

Tactical and Forensic Features of The Search for Proceedings Involving the Forgery of Excise Stamps, Product Labels and Payment Cards

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Abstract: *The main purpose of this article is to develop tactical features of an investigative action is a search for proceedings involving the forgery of excise stamps, product labels and payment cards. The analysis is reviewed on the list of grounds for conducting a search regulated by the Code of Criminal Procedure of the Republic of Kazakhstan, which makes the investigator limited in the ability to identify, seize traces in proceedings of the investigated category of proceedings. Based on these, the author has proposed recommendations for the provision of additional number of authorities for being searched premises.*

In this regard, a system of sequenced investigative examinations is being considered, accompanied by the examination of documents in the form of their preliminary study, and combined, if necessary, with the seizure of documents and objects by means of seizure and search. The recommendations are substantiated on the improvement of the organizational and tactical aspects of a search in the investigation of crimes related to the forgery of excise stamps, product labels and payment cards.

Key words: *tactical, forensic, features, search, involving the forgery, stamps, product labels, payment cards*

Introduction

The importance of such investigative actions as search and seizure is extremely great, when it comes to the investigation of criminal proceedings involving the forgery of excise stamps, product labels and payment cards. A search can serve as a method of identifying the group characteristics of the committed crime, as well as obtaining information about the existence of a criminal community, its members, goals, the distribution of roles between participants, the identity of the organizer, etc. [1]. The reason is that various types of objects can be found and seized during the search, the presence of which may affect the disclosure and investigation of a specific criminal proceeding of pre-trial stage. In this regard, we fully agree with the opinion of R.S. Belkin, that «searches at subsequent stages are possible when investigating crimes committed in the economic sphere, when a long work precedes the search - identifying where, who and what you need to look for: documents, computer media, plastic cards, etc.» [2]. The general provisions of the search tactics are quite widely covered in the legal literature, along with the typical methods of investigative action.

We believe that V.I. Popov's opinion that «successful search can give such results, which essentially prejudice the outcome of other consequences. Physical evidences, identified by the search, often let us fully track down a criminal. A search can be the only method in many cases to get evidences of committed or intended crime» is justified. [3].

It is clear that an essential condition for achieving the goal and accomplishing the tasks assigned to this investigative action is «strict compliance of its procedural form and the optimal use of an extensive tactical and for Academy of Law Enforcement Agencies under the General Prosecutor's Office of the Republic of Kazakhstan ensic potential» [4].

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Considering that crimes, related to the manufacture and distribution of forgery of excise stamps, product labels and payment cards, are specific on *modus operandi* (method). Investigative actions as search, when investigating such category of criminal proceedings, have the following objectives:

- investigation and procedural preservation of the scene, method and time, as well as conditions of storage and distribution of excise stamps, product labels and payment cards with a sign of forgery;
- search, preservation and seize of objects, traces, showing the sign of the criminal manufacture and distribution;
- obtaining of background information, its analysis for investigation, suggesting versions, planning of investigative combinations and tactical operations.

The place of the incident when investigating the crime, related to the illegal manufacture of excise stamps, product labels and payment cards, generally, is storages, transportation, if necessary distribution.

We support point of view of the A. V. Shomin, who says that «practice of the crime investigation, connected to the bank technologies, shows that authorities of investigation resort to such investigative actions, as search in premises and (or) in storages of the credit organization, only when there is reason to believe that the management or other employee of the credit organization is involved in commission of a crime» [5].

Main part

The investigative–operative group, which is going to search, usually consists of investigator, criminal law expert, operative worker (detective). Besides above-mentioned employees, inspectors of local police service, dog handlers, law enforcement employees (depending on the situation when searching) are involved in this group. When transferring excise products with counterfeit labels of excise duty, product labels through the State border (smuggling), we think that employees of the Border Service of the National Security Committee of the RK should be members of the investigative–operative group. Together with specified parties, according to the decision of the investigator, the following parties can be involved in a search: representatives of the State Standard of the RK, the State Trade Inspection; expert – technician. In case of the filling an appeal by citizens on public health hazard by surrogate excise products, it is necessary to involve a doctor of the medical emergency.

A special attention should be given to witnesses. Supporting the opinion of A.I. Anapolskiy, witnesses, particularly, are a deterrent of possible violation the law on the part of investigator (interrogative officer), and make data, obtained with their participation, more convincing and credible [6].

