

The Model of the Criminological Characteristics of the Subject of Crimes in the Field of Taxation

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Abstract

This article is devoted to the analysis of the personality characteristics of persons who commit crimes in the field of taxation, as well as empirical forensic material in the current forensic paradigm of research, in order to develop a stable criminological portrait of tax criminals. A comprehensive theoretical formation of the personality structure of tax criminals is carried out taking into account the number of determinants: socio-demographic, penal, moral and psychological levels, attention is paid to the functional purpose of the doctrine of personality. The article gives a reasoned empirical criticism to the position on the delimitation of the general characteristics of the objective side of the act depending on the characteristics of the subject of a specific crime. That is, depending on the organizational and legal forms of organizations, the official of which is or was the person who committed the crime, on the position held by him. We draw attention to the correlation of quantitative and qualitative indicators of the level of education of tax criminals and their distribution by percentage in the general structure of such crime. The practical relevance and consistency of the theoretical thesis on the existence of a correlation between the level of education of subjects of tax crimes and the frequency of their commission is indirectly confirmed.

Keywords: criminology; criminological characteristics; tax crimes; tax evasion; the identity of the offender

I. Introduction

In order to take the most effective preventive measures in the field of tax crime, attention should be paid to the criminological characteristics of the subjects of crimes. An integral part of the tax crime fighting is the determination of the dynamics of tax crime, its distribution rate and structure, supporting factors, other trends, statistical data and indicators. All this certainly contributes to its best interpretation, and, therefore, contributes to the development of preventive measures.

Drawing attention to the quantitative and qualitative conditionality that accompanies any criminological characteristic, we consider it necessary to provide data that determine the relevance of the current study. According to statistics presented on the website of the Investigative Committee of Russia for 2012-2017, in 2012, 1291 criminal

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proceedings in respect for crimes in the sphere of taxes and fees were opened, in 2013 – 1,655 proceedings, in 2014 – 1,831 proceedings, in 2015 – 4,568 proceedings, in 2016 – 3,111 proceedings, in 2017 – 2,428 proceedings (Figure 1) (Investigative Committee of the Russian Federation, 2020).

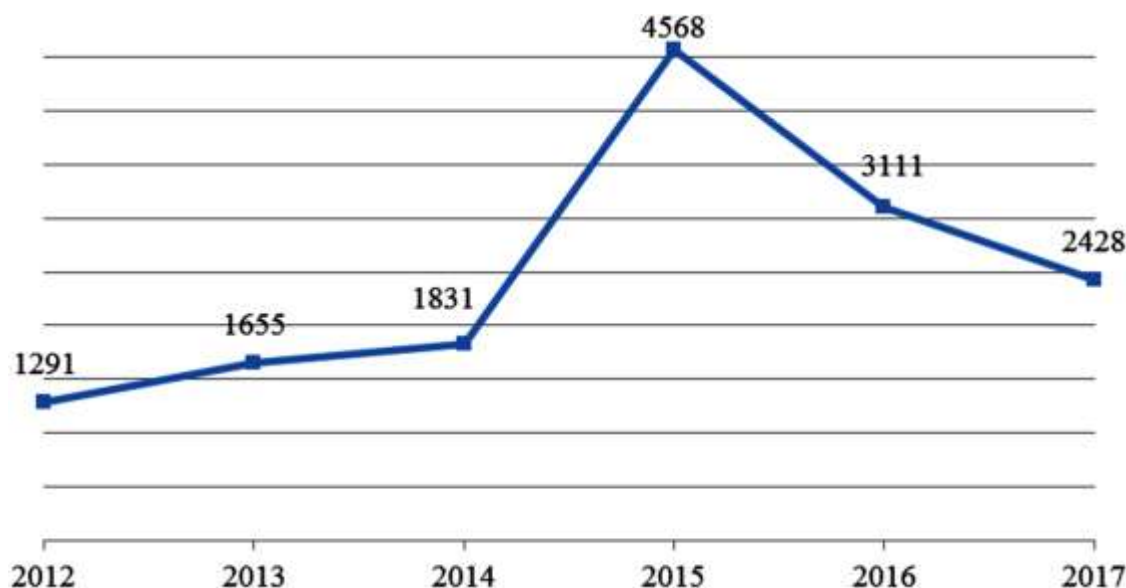


Figure 1. Statistics of criminal proceedings for tax crimes in the period 2012-2017

Indirectly, the amount of damage detected during this period, 220 billion rubles, also indicates the growth in the detection and disclosure of tax crimes. During this period, an annual increase in the detected damage was also noted. For example, in 2013 it amounted to 33.3 billion rubles, but in 2016 it was already 65 billion rubles and 57.6 billion rubles in 2017.

