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Типичные следственные ситуации первоначального и последующего этапа расследования незаконного участия в предпринимательской деятельности.

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Аннотация

В статье изложено содержание типичных следственных ситуаций начального этапа расследования незаконного участия в предпринимательской деятельности и следственные версии, строящиеся на основе ситуаций, изложен алгоритм следственных действий по каждой ситуации. На первоначальном этапе расследования незаконного участия в предпринимательской деятельности следственная ситуация характеризуется спецификой отражения действий должностного и доверенного лица по учреждению, участию в управлении подконтрольной организации, осуществляющей предпринимательскую деятельность и предоставлению должностным лицом подконтрольной организации покровительства в окружающей среде и располагаемым следователем объемом. Изложенные автором научно-практические рекомендации могут способствовать повышению качества первоначального этапа расследования незаконного участия в предпринимательской деятельности.

Ключевые слова: следственная ситуация; незаконное участие в предпринимательской деятельности; должностное лицо; доверенное лицо; следственная картина преступления.

Typical investigative situations of the initial and subsequent stages of the investigation of illegal participation in entrepreneurial activity.

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Abstract

The article describes the content of typical investigative situations at the initial stage of the investigation of illegal participation in entrepreneurial activity and investigative versions based on the situations, an algorithm of investigative actions for each situation is presented. At the initial stage of the investigation of illegal participation in entrepreneurial activity, the investigative situation is characterized by the specifics of reflecting the actions of an official and a trustee in the institution, participation in the management of a controlled organization carrying out entrepreneurial activities and the provision by an official of a controlled organization of environmental protection and the amount available to the investigator. The scientific and practical recommendations outlined by the author can help improve the quality of the initial stage of the investigation of illegal participation in entrepreneurial activity.

Key words: investigative situation; illegal participation in business activities; executive; confidant; investigative picture of the crime.

When investigating illegal participation in entrepreneurial activity, various investigative situations arise. Based on the conducted studies of the content of the investigative situation by A. N. Kolesnichenko, V. K. Gavlo, N. A. Selivanov, I. G. Gerasimov, V. D. Zelenskiy and others, we note that the investigative situation must be understood as a set of conditions (setting) in which the process of proof is carried out [1].

Indeed, the content of the investigative situation, incl. and at the initial stage of the investigation of illegal participation in entrepreneurial activity,

it is determined by the degree of the investigator's awareness of the state of the investigation.

Traditionally, the content of an investigative situation includes components of a psychological, informational, procedural and tactical, as well as material and organizational and technical nature, the content of which is influenced by subjective and objective factors [2]. We agree with the opinion expressed by Professor S. A. Kuimzhieva that: "The influence of objective and subjective factors in the investigation predetermines the content of the investigative situation and the algorithm of the initial investigative and other versions" [3, 4].

So, the objective factors should include:

- features of the way of committing illegal participation in entrepreneurial activity (preparation, commission and concealment by an official of actions to provide a controlled organization with benefits, advantages or patronage in another form). The source of information will be documents reflecting the illegal actions of the official, as well as the testimony of witnesses (employees and counterparties of the controlled organization, officials working in one or a related field with the patronizing official).

Despite the fact that the investigative situation determines the tactics of certain investigative actions, it, along with tactical and forensic concepts, is implemented in the forensic methodology, serves as a kind of basis for making a decision on the choice of means of investigation. As RS Belkin rightly notes: "In order to be used in forensic techniques, investigative situations need to be typified, because specific private techniques are designed specifically for typical investigative situations"[5]. At the same time, given the variety of subjective and objective factors, it is possible to typify the investigative situation of illegal participation in entrepreneurial activity only according to one of the constituent components, namely: the availability of information about an event of illegal participation in entrepreneurial activity and information about an official and a trusted person. In support of this conclusion, we are guided by the position of R. S. Belkin on the formation of an inexhaustible number of variants of investigative situations differing

