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Research Article

THE CONCEPT OF SMUGGLING CRIMINAL

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ABSTRACT

The article describes in detail the history of the origin of the concept of the crime of smuggling, the application of this concept and the definitions that a number of legal scholars have given in relation to this concept. The norms concerning the concept of the crime of smuggling in the legislation of our state were also discussed, and the author's definition was given as a conclusion.

KEYWORDS

Smuggling, crime, customs authorities, customs legislation, border, objects of smuggling crime.

INTRODUCTION

Currently, there are increasing global sources of threat, increasing confrontation and tension in different parts of the world, and the incidence of crimes through this “smuggling” during the period of terrorism, extremism, drug trafficking and other dangers and threats. Therefore, the parable of preventing and combating this risk is of great importance for the entire world community, in turn, for our country. In this place, we are destined to dwell primarily on the concept of the crime of smuggling. Because the concept of

smuggling in our country, the norms in certain legal acts indicated, require improvement.

Today, in the processes of a developed market economy and globalization, no state can be wrapped in its shell and live only at the expense of the product it produces. As long as the world market exists, there will also be an international division of labor between countries, export-import operations for the exchange of goods. The type and quantity of such goods, of course, comes from the existing extents in a particular

state. As each country organizes its own economy, it is obliged to take into account these circumstances. Countries that want to live on the basis of natural farming at the expense of self-produced goods (China in the 60s, North Korea in the 90s, etc.) experience shows that they are doomed to backwardness and poverty. Typically, the exchange of goods between countries takes different forms and in appearances and through export-import contracts formalized [1, 94-102].

However, in such situations, the compliance, type and quality of goods with established standards is of great importance when importing them into the territory of the state. The importation of goods that are of poor quality and do not meet the corresponding standards into the territory of the state poses a threat not only to the health, urgency of the population, but also to state security. For this reason, criminals who think of making more profits by acting less often try to import (withdraw) such goods into the territory of the country through different methods in different ways.

Of course, such actions cause certain offenses, that is, Crimes, one of such crimes is smuggling.

Smuggling is considered one of the most ancient and well-known types of crime associated with the transfer of goods across the state border, and the fight against smuggling has always been of great importance. One of the important factors in the effective fight against smuggling should be recognized as its legislative strengthening as an illegal, criminal punishable act [2, 121-128]. The reforms in the criminal and customs legislation implemented in our country in recent years have changed not only the identification of smuggling, but also approaches to its essence. In this regard, it is necessary to observe trends in the detection of smuggling in national legislation, analyze existing definitions and, on this basis, develop

recommendations aimed at improving them. These issues are important, since it is the study of the peculiarities of crimes that serves as a Regulatory Guide for them to be opposed by the state.

The crime of smuggling occurred in the XIV-XVI centuries as a result of the transition of states to capitalist development, the rapid development of commodity-money relations and the need to keep the economy of states from encroachments in a certain sense, as a result of the unlimited import or introduction of goods from the borders of states, literally as a separate type of crime. Initially, the crime of smuggling was expressed in the importation of certain goods by states in order to support their domestic economy and local producers, through which the main economic state of the States was intended to improve. Later, as a result of the illegal import of other objects from the state border by individuals, including weapons, ammunition and drugs, the objects in question were also subject to damage to contraband objects, and their illegal turnover was recognized as a crime.

In particular, as a result of the wars that continued in the European countries in the 16th and 17th centuries, the crime of smuggling was even more rampant, and a new type of it was the crime of “military smuggling” [3]. This type of contraband is expressed in the fact that weapons, ammunition or military equipment are carried into it, which are prohibited from non-participating countries to participating countries in the war. During the war, special laws and contracts were developed by the world community and states aimed at preventing the crime of smuggling due to the development of illegal arms trade.

Smuggling in Russia was officially recognized by the XII – XIII centuries. According to some researchers, this is initially associated with the determination of

responsibility for the attempt to transport or transport goods by cunning ate [4, 3]. However, the consolidation of smuggling as an illegal (criminal) act occurred much later. At the same time, in the early years, legislation referred to smuggling “in essence”, but not by name, that is, it was not given a specific definition. For example, the 1649 Charter of the Cathedral [5, 14-17] and other subsequent legislative acts did not use the word “contraband” itself, but “on goods hidden from duties [6, 462], [7, 302], [8, 385].

One of the first legal sources to use the content of the word "smuggling" without disclosure was the customs Charter for European and Asian trade of 1893. In particular, the Charter of paragraph 1559 states that "the production of contraband, the use of false labels, the counterfeiting of Customs stamps, the counterfeiting of goods to" liability established [9, 86-431]. A more accurate definition of the concept of smuggling in Russian law appeared only at the beginning of the twentieth century with the adoption of the customs Charter of 1904. In addition, the concept of smuggling has been identified through illegally transported goods. Thus, paragraph 1045 of this document states that "goods transported or imported by illegal means and means abroad or abroad ... considered secretly transported, ... recognized as contraband"[10, 372-378].