From the presented data volume, it must be concluded that the degree of detection of tax crimes is increasing, however, due to the unfavorable economic and social situation in the state, the latency and prevalence of tax crime, these indicators are growing. In this regard, the criminological characteristics of the subjects of such crimes should be given particular attention (Shuvalov, 2018, p. 106).

II. The Main Criminological Characteristics of the Subject of a Tax Crime

The identification and determination of the determinants of crime correlates with the concept of criminological characteristics mentioned above. Despite the prevailing traditionalism, consolidation in the research area has not been achieved regarding the exhaustive content of the concept and its scope. This indicates the formation of the “axiomaticity” of the concept, which goes against the lack of a utilitarian understanding in science. In addition, the development of a sustainable policy for the prevention and avoidance of tax crimes is possible only with the concentration of resources on the identity of the crime subject, since he seems to be the main host of motives, causes and deviations that lead to illegal acts. In other words, a person, in our opinion, leads to an understanding of the processes within the mechanism of committing a crime, its analysis allows you to structure criminal behavior.

Thus, according to the opinion of E.B. Kurguzkina (Kurguzkina, 2003), the functional significance of studies of the identity of the person who committed the crime is as follows: prognosticism, explanation of behavior, methodological support, applied and synthetic functions. It is obvious that the nature of detailing the identity of the deviant at the theoretical stage is closely correlated with the prevention, suppression and disclosure of crimes in reality. The most appropriate would be the allocation of the prognostic function, which opens up the possibility of taking preventive measures against the offender.

In our view, a criminological characteristic should be understood as *the totality of the universal characteristics inherent in the identity of an offender, which together form his psychosocial portrait, clearly reflecting the correlation between these characteristics and the committed wrongful act*. Turning to the totality of such signs, they should be divided into several categories that in one way or another characterize the social perception of such a person, his internal attitude to reality:

- 1) socio-demographic characteristics: gender, age, level of education, family status, occupation, *etc.*;
- 2) criminal law characteristics: the nature and gravity of the offence, the presence of relapse, the degree of involvement in the offence, the form of complicity, the nature of the offence committed earlier, *etc.*;
- 3) moral characteristics: beliefs, interests, value orientations, *etc.*;
- 4) psychological characteristics: features of emotional, strong-willed and intellectual properties (Dyakonov, 2008, p. 68).

It is logical that the structure of the identity of the offender is in many ways responsive to the general structure of the identity, which is a holistically unified system of mutually determining characteristics: a) the need-motivational sphere (motives, needs, interests); b) value-normative sphere (value orientations, attitudes, norms, beliefs); c) functional role sphere (social positions, statuses, roles); d) the physiological framework (Sokolov, 2019, p. 28).

Let us get to the analysis of socio-demographic factors related to the external perception of the person who committed the crime. Turning to the data shown in the statistics, we can conclude that employers and self-employed persons are greatly outnumbered among persons committing tax crimes, correlating with the rest of the population in fairly low percentages, so for 2009-2015 the number of employers was in the proportion 1.3-1.2% of the total population, self-employed citizens (this also includes individual entrepreneurs) – 5.6% of the country's population (Evstratova & Likhanova, 2017, p. 77).

It is interesting that review of the socio-demographic aspects of tax crime in the chronological period 2004-2015 allows us to conclude that the percentage of women who commit crimes in this area is at the level of 28.6%, the percentage of married people is also quite high – 77.3% of the total. As for the age criterion, the allocation of age groups is as follows: the dominant is the group from 31 to 40 years old (32.2%), the second largest – from 41 to 50 years (29.6%), the third – from 25 to 30 years (20.8%), the fourth – from 51 to 60 years old (12.7%), the fifth – the individuals aged 22 to 24 years (4.6%), the sixth – from 61 and older (0.1%) (Balyuk, 2015, p. 22). The presented data indirectly reveal the validity of the thesis according to which tax crimes are committed by persons regarded as socially mature, with relatively developed social connections.

From the above statistics, we can also conclude that it is impossible to commit such crimes by persons who do not have employment, as well as sources of income as such. Furthermore, it is the large and especially large size that is established by the criminal law, this allows us to concentrate on the idea of the high social status of persons committing

such crimes (heads, chief accountants, entrepreneurs). The fact that they have a wide range of property, high income, which is covered by the tax base, causes that the process of tax evasion makes no practical sense for them. This activity is the same indirect confirmation that such individuals have fairly extensive social connections and interactions (Botvin, 2018, p. 195).

