COