee, and the signature was also on the place where the user, ie the person who was supposed to raise the pension. The employee in charge of payment of pension was not available for conducting a conversation, the mentioned disputed documentation with a certificate for temporarily confiscated items was seized from the director of the Postenska banka. The same documentation was submitted to the Sector for Criminalistics Technique Skopje for the purpose of expertise. On their side it was established that the signatures stipulated in the payment orders for

³Ibid.

⁴Ibid

⁵Халили , М. “Криминолошко – криминалистички аспекти на злоупотребите на службената положба и овластување во Република Македонија” Докторска дисертација, Факултет за безбедност – Скопје,2015 г. стр.192

pensions do not match their original signatures. After establishing this fact, it was already clear that these were forged signatures, while the Criminal Police Office-Gostivar filed a criminal charge against a person employed in Postenska Banka for committing a crime of embezzlement in the service and forging a document (the same employee by the management of the bank received a cancellation decision).

When performing inspection in the documentation of a state body, another institution that performs a public authorization, and another legal entity, the police officer takes the necessary data from it, partially or completely prescribes or photocopies that content that is related to the particular case, and in case of for documentation of crucial importance or in the documentation, traces of the committed crime that can serve as evidence in the criminal procedure are found in the original form is confiscated from the person who was present. The certificate for the temporarily seized items shall be filled out in such a way that the documents that are confiscated are accurately described, as it is the original documentation.

Items that according to the Criminal Code should be confiscated or that can serve as evidence in the criminal procedure will be temporarily confiscated and handed over to the public prosecutor or the body determined by a special law or otherwise ensured their keeping.⁶

The order for temporary seizure of objects shall be issued by the court upon proposal of the judicial police or the public prosecutor.⁷

Inspection of documentation is the most commonly used measure when we have a criminal situation with abuse of office. When implementing this measure, the operational officer should be maximally concentrated and well aware of the problem and to overcome the matter, in order to be able to identify the documentation from which the incriminated actions can be seen. The inspection checks the reported events or the operational information received, also it can be revealed new information which indicates the criminal activity, the connection of the perpetrators with the criminal activity, as well as their role in the conduct of criminal activities.

An example where from the inspection of the submitted documentation that was subject to review, new moments were discovered, which pointed to criminal activity of other persons. By the person D. J. from Belgrade, Republic of Serbia, a complaint was submitted to the Agency for Real Estate Cadastre (AREC) - Skopje, which stated that part of the CPxxxx KO Mavrovo was incorrectly registered to another person, without having adequate legal basis in accordance with the Law on Cadastre of Real Estate. Acting upon the written complaint, the Sector for Internal Control and Supervision conducted inspection and control in the official records of the Real Estate Cadastre Unit Gostivar, where a number of irregularities were made. These irregularities are made by a lawyer and a geodetic engineer employed at AREC Gostivar. After establishing irregularities, the Sector for Internal Control and Supervision submitted to the Ministry of Internal Affairs an initiative for initiating a criminal procedure registered with no. xx-xxxxx/x from 16-10-2012 against the persons: X 1. X2 and the two employees in AREC Gostivar. Acting upon the reported event, the External Office of the Criminal Police (NC for the PR) at the PS Gostivar undertook measures and activities for clarifying and documenting the case. From the inspection, in the documentation received by AREC Gostivar and the documentation received from AREC Skopje, it was analysed the Law on Real Estate Cadastre, especially the articles of the law regulating the mentioned issue. As a result, it turned out that the Sector for Internal Control and Supervision from Skopje made a mistake (whether it is intended or not, we do not know) because they did not cover the person X3 in their initiative for initiating criminal proceedings, in the position of a

⁶Чл. 194 ст. 1 од ЗКП Сл. весник на РМ бр. 150/10, 51/11 и 100/12.