Among other things, we should not underestimate the level of education of those who commit tax crimes. As a general rule, in most crimes, especially committed with the mercenary motives, the level of education of subjects of illegal acts is inversely correlated with the number and nature of crimes committed by a person. However, tax crimes in this case are strongly distinguished, since they are most often committed by people with higher education, and a little less often they have secondary vocational education. Guided by this circumstance, L.V. Platonova, in our opinion, appropriately categorizes crimes committed in this area as “intellectual”, since their implementation requires a high degree of awareness in the field of taxes and fees, including for attempts to avoid responsibility and optimize risks. Hence, such persons have higher education, incomplete higher education, and in some cases a scientific degree (Platonova, 2005, p. 52).

We should point out that among the deviants who commit tax crimes there are a lot of women. It seems to be explained by their rather frequent employment as accountants (chief accountants), financial directors, *etc.* (Soloviev, 2006, p. 218).

In terms of the age component of the subjects of economic activity, it is quite homogeneous, but not informative enough, since in the last decade about 50% of people related to the economy are middle-aged people, that is, from 30 to 49 years old (Efimova, 2015, p. 19). It seems that the age criterion of the subjects of tax crimes also corresponds to this range (Badisov, 2007, p. 15). Furthermore, if persons aged 24-26 years are also involved in other economic crimes, then in the tax crimes, as a result, it is the middle age group that prevails, moreover, with minimal relapses (Abakumova, 2010, p. 128). Such statistics are not without shortcomings and logical errors, if only because the collection of evidence for tax crimes is not fast, and these crimes are characterized by high latency, like any economic crime, as a result it does not reflect a certain part of undetected subjects that are able to slightly adjust these indicators.

Another category of signs of interest to us is associated with a list of formal criminal law factors that characterize the object of the assault, the gravity of the committed act, the presence of relapse, type of complicity, *etc.* Analysis of the objective side of tax crimes leads to the definition of their subject as special one. That is, to a number of common features in the form of an individual who has reached the required age, he also has the obligation to pay and calculate the legally established taxes and fees. This also includes such categories of subjects of economic activity as individual entrepreneurs; lawyers; heads of a peasant (farm) economy; other persons actually carrying out their business activities through another person registered as an individual entrepreneur (Glebov & Rolik, 2017, p. 74).

III. The Relationship between the Concept of the Identity of the Offender and the Subject of the Tax Crime. Psychological Characteristics of the Identity of the Offender

Based on the meaning of the formulations established by the articles 199, 199.2 of the Penal Code of the Russian Federation, the subject is characterized by the presence of his authority to submit reporting documents to the tax authorities, as well as the assignment of a security function to him for the comprehensive and proper payment of taxes. As a rule, the job descriptions of organizations assign such powers to directors, financial directors and chief

accountants. In other words, these articles greatly narrow the range of potential subjects of crime to the leadership of a particular organization. We would like to note that the list of special subjects is not limited to this, since the article 199.1 of the Penal Code of the Russian Federation considers a tax agent to be such. The very concept of “tax agent” acts as a kind of generalizing category for economic subjects that are charged with the proper calculation and withholding of tax amounts from the taxpayer with their subsequent payment (The State Duma & Federation Council of Federal Assembly of the Russian Federation, 1996).

Among other things, we consider it appropriate to distinguish between the concepts of the subject of crime and the identity of the person who committed the crime, at least because the subject of the crime is a semi-formal narrow penal law concept that focuses on the legal characteristics of the offender. In this context, the concept of “the identity of the offender” gets presented to us, obviously, broader than the subject, since it also includes the social role inherent in the person, the totality of all his moral and behavioral properties, which appear in relationships with surrounding events and phenomena of reality, as well as the reaction to them, the characteristics of perception, causality between them, which have led to the commission of the crime. Moreover, in some cases, the categories of “subject of crime” and “subject of criminal liability” should be clearly divided, since the persons often involved in the crime are not liable, which also makes us focus on the personal aspect.

The following list of signs is related to the moral component and the internal perception of reality, this includes values, beliefs, interests, *etc.* It is logical to assume that for tax crimes it is the mercenary motive that is recognized as the dominant one, which leads to an underestimation of the tax base, tax evasion, *etc.* Characterizing tax (and any other) criminals, they should be divided into several types: 1) situational type – consists of persons who were not previously characterized as deviants, as a rule, who were not prosecuted, but commit a tax crime due to a combination of circumstances, for example, due to a developing economic crisis, bankruptcy risk, *etc.*; 2) stable type – persons who regularly evade taxes, commit other crimes in the field of taxation, relying on the incompetence of tax and law-enforcement agencies; 3) egregious type – they constantly commit tax crimes, develop methods for their further improvement, initially adhere to nihilistic attitudes. The foregoing allows us to carry out an intermediate generalization of the features characteristic of tax criminals: a sufficiently high social status, a sufficiently high level of education and intellectual abilities, the presence of significant tangible assets, an orientation toward pragmatism and maximization of income and pluralism of social connections. The above qualities, in turn, contribute to an underestimation of the perception of the public danger of persons committing tax crimes for various reasons. In our opinion, they are not always committed taking into account the direct self-serving component, because, for example, evading taxes, the person (head of the organization) does not benefit any material things, but risky improves the economic health of the company, helping to a further increase in profitability. This allows us to talk about the mercenary mediation of such crimes, even if the act does not contribute to the immediate receipt of tangible assets (Ilie, 2019).