It is recommended to involve as a witness people that have basic knowledge about how authentic stamps of excise duty, product labels and payment cards look and made in order to let them understand the meaning of actions during the process.

It is also necessary to consider possible situations, when during the investigation of computer of being investigated person, the whole data on credit card holders, number of settlement accounts and information about cash flow of commercial companies (entrepreneurs), other important for investigation data, located in the hardware of computer or on disk are discovered. That is why it is recommended during the search in premises with computers inside to invite expert-programmer, system administrators [7].

However, we support point of view of A.I. Gaydin that «along with criminally important information on the electronic media, which have to be seized, there are can be important information for legal holders which is not relevant for the criminal proceeding» [8, p.99]. Limitation in the further use by a holder due to the seizing of it can unduly harm, because in many cases holders of the being seized information can have nothing to do with a crime, which is on the pre-trial proceedings. That is why, it is important to pay attention to the interest of holders when seizing the information.

The following the most popular methods of searching can be used during the proceedings related to manufacture and distribution of excise stamps, product labels and payment cards:

- a) a search in premises;
- б) a search in open space;
- в) a search of car;
- г) a body search.

Through the consolidation of criminal proceedings investigation practices, related to the forgery of excise stamps, product labels and payment cards, among above-mentioned types of searching the most successful is a search in premises. First, the process of manufacture of counterfeit excise stamps, requiring using of special fixed equipment, let, despite the declines, search specific premises. Secondly, according to the practice materials, the notable thing is that the place of manufacturing of above-mentioned counterfeit objects often is a storage place, which makes the search more important.

Regarding the search procedure, we fully agree with Y.I. Barshev, who notes that when carrying out this investigative action, it is important to follow the main rule - unexpectedness. As the main goal of search can be reached only thorough provisional uncertainty combined with features of the art, agility and remarkableness of the investigator [9].

We endorse the view of the majority of scientist-criminalists, who in their works on carrying out a search in premises divides actions of investigator on three stages:

- a) preparation;
- б) search;
- в) conclusion.

Preparation stage of the search is subdivided in two phases:

- the first phase – time before arriving in the place of search;
- the second phase – time after arriving in the place of search.

For proceedings, related to the manufacturing and distribution of counterfeit excise stamps, product labels and payment cards, preparation to the search starts from evaluation of the existing situation and, firstly, determining validity of grounds for carrying out such operation. According to the description of clause 2 Article 252 Code pf the Criminal proceedings of the RK a factual ground is sufficient data, suggesting the presence of objects, documents, other objects in the specific place relevant for the criminal proceedings.

In different situations, the investigator can have various in volumes, credibility and certainty information on necessary objects and locations [10]. It can be testimonies of witnesses (victims, suspects) that they saw relevant for investigation objects, or know through the interpretation of others; also, it can be documents on procurement, maintenance of different equipment, mechanisms etc.

The most common ground for carrying out a search on cases, related to the manufacturing and distribution of counterfeit excise stamps, product labels and payment cards, is information on involvement of suspected persons in investigating proceeding. Based on them, conclusion is drawn up suggesting that they possess and store counterfeit excise stamps, product labels, payment cards, false documentation, equipment, materials, etc.

There many cases in investigative practice, suggesting the possibility of presence of searched objects at people's, who did not participate in investigated case. Generally, it is information on relationship between suspects and indicated above people and other similar information. Factual ground for carrying out a search can be information, obtained by operative -search method.

After evaluation of available information as a sufficient ground for carrying out a search, it is recommended to precisely define its goals. As mentioned before, it is a search and seizing of searched objects. In many cases the goal of search is discovering counterfeit excise stamps, product labels and payment cards, false documentation, equipment, expendables, credit cards (including stolen ones), storage place, supporting documents (with false data), and material assets, bought through loan funds, raw records of suspects hiding from investigation. Planning of a search starts on this stage. There are many conflictual cases when carrying out a search on investigated category of cases, which underlay carrying out difficult, cumbersome and protracted actions during the investigation operation. That is why it is recommended to make detailed plan in written form, without limitation to the oral planning of the investigation.

