УДК/UDC 343.98

Криминалистическая характеристика личности преступника, совершающего незаконное участие в предпринимательской деятельности

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Аннотация

Для построения частной методики расследования незаконного участия в предпринимательской деятельности необходимо изучить личность должностного лица, незаконно участвующего в предпринимательской деятельности и доверенного лица, способствующего совершить данное преступление. В данной статье автором изучаются служебно-функциональные свойства должностного лица и доверенного лица, способствующие совершению преступления. Отмечается, что при собирании данных, характеризующих должностное лицо, следует определить характер его служебной деятельности, его деловые качества, допущенные им нарушения, имеющиеся у него поощрения и взыскания. Данные сведения можно получить из материалов личного дела, служебных документов, а также свидетельских показаний его сослуживцев, в том числе и начальников. Мотивы совершения незаконного участия в предпринимательской деятельности должностного и доверенного лица характеризуется корыстной или иной личной заинтересованностью, стремлением посредством тех или иных незаконных действий получить для себя определенную выгоду.

Ключевые слова: должностное лицо, доверенное лицо, предпринимательская деятельность, подконтрольная организация, коррупция.

Forensic characteristics of the identity of the offender committing illegal participation in entrepreneurial activity

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Abstract

To build a private methodology for investigating illegal participation in entrepreneurial activity, it is necessary to study the identity of the official who is illegally involved in entrepreneurial activity and the agent who contributes to the commission of this crime. In this article, the author examines the service and functional properties of an official and a proxy that contribute to the commission of a crime. It is noted that when collecting data characterizing an official, one should determine the nature of his official activities, his business qualities, the violations he has committed, his incentives and penalties. This information can be obtained from the materials of the personal file, official documents, as well as the testimony of his colleagues, including the bosses. The motives for the illegal participation of an official and a trustee in entrepreneurial activity are characterized by a selfish or other personal interest, the desire through certain illegal actions to obtain certain benefits for themselves.

Key words: official, trustee, entrepreneurial activity, controlled organization, corruption.

In order to ensure the completeness, objectivity and comprehensiveness of the circumstances of the case, the lawful and justified resolution of the issue of bringing an official to criminal liability for illegal participation in entrepreneurial activity, a fair determination of the type of punishment, as well as ensuring his re-education, it is necessary to examine the identity of the official and the identity of the agent in the proceedings preliminary investigation.

In forensics, there are different positions regarding the identity of the offender. So, for example, M. I. Enikeev, considers the person as a subject of behavior when committing a crime, which includes in its content the external and internal spheres of its action that are closely related [1]. V. F. Glazyrin reveals the personality as a subject of behavior in the commission of a crime [2].

N. I. Malykhina by the person who committed the crime, understands a person with a set of individual characteristics inherent in him, which are reflected to some extent in the surrounding reality in the form of the consequences of his activity, qualifying the authorized bodies as criminally punishable [3]. In most of the studies conducted, identification of the concept of the person who committed the crime with the suspect and the accused is observed, leaving unaccounted for the methodological and methodological research of the criminal unknown to the investigation.

At the same time, the understanding of the model of the person who committed the crime, the characteristics of the person, states and properties, the information model of the criminal event, the modeling method and its importance in the study of the desired criminal remains inconsistent.

For a proper preliminary investigation of illegal participation in entrepreneurial activity, it is necessary to study not only the identity of the official, but also the agent, since the identity of the suspected (accused) official who establishes an organization carrying out business activities and (or) participates in its management and the identity of the agent the manager of such an organization, which is provided by the official with benefits and other benefits (for example, cial [4]), the whole phenomenon, which is inherent in the biological, physical and social characteristics on which information is displayed in the implementation of the civil service, aimed at committing a crime activities, the results of which are the ideal and the material traces.

Of course, the evidentiary value of certain information characterizing the identity of an official and a proxy depends on the specific circumstances of the criminal case under investigation.