If we pay attention to the role of a mercenary motive in the assigned punishment, then the data of a criminological study of the problems of combating tax crime conducted by employees of the Russian State Tax Academy (VGNA) indicates that those who committed a tax crime in 2014 for unselfish motives were assigned a milder punishment (only 31% of such criminals were imprisoned; of these, 69% were sentenced to less severe penalties provided for in the article 199 of the Penal Code of the Russian Federation). Of all those who were imprisoned among non-mercenary tax criminals, 89% were conditionally convicted, the remaining 11% received an amnesty, which could not be known to law-enforcement agencies in advance. Among tax criminals whose actions were recognized as self-

serving, the rate of persons who were imprisoned corresponds to 93% (Federal Tax Service of the Russian Federation, 2020).

The last category of characteristics to which attention should be paid is due to the psychological characteristics of the identity of the offender. In addition, resort to the identity of the offender requires a correct understanding of the doctrine of the personality in general. In this regard, the position of V.N. Kudryavtsev, who claims that an insufficient level of socialization in conjunction with the criminal environment, a trigger situation, can be considered as the cause of criminal behavior at the level of identity, seems to be logical. That is, he calls the starting point of the crime the extrapolation of specific circumstances and psychological characteristics of the person who commits the crime (Kudryavtsev, 2007, p. 33). However, it should be noted that the interdependence of the causes of any crime is strictly individual, and their too utilitarian understanding can only harm, moreover, the emergence of antisocial, criminal behavior is a process characterized by rather wide chronological ranges. And what led to the crime in one case may not lead to it in another, even if the prevailing conditions are subjectively “worse” than in the precedent. This happens due to the transformation of values, ideas, interests and qualities at different stages of the life of a particular individual. But in our opinion, the individual psychological traits of a tax criminal can be characterized by such a concept as nihilism (including legal), characteristic of the Russian population in general due to the low level of trust in any public law institutions, the relatively low detection of tax crimes and insignificant sanctions for their commission. The reason for this is the antagonistic relationship between public and private interest despite their interconnectedness, lack of understanding of the so-called “general interest” (Harahap, 2016), perception of the idea of paying taxes as public expropriation (Braithwaite, 2017), and deformation of the sense of justice. In the conditions of maintaining a low legal culture, a reduction in tax rates will not lead to an increase in revenue and the leveling of the legal nihilism.

IV. Conclusion

Analysis of criminological literature and judicial investigative practice leads us to the conclusion that tax criminals differ in the following structure of identity:

- 1) utilitarian qualities – ingenuity, flexibility of thinking, determination, high social and situational adaptability; risk pragmatism;
- 2) general variable personality traits (radicalism; diplomacy; calm), which represent hypothetical mental structures that are found in behavior, which determine a predisposition to unified behavior at different chronological intervals;
- 3) the traits of the individual personality level reflect stable and predictable psychological characteristics (practicality, emotional stability, high intelligence, conformism) (Pickhardt & Prinz, 2014).

Other universal characteristics include age, characterized by an interval of 30 to 49 years, a sufficiently high social status, education, high income, leadership position or owning your own company, law literacy, low social conflict, wide horizontal connections, commitment to legal nihilism, self-serving pragmatism.

Despite this, V.N. Bosakov argues that regardless of various personal characteristics, persons committing crimes in the field of taxation should be divided into 2 conditional groups: entrepreneurs and persons who manage organizations (officials). According to this study, officials are prone to a more sophisticated methodology for committing crimes. Crimes are committed by hiding the tax base, shifting tax liabilities to non-existing counterparties,

as well as falsification of accounting registers. However, an appeal to forensic materials for 2018 demonstrates the inadequacy of this position, since widespread informatization has led to increased awareness of both categories. Therefore, neither the positions held, nor the organizational and legal forms of organizations actually affect the committed crimes. In our opinion, the unifying criterion is to make a profit in one way or another, as a result of which we can talk about all the subjects of tax crimes as a separate consolidated category with similar psychological qualities and a separate socio-economic environment.

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