Planning include defining the content and sequence for carrying out search functions. Considering their complexity, size of searched area and possible counteractions for carrying out a search, the average duration can be shortened through detailed preparation to the search and its detailed planning. The plans of proceedings, related to the manufacturing and distribution in illegal conditions of excise stamps, product labels and payment cards should include the following provisions:

- a) object to be searched and its location;
- b) time and a searching procedure, objects to be seized in accordance with this case;
- c) obligations of investigative-operative group members;
- d) method of entering to the searched premises and measures, warning resistance, including armed;
- e) tactical techniques, which are relevant to apply in a search;
- f) experts to be invited;
- g) technical means (for a search, fixation and packages of seized objects);
- h) communication method and transportation mean;
- i) measures on a search area security;
- j) measures, excluding communication of a searched person with other persons;
- k) methods of criminal intelligence data legalization, used in the search process;
- l) alleged actions of members during deteriorating situation;

m) measures on prevention possible concealment and damage of a searched objects.

Interpretation of these events is applicable for investigated category of proceedings. Defining an optimal time and place for a search is carried out depending on discovering the maximum number of searched objects, other objects and documents, indicating the criminal activity, as well as detection and, if necessary, detention of people, carrying out actions related to the illegal manufacturing excise stamps, product labels and payment cards. Information on delivery time for distribution of excise stamps, product labels and payment cards, or bulk purchase of raw material and accessories, and presence on the searched area of important persons for investigation can be obtained from operative sources. The same criteria are used for choosing a manufacturing place for a search, if within the investigation of one criminal proceeding there is another potential place of location of involved persons (residence place, work, leisure time place, residence place of relatives or close people, premises of sweatshop or warehouse), and subsequently – place of objects storages, which are important for case. In general, when it comes to crimes committed by group of people, it is better to search simultaneously different partners in crime or related to them people, as well as different territories of one person. It minimizes the possibility of participants to transfer the searched object to another place, and prevent their detection. However, it requires creating of several investigative – operative groups, and additional forces and means, providing the technical aspect of detention [11].

This preparatory element is tightly related to examining future places of a search, which locations are analyzed on presence of additional exits, warehouse, basement etc.

Examining a place of the search includes specifying its address and its characteristics. «The investigator, if possible, should study the structure of premises to be searched (amount of rooms, the layout, seize and purpose of the facility, etc.) » [12]. Nevertheless, it is recommended to determine entrances and exits, including emergency exit, furniture (equipment, tools), availability of the security system, eyehole in the door, locking device. For obtaining this information, the investigator (interrogating officer) can request agricultural production co-operative to give floor plan of the building or individual plan of the premises. It is important to identify purpose, certain borders, vegetation, soil characteristics, presence of construction, well, reservoir, approach conditions and access roads. The sources of information are topographic maps, plans, photos of the area, and materials of the operative – tracing activities.

Studying the personality of the person being searched is carried out through their professional and psychological characteristics, letting to detect the most possible places of concealment of the searched objects, and also inclination to resist law enforcement agencies employees.

Establishing of investigative-operative group, choice and invitation of other members of investigative actions is carried out considering the following factors. «If a search has to be done on the place of location of the sweatshop or on the legally existing enterprise, undertaking illegal actions, witnesses should be invited earlier, because their choice on that enterprise can be unsuccessful due to their possible involvement in criminal violation [13]. If there is partial or full discovering of the storage with counterfeit excise stamps, product labels, payment cards or searched false documentation, people, carrying out a technical aspect of these actions, should be included in the members of the search. In addition, undoubtedly, the result of a search largely depends on participation of an expert-criminalist. As only, he/she can define the difference of hidden place on the appropriate level, other methods of hiding objects, and find traces, left after liquidation. [14].

The expert-chemist also can give consultations in investigating sweatshop laboratory, carry out qualitative express-analysis of indicated ingredient and expandable materials. In our opinion, participation of expert in a search is necessary for discovering and seizing of traces (in particular, fingerprints) on objects, hidden in secret places, and other objects of interior not accessible for occasional visitors. It would show involvement of particular people in activities of the criminal group.

However, if the traces are discovered in the inner sidewalls of vault (lock box) or other places, not accessible for strangers (if the offender poses as stranger), the investigator is limited in identifying, recording and seizing these prints. Therefore, we believe that during the investigation the investigator has to be granted the right not only to search objects but also prints of suspects or other related to them people.