To date, the concept of smuggling has changed and is expressed in its own way in each foreign state. The word smuggling is Italian for “contra” - counter, “bando” - government decree, meaning the transfer of goods, valuables, foreign exchange assets and others prohibited from being brought and taken into the country in illegal clandestine ways across the state border, as well as legal actions to carry prohibited goods [11, 704].

In addition to customs control, goods that are hidden, through difficult-to-identify means, or not listed in documents (declarations), are considered to have been smuggled. It is worth noting that in fact, such illegally transferred property itself is also called smuggling. In the lexicographical literature, three main meanings of this concept are usually distinguished: firstly, smuggling means secretly transporting goods, currency and other assets across the border in violation of customs legislation; secondly, contraband refers to goods or other objects illegally transported across the border; finally, and thirdly, prohibited, clandestine activities, things that are secretly moved from one place to another are sometimes called smuggling [12, 249]. Other literature highlights the meaning of the word contraband with emphasis on transporting goods across the border without paying duty. Smuggling is thus argued to be understood as only those items that are transported from the border without paying a special tax (duty). In our opinion, it is important to understand the essence of smuggling and distinguish it from crimes and other offenses that are superficially similar.

Despite the existence of certain "domestic" meanings, the concept of smuggling is, in our eyes, undoubtedly a legal concept. It is actively used in international legal documents. An example of this would be the convention "on the cessation of smuggling of Alcoholic goods", signed in Gelsingfors on 19 August 1925 [13, 261].

In scientific literature and research work, different definitions of the concept of smuggling can be encountered. For example, one of the scientists who conducted research on the crime of smuggling in foreign countries was D.V.Kozemaslov opinion that while the crime of smuggling was initially introduced in the Russian Federation for the purpose of forming a

single market, supporting domestic producers, now its social danger is further increased, it is considered a serious crime due to the serious danger to the public's life and health, the normal life of society, the constitutional system of the state [14, 177].

A.P.Kuznetsov, on the other hand, denounced the policy of smuggling carried out by the special competent authorities of the state as punitive due to the serious harm it can bring to the state economy, touching on the fact that it is committed by individuals in order to gain wealth [15, 31].

Also a well-known researcher of anti-smuggling problems, prof. Yu.I.Suchkov according to, it would be appropriate to consider free-flowing goods and other objects as contraband only if they were smuggled across the customs border [16, 39].

A similar idea was made by S.A.Sirma also promotes. He believes that it is necessary to distinguish between economic smuggling, smuggling of people, as well as the illegal transfer of objects that are excluded from circulation or are limited in circulation [17]. A similar view was taken by prof. B.V.Voljenkin also promotes. He expresses doubt about the validity of using the term "smuggling" to refer to Social Security acts that directly encroach on public security rather than economic interests [18, 182]. From this point of view, Project The Model Criminal Code for the participating CIS states, developed by a group led by B.V.Voljenkin, states that the general composition of the crime of smuggling is divided into two: economic smuggling and smuggling [19] is not accidental. In our opinion, this solution is correct in its essence, but from a terminological point of view is not devoid of disadvantages, since objects released from free circulation or objects restricted to free circulation (ordinary weapons, drugs and Psychotropic Substances, strategic raw materials and so etc.)

applied to the illegal transfer of customs from the border, the term "contraband" was retained.

Professor S.V.Dyakov, in a work published in 1996, places smuggling in a group of state crimes, but this crime is considered capable of disrupting the economic security of the country. The latter is indisputable, but this does not give grounds for classifying smuggling as a state crime, since some objective and, most importantly, subjective factors, in particular, the motivational direction of the culprit's actions, are not fully taken into account. The purpose of the individual here is not related to the crime of the state, but to the violation of the economic basis of the state. The culprit is guided by completely different (selfish) motives, and he sets himself other goals of criminal activity. Although not all, most economic crimes greatly or significantly violate the normal state of the economic security of the state, objectively one way or another, sometimes causing enormous harm. But this fact does not give reason to consider them as state crimes, or rather, "the foundations of the constitutional order and crimes against state security" [20, 16].

It would be appropriate, in our opinion, to look for the grounds for solving the above-mentioned problem in studies on the issues of systematization of crimes in the field of economic activity, as well as in current legislation. Some authors include smuggling in the system of crimes in the field of economic activity in the group of Customs crimes [21, 147-148]. In this case, as the main criterion for distinguishing this group of crimes, they recognize the specific area of economic activity. The existence of a separate group of Customs crimes P.N.Panchenko also confesses. He systematizes these crimes on the basis of direct objects of aggression, i.e. social relations in certain areas of customs work [22, 541].

A.I.Chuchaev and S.Yu.Ivanova, in addition to dividing customs crimes into a separate group, give a definition to the concept of Customs crime, based on the fact that their conspecific object is one. In their opinion, smuggling, as a customs crime, encroaches on customs activities to ensure the transfer of goods and vehicles from the customs border in accordance with the established rules [23, 41-43].

In the system of economic crimes proposed by N.A.Lopashenko, smuggling is included among the encroachments on social relations based on the principle of prohibiting criminal forms of behavior in economic activity [24, 16]. V.E.Melnikova uses specific areas of economic activity as a criterion for the systematization of crimes, introducing smuggling into the group of crimes in the field of state regulation of economic activity [25, 178]. Based on the same criterion, which is recognized as the direct object of the crime, B.V.Yaselenko lists smuggling among the crimes in the financial sphere of the state [26, 145].