Studying the circumstances characterizing the personality of the accused, it is necessary to proceed from the provisions of Article 289 of the Criminal Code establishing a circle of this information. Of particular importance is the establishment of the basis and date of appointment. Then it is necessary to determine the competence of the official and correlate the benefits, advantages or patronage provided in a controlled organization with another form with the competence of the official.

Based on the content of Article 289 of the Criminal Code of the Russian Federation for the occurrence of a crime event, the official directly or through a proxy should manage the organization under control and provide the latter with benefits, advantages or protection in a different form.

Thus, for the correct qualification of this act, from the moment the fact of providing the organization with benefits, advantages or patronage in a different form is established, it is necessary:

1. To establish the grounds and date of appointment to the position;
2. Determine the competence of an official;
3. To correlate the benefits, advantages or patronage provided in a controlled organization with another form with the competence of an official.

In accordance with Art. 10 of the Federal Law "On the State Civil Service of the Russian Federation" the posts of the federal state civil service, classified by state bodies, categories, groups, as well as on other grounds, make lists of posts of the federal state civil service, which are the relevant sections of the Register of posts of the federal state civil service. Thus, the investigator must compare the position indicated in the order of employment with the indicated positions in the Register of Public Civil Service [5].

The posts of the state civil service of a constituent entity of the Russian Federation in the state bodies of the constituent entities of the Russian Federation, established taking into account the structure of these bodies and classified by categories, groups of posts compile lists of posts of the state civil service of the constituent entities of the Russian Federation, which are the relevant sections of the register of posts of the state civil service of the

constituent entities of the Russian Federation. The register of posts of the state civil service of a constituent entity of the Russian Federation is compiled taking into account the principles of the construction of the Register of posts of the federal state civil service and is approved by law or other regulatory legal act of the constituent entity of the Russian Federation [6, 7]. In addition, in each municipality, a register of municipal posts and a register of posts of the municipal service are established [8, 9].

In addition, as noted by S. S. Galakhov and V. G. Krasilnikov, it is conditionally possible to distinguish two categories of officials who have a real opportunity to commit a crime of corruption: officials of state authorities and local self-government [10] and heads of various levels of state corporations, including and with the participation of private companies. Thus, the subject of the crime are both state and municipal servants, persons holding government posts of the Russian Federation and constituent entities of the Russian Federation, persons performing organizational and managerial, administrative and business functions in state-owned companies, state and municipal unitary enterprises, joint-stock companies whose controlling block of shares belongs to the Russian Federation, constituent entities of the Russian Federation or municipalities, and their representatives.

Note that the legislation of the Russian Federation contains a number of direct prohibitions on the participation of officials in entrepreneurial activity. In particular, Art. 289 of the Criminal Code establishes a ban on the illegal participation of an official in entrepreneurial activity. Responsibility is possible when the law explicitly prohibits such participation.

This prohibition contains the Federal Law of July 27, 2004 No. 79-FZ [11]. The provisions of this law expressly prohibit all public servants, personally or through proxies, from engaging in entrepreneurial activity. A similar ban exists in other federal laws, in particular, law dated 25.03.2007 No. 25-FZ (in relation to municipal employees) [12]; Law of November 30, 2011 No. 342-ФЗ [13] (in relation to employees of internal affairs bodies); Law No. 114-FZ of July 21, 1997 [14] (in relation to customs officials); the law of the Russian Federation "On Police" [15]; the law of 17.01.1992 No.

2202-1 [16] (establishes a ban on combining core activities with other paid or gratuitous activities for prosecutors) and others.

Our list of legal acts establishes the inadmissibility of being a member of the governing body of a commercial organization (unless otherwise provided by law or in the prescribed manner the employee is not instructed to participate in managing the organization), engage in entrepreneurial activity personally or through proxies, engage in any other paid activity other than teaching, scientific, creative, etc. The subject of the crime under Art. 289 of the Criminal Code of the Russian Federation, as a rule, uses administrative and administrative powers to manage state or municipal property, the disposal of budgetary funds or the power to exercise oversight functions in relation to commercial organizations, as a result of which this encroachment is a clear manifestation of corruption.