During the investigation of criminal cases in illegal manufacturing excise stamps, product labels and payment cards, the investigator (interrogating officer) has to pay great attention to searching and seizing of unofficial accounting documents, which, generally, are recorded by heads (including unofficial), responsible persons, accounting employees. In order to use these documents as evidences on the pre-trial and trial proceedings the investigator (interrogating officer) has to find out the following facts: origin of the document, time and other circumstances of its preparation; compliance of the document's content with other trial evidences, obtained through preliminary investigation; other material, certifying the authenticity of information, reflected in the document, which can be obtained by the investigator (interrogating officer) with a help of experts during the search [15].

During the second stage of the search the investigator has to undertake actions, which have to be done before the active search events as following:

- a) to update a plan considering the real situation;
- b) to locate checkpoints near the front door, stairs, windows, playgrounds and other places;
- c) to set a connection between the groups of external security and other members of the search;
- d) to unexpectedly enter to the premises being searched and take measures to provide safety of all members of the investigative actions;
- e) to present a search warrant;
- f) to explain present people their rights and obligations;
- g) to state about the objectives of the search and suggest a person being searched to hand over counterfeit excise stamps, product labels and payment cards, false documentation, equipment, machinery, expandable materials, and other objects, significant for the criminal proceeding. In cases where the above-mentioned items of relevance to the case are issued voluntarily, not limited to seizure, it is advisable to conduct a thorough search.

At the search stage, operations are carried out to detect the desired objects. Initially, the search is recommended to be carried out using a static method (review stage), i.e. without violating the position of the objects in which they are found. At the present stage of development of criminalistics tactical conditions and techniques of production search phase of the search in General is developed [16]. Therefore, we, abstracting from a number of General theoretical aspects of tactics, will focus on the specific features of the production of these investigative actions in the investigation of crimes related to the forgery of excise duty stamps, commodity labels and payment cards.

The objects of the search for the analyzed categories of cases were:

- counterfeit excise duty stamps, trade labels, payment cards, banknotes;
- supplies, equipment and handy tools: cliché, matrix, cutting of paper, chemicals, molds, prints, rollers for rolling, cameras, negatives, duplicating equipment, engraving tools, specialized literature, publishing, printing, print production, various drawings, diagrams, posters, records of chemical processes, formulation, etc.
- documents for the right to carry out entrepreneurial and other activities; documents certifying the presence of the bearer of any qualification, containing material or intellectual forgery;
- fictitious balance sheets (including machine and electronic accounting documents), profit and loss statements, tax returns;
- documents reflecting both banking and economic and financial transactions related to the production and other activities of the malefactor;
- the primary accounting documents;
- various kinds of informal documents (rough notes, calculations);
- analytical documents (certificates, reviews, compilation reports);
- technological, planning, commodity documents, statistical documents;
- other items or documents that indirectly indicate involvement in the activities of the criminal group in the sphere of shadow turnover of excise products and in the monetary sphere.

For example, discovered at the place of residence of the organizer of the underground "shop" for the production of excise duty stamps, commodity labels and payment cards, General and other powers of attorney for the right to own and use several vehicles, which carried out systematic transportation of excise products with fake excise duty stamps, commodity labels to the place of sale, will allow to take a critical view of the testimony of this person about non-involvement in the management of underground production.

Another group of documentation, the detection of which is of interest to the investigation, are documents showing previously identified administrative offenses related to its mechanism with the analyzed crimes. For example, as a result of the administrative audit, violations in the sphere of turnover of ethyl alcohol, alcoholic and alcohol-containing products were identified [17]. Since in some cases the distinction between an administrative offence and a crime similar in object and subject matter depends on the volume (size in monetary terms) of manufactured and sold products, often the subjects of administrative activity are limited to the statement of an administrative offence. Meanwhile, signs of a similar nature of the crime were unidentified due to the concealment of its participants. In such cases, the discovery of these documents, as well as the verification of this information through the production of other procedural and other actions will also be one of the means to facilitate the establishment of the circumstances of the crime.