⁷Чл. 194 ст. 2 од ЗКП Сл. весник на РМ бр. 150/10, 51/11 и 100/12.

responsible person in legal entity, as well as the legal entity. After this was determined, the NC for the KR at the PS Gostivar provided the documentation necessary for proving the crime, and criminal charges were brought against 4 persons, and not only against the two stated in the initiative from the internal control of AREC Skopje, against the two employees of AREC Gostivar, for committing a crime "Abuse of official position and authorization" for the person employed in a private geodetic company for committed criminal act abuse of official position and authorization and for forgery an official document, while for the legal person ie private geodetic bureau, for committed crime falsification of documents according to paragraph 4 of the same article which provides responsibilities for the legal entity. The first reported X1, and the second reported X2, the criminal act committed during 2011, the first reported as a geodetic engineer employed in AREC - Gostivar, in that it was not allowed to approve a geodetic report with completely false identification, while the second reported as a lawyer employed in AREC Gostivar, on the basis of an ineligible legal basis and without insight into the old cadastral records (1979 survey), issued a certificate for registration of persons who are not the owners. The third accused X3 committed the criminal act in the position of a responsible person in a legal entity during the May 2009, as a geodetic engineer employed in the legal entity Geo Plan X, using his official position and authority, preparing a geodetic report with the untruth content, for KPXXXX CM Mavrovo. The fourth defendant, legal entity X4 from Gostivar, committed the crime during May 2009, by making a false public document (geodetic report for geodetic works for special purposes No. 1214-53 dated 08.05.2011) in which the data stated are not corresponding with the factual situation, according to the Sector for Internal Control and Supervision of AREC Skopje, the claims of the Trade Company for Geodetic Works are completely false. With such incriminated acts, the applicants allowed other persons to acquire unlawful property gain to the detriment of D. J. from Belgrade Republic of Serbia.

In a tactical manner, the approach to implementing any of the operational - tactical measures, investigative actions or special investigative measures depends primarily on the criminal situation, the time and place of implementation of the expertise of the operational officers and, of course, the availability of the suspects before the police authorities at the time of taking up one of the actions. Without the presence of the suspect - the responsible person is not possible to review, search and insight into the business documentation.⁸

Taking unlawful acts or unlawful tactical treatment, actually is a form of abuse by the police officers who are obligated when taking the legally authorized police authorizations to comply with the Law on Criminal Procedure, the Law on Police and other by-laws, rulebooks, instructions, etc., are aimed at legal-tactical acting with respect to the principles of proportionality, proportionality, etc.⁹

Therefore, it is worth to mention that it is of the utmost importance that all taken measures are in accordance with the LCP, otherwise, the provided evidence will not serve as valid evidence.

⁸Николоска, С., Кривични дела против службената должност, Графотранс, Скопје, 2008 г. стр.234

⁹Ibid

4. Conclusion

The vindicating of criminal situations with the elements of economic and financial crime is a complex process that requires seriousness, professionalism and expert advocacy of the authorized persons working on this issue.

The specificity of the manifest forms of the offense "Abuse of official position and authority", as the criminal act that is most represented in the area of economic criminality, as well as the characteristics of the perpetrators, their professionalism and the power to hide the criminal activity, are factors that influence at the operational officers on the choice of the tactical way of implementing measures to clarify the criminal act of abuse of official position and authorization. The biggest suffer of consequences of the execution of the above-mentioned criminality is the state budget. Having in mind the consequences of this offense, the operational officers should take all operational tactical measures in a professional way, in ways and combinations, in accordance with the Criminal Procedure Code and the Law on Police.

References

1. Benson. I., Michael I Simpson S. Sally, 2009, White – Collar Crime: An Opportunity Perspective, taylor and Francis, New York.
2. Витларов, Т. “Казнено - Правна заштита од корупција”, Докторска дисертација, Правен факултет, Јустиниан први, Скопје, 2005.
3. Јовашевич, Д. Злоупотреба службеног положаја и корупција, Номос, Београд, 2005.
4. Камбовски, В. “Кривичен законик на РМ,” (интегрален текст) Скопје, 2009 г.
5. Николоска, С., Кривични дела против службената должност, Графотранс, Скопје, 2008 г.
6. Николоска, С., Методика на истражување на економско - финансиски криминалитет, Факултет за безбедност - Скопје, 2013.
7. Халили, М. “Криминолошко – криминалистички аспекти на злоупотребите на службената положба и овластување во Република Македонија” Докторска дисертација, Факултет за безбедност – Скопје, 2015.
8. Цуклески, Г., и Николоска, С., Економска криминалистика”, График Мак Принт, Скопје, 2008.