The emergence of criminal intent by an official to commit illegal participation in entrepreneurial activity implies the availability of special knowledge in the field of civil, administrative, criminal law, management, functioning and competence of state bodies. An analysis of investigative and judicial practice indicates that illegal participation in entrepreneurial activity is carried out by persons who have been in the public service for a long time, have higher education (legal, economic, technical) and special knowledge, work experience and, as a rule, occupy senior positions [17].

Of particular importance for the investigation is the entry of an official before entering the civil service into the composition of participants or heads of a commercial and non-commercial organization, including and controlled organization. In addition, when collecting data characterizing an official, one should determine the nature of his official activities, his business qualities, the violations he has committed, his incentives and penalties. This information can be obtained from the materials of the personal file, official documents, as well as the testimony of his colleagues, including the bosses.

The motives for the illegal participation of an official and a trustee in entrepreneurial activity are characterized by a selfish or other personal interest, the desire through certain illegal actions to obtain certain benefits

for themselves. After establishing the basis for the appointment of an official to the civil service, an analysis of his competence should be provided for the benefits, advantages or patronage of the organization under the control of another form.

The competence of an official is determined both by federal laws and laws of constituent entities of the Russian Federation, charters of municipalities, and intra-departmental orders, job regulations, job descriptions, internal labor regulations, administrative regulations and contracts concluded with public servants that determine their competence.

We note that the grounds for establishing benefits, in contrast to advantages and protection in a different form, due to a direct legal prescription, can be regulated by federal law, the law of the subject of the Russian Federation, the Decree of the Government of the Russian Federation, and the administrative regulations of the relevant body. Accordingly, it is necessary to verify compliance with the nature and grounds for the provision of benefits to the controlled organization.

With regard to the provision of benefits and the exercise of patronage in a different form, in order to establish a relationship with an official, it is necessary to proceed from the specific nature of the crime and its relationship with the competence of the official. Of course, that the crime investigated by us is committed by an official, as a rule, with the participation of an agent. A similar person can be both relatives of the official, and people who are in a trusting, friendly and long relationship with the official.

In view of which, it seems important to establish information on the living conditions of the accused, his marital status, family composition, material and housing conditions. The current legislation to create a legal entity does not imply that the founder has a special status or permission. Perhaps, business partnerships can be mentioned as an exception (however, the number of registered organizations in this legal form is negligible), requiring the status of an individual entrepreneur or a participant in a legal entity (persons engaged in entrepreneurial activity are participants in a full partnership).

Requirements for the participant (founder) of the legal entity. According to Art. 18 of the Civil Code of the Russian Federation, citizens can create legal entities independently or jointly with other citizens and legal entities. According to paragraph 1 of Art. 21 of the Civil Code of the Russian Federation, a citizen's ability to acquire and exercise civil rights, create civil obligations for himself and fulfill them fully arises upon coming of age (including the establishment of a legal entity). Moreover, Art. 26 establishes that minor citizens, upon reaching the age of sixteen, may be members of cooperatives.

Requirements for the executive body. Since most controlled organizations are small businesses classified as microenterprises, labor relations between the organization and the trustee will be regulated by chapters 43 and 48.1 of the Labor Code of the Russian Federation. So, according to Art. 273 of the Labor Code of the Russian Federation, the head of the organization is an individual who, in accordance with this Code, other federal laws and other regulatory legal acts of the Russian Federation, laws and other regulatory legal acts of constituent entities of the Russian Federation, regulatory legal acts of local authorities, constituent documents of a legal entity (organization), and local regulatory acts provide leadership to this organization, including the functions of its sole executive body. According to Art. 63 of the Labor Code of the Russian Federation, the conclusion of an employment contract is possible from the age of 16. In addition, the executive body may be an individual entrepreneur or an organization that carries out management activities of a controlled organization on the basis of a civil law contract.

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