In accordance with Art. 252 of the code of criminal procedure, the basis for the seizure is "the availability of data to believe that these items or documents may be in a certain room or other place or a particular person" [18]. Thus, the absence of an explicit search character distinguishes the seizure from the search. The study of criminal cases

of crimes in the field of illegal manufacture and sale of counterfeit excise stamps, commodity labels and payment cards showed that often the objects of seizure were identical to the objects of the search. As a rule, objects in the form of finished goods, as well as commodity or cash receipts, were seized from bona fide purchasers (for example, at the time of acquisition of those who were unaware of the counterfeiting of these products with fake excise stamps or commodity labels), or from persons who purchased fake excise stamps, commodity labels and payment cards under the control of law enforcement agencies.

Another group is legal entities-the original rights holders, brand names and trademarks of which were reproduced by intruders on artisanal manufactured product labels, excise duty stamps and payment cards. Accordingly, the seizure was subject to brand labels, trademarks, excise stamps, payment cards and other conformity marks, branded consumer packaging (packaging, box, etc.), if necessary-goods legally manufactured at the enterprise, packaged or Packed in full compliance with the requirements of the standards, etc.

The third category of entities whose items or documents related to the case were seized by seizure were persons, although related to the activities of the criminal group, but due to the lack of public danger in their actions, or due to the lack of direct intent to commit illegal acts that are witnesses.

Next, you need to allocate legal persons consisting in business relations with the company, working in the shadow turnover of excise stamps, product labels and payment cards that had the nomenclature and archival Affairs of various title documents written (prepared) individuals, a business of manufacturing and sale of counterfeit excise stamps, product labels and payment cards, documents, business correspondence, etc.

Conclusion

A special place among the subjects of seizure in this category of cases is occupied by state bodies and institutions, public authorities, containing official information, for example, on the presence, absence or revocation of a license to engage in a certain type of activity, compliance with tax legislation, etc.

A specific type of seizure is also the seizure and details of telephone calls made by subscribers who are participants in the proceedings, as well as the seizure of postal and telegraphic correspondence.

Seizure of objects or documents related to the case by seizure from persons who deny their guilt, perform other actions to conceal the circumstances of the crime, is advisable only if at the time of detention of the person at the crime scene the desired objects were available directly to the person.

In other cases, that is, if it is known that certain items or documents must be at any person in a particular room (for example, in the office, in the warehouse, in the house, in the apartment, etc.), but do not know the exact location of storage of these objects at the moment (safe, Desk, other items of office furniture, nomenclature folder, file Cabinet, etc.), the production of seizure may be ineffective.

In such cases, the investigative situation requires immediate, that is, right at the place of the procedural action, the issuance of a decision on the search and direct search. The situation is complicated in cases where the seizure is not carried out personally by the investigator in whose proceedings the case is, but on his behalf-by an employee of the body of inquiry (operational Commissioner, precinct Commissioner, etc.). Acting within the limits of this order, the authorized employee shall not have the right to independently go beyond it and carry out other investigative actions not provided for in the resolution. In order to avoid the negative consequences of this situation, in the process of preparing for the seizure in case of revealing signs of an obvious or hidden conflict, the investigator must take a personal part in the seizure, or initially decide on the search.

If the venue of the proceedings is a home, it should be considered that by virtue of article 25 of the Constitution no one has the right to enter the home against the will of the persons living in it except in cases and in accordance with the procedure established by law or by a court decision. The basic law of the state allows the restriction of this right by law only to the extent that it is necessary to protect the foundations of the constitutional system, morality, health, rights and legitimate interests of other persons, to ensure the country's defense and state security (article 39 part 1) [19]. Therefore, we believe that in this case the provisions of part 3 of article 254 of the code of criminal procedure on the possibility of conducting a search (seizure) without the sanction of the investigating judge are appropriate and applicable. However, if it is possible to apply to the court for a search warrant, the provisions of this rule, which is rather urgent, should not be abused. So, checking the legitimacy of the performed search without a warrant of the investigating judge, he is entitled to draw public attention to the existence of legal and factual grounds of search (seizure), and on the validity of the use of urgent mode. Thus, the investigator (investigator), making the resolution on carrying out a search without the sanction of the investigative judge shall specify the actual circumstances confirming exclusivity of the situation which is not suffering delay. This approach was determined by the Constitutional Court of the Russian Federation in the conditions of the code of criminal procedure [20].

Thus, we believe that the search in the investigation of crimes related to the forgery of excise duty stamps, commodity labels and payment cards should be carried out considering the place and time of the investigative action.

In addition, in its production, it is necessary to ensure the participation of the appropriate specialist, which will make the search more targeted and rational.

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