from each other under the influence of a significant number of objective and subjective factors that affect the content and nature of the components of the investigative situation. At the initial stage of the investigation of illegal participation in entrepreneurial activity, the investigative situation is characterized by the specifics of reflecting the actions of an official and a trustee in the institution, participation in the management of a controlled organization [5, 6] carrying out entrepreneurial activities and the provision by an official of a controlled organization of environmental protection and the amount available to the investigator. The content of the investigative situation is constituted by circumstances of an objective (investigative picture of a crime) and subjective (the presence of factors due to the position of the participants in the investigation). In cases of illegal participation in entrepreneurial activity, based on the results of investigative and judicial practice we have studied, by the nature of the difficulty, simple, complicated and complex investigative situations are possible. Note that in the process of investigating illegal participation in entrepreneurial activity, as a rule, complicated and complex investigative situations take place, however, simple investigative situations are also permissible in rare cases. Simple investigative situation. Despite the commission of illegal participation in entrepreneurial activity in conditions of obvious non-obviousness, the investigator may have data on the identity of the official and planned or committed actions to provide a controlled organization with benefits, advantages or other forms of patronage.

Thus, a simple investigative situation, as a rule, arises as a result of providing the investigator with actual data obtained by operational units in the manner established by the Federal Law "On Operational Investigative Activities" on the signs of prepared, committed or committed illegal participation in entrepreneurial activity in the form of a resolution on the provision of results operational-search activity [7]. Possessing the necessary set of sufficiently verified factual data obtained as a result of operational-search activities (as a rule, by conducting a survey, making inquiries, collecting samples for comparative research, operational inspection, control

of postal items, telegraph and other messages, wiretapping, surveillance and removing information from technical communication channels) and allowing to make a preliminary judgment about the nature of the crime, the situation, the proxies, the possible circle of witnesses, the method of committing and concealing, the investigator does not encounter difficulties in building investigative versions and choosing investigative actions. In addition, the investigation may be sent to the investigation material of the Federal Antimonopoly Service about the violation, indicating the fact of illegal participation of an official in entrepreneurial activity and the provision of a controlled organization of advantages for concluding contracts for the supply of goods, performance of work, provision of services for state and municipal needs, in comparison with other participants in the economic turnover. The source of information, along with the inspection materials, will also be the protocols submitted by the FSB on conducting a survey of the premises of the controlled organization, audio recording of telephone conversations confirming the participation of an official in illegal participation in the entrepreneurial activity of the controlled organization, and other documents. Complicated investigative situation. It is characterized by incomplete information about the fact of illegal participation in entrepreneurial activity, unknown information about certain elements of the crime, but the investigation knows the information or sources necessary to establish them. So, for a complicated investigative situation will be characterized by the absence or incomplete information about the way of committing illegal participation in entrepreneurial activity and the identity of the official and trusted (in case of participation) person. A complicated situation in which the criminal result is known, but information about the method of illegal participation in entrepreneurial activity is completely or partially absent, is typical if state (municipal) property (equipment) is found in a controlled organization.

Lack of information about an official is permissible when investigating crimes in the economic sphere and detecting, during investigative actions, the composition provided for in Art. 289 of the Criminal Code of the

Russian Federation. For example, when investigating the illegal formation (creation, reorganization) of a legal entity (Art. 173.1 of the Criminal Code of the Russian Federation), the illegal use of documents for the formation (creation, reorganization) of a legal entity (Art. 173.2 of the Criminal Code of the Russian Federation), a knowingly false expert opinion in the field of procurement of goods, works, services to meet state and municipal needs (Article 200.6 of the Criminal Code of the Russian Federation), etc. A complex investigative situation is characterized by the presence of information about an event, possibly a crime, and the person involved in its commission, and the lack of information that such an event actually took place. When establishing an event, there is no factual evidence that it contains corpus delicti. On the basis of a particular investigative situation, investigative actions arising from their content will be carried out.

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