It should be noted that, in detail, the points advanced by scientists dwell on the criteria for the systematization of crimes in the field of economic activity used by the authors N.A.Lopashenko, V.E. Melnikova and B.V.Yaselenko's views were critically evaluated in the legal literature [27, 40-42]. However, even a superficial analysis of the opinions advanced by scientists suggests that many of them point to the direct connection of these crimes or objects of these crimes with the customs business.

The legislation in the Republic of Uzbekistan uses documents made by fraudulently avoiding customs control or hiding from customs control, or resembling customs documents or tools, without a declaration or using a declaration inscribed in another name, using powerful influencers, poisoners, explosives, radioactive materials, blasting devices, weapons,

firearms, ammunition or main parts of firearms, as well as devices of, the transfer of materials promoting separatism and fanaticism from the customs border of the Republic of Uzbekistan constitutes the content of smuggling [28].

The specificity and excellence of the criminal law of the Republic of Uzbekistan is considered to be a separate crime of importation of prohibited and restricted objects from circulation or circulation by law from the state border. After all, while Article 182 of the criminal code regulates social relations related to violations of customs legislation, Article 246 establishes the inevitability of punishment for smuggling, that is, the importation of prohibited or restricted items of civil circulation. In violation of customs laws, aggression is directed towards social relations in the field of Economics, and the object of the crime - any goods or wealth in which the Earth is in circulation in society-can be.

Violation of customs laws also takes into account the transfer of any goods of an extremely large size from the border of customs without proper registration, which is now carried out on the basis of the list of items and products prohibited for export in accordance with the annex of the PF-5286 of December 15, 2017 "on additional measures to ensure the competitiveness of domestic products in Smuggling is a crime committed in certain forms. This crime involves violation of the procedures and conditions established when carrying items previously issued in lombor, civil turnover through customs borders.

Paragraph 17 of the plenum of the Supreme Court of the Republic of Uzbekistan No. 2 of February 20, 2023 "on the judicial practice of violation and smuggling of customs legislation" states in the first part: "the courts must provide that, in accordance with Article 246, in accordance with Article 246, customs control must be

avoided or hidden from customs control or used by fraudulently using documents or instruments similar to customs, explosives, radioactive materials, detonation devices, weapons, firearms, ammunition or main parts of firearms, as well as drugs, their analogues or psychotropic substances, materials that promote religious extremism, separatism and fanaticism, other types of nuclear, chemical, biological and weapons of mass destruction, materials and devices that are obvious that can be used to create such weapons, the transfer of radioactive materials (henceforth referred to in the text as contraband items) from the customs border of the Republic of Uzbekistan constitutes another crime, that is, the composition of the crime of smuggling” [30].

Crossing the customs border when importing goods and other items – indicates that a state of transportation of those items has occurred. In the case of export of goods and other items, filling out the customs declaration or other actions aimed directly at the purpose of export of goods and other items, means of transport is considered export. If, when carrying out these actions, the importation or removal of goods and other items is a violation of the rules of procedure, based on the specific case of this violation, these actions are considered an administrative violation, such as smuggling, violation of customs legislation or, as established in the Customs Code, which requires criminal prosecution [31, 9].

Based on this description of the crossing of the customs border, we must understand all the actions provided for by Article 246 of the Criminal Code and all the circumstances related to the importation and withdrawal of the word “transfer” in the settlement. But in the Customs Code, the word “transfer” was used without the use of the word “transfer”. Of course the word “transfer” also means a different meaning in

terms of meaning. For example: Article 273 of the Criminal Code provides for the purpose of illegally preparing, obtaining, storing and other actions for the transfer of drugs, their analogues or psychotropic substances, as well as illegal transfer of them, that is, the transfer of drugs here from one person to another. In this article we are considering, the smuggler does not take the object he is carrying from one person and give it to another person, it is implied that he himself will carry that object across the border.

It should be noted that the Customs Code uses the concept of “transfer” in relation to the import and import of goods. Today, in criminal legal norms (articles 182 and 246 of the Criminal Code), the concept of “customs border” is introduced, although we also have the concept of “state border”, and we know that the crime of smuggling is also carried out by crossing the state border. Even in this case, the crime will continue to be qualified by this article.

This approach to the issue comes from the concepts that are legally enshrined in the Customs Code, the main legal document that defines the procedure for the implementation of Customs actions by all individuals and legal entities. Therefore, the customs code is in a broad sense the main document in the application of criminal penalties for violations in this regard. Because, Article 246 of the Criminal Code establishes a general norm. But in order to properly apply it in practice, it is necessary to apply to the Customs Code, which is a special legal document.

Usually, when a person has completed a customs declaration or other documents, he puts his personal luggage on the transporter and carries goods or other items through the customs border. Its cargo arrives by transporter at a place equipped with special tools and is subject to customs control and inspection. This is what the transportation of goods from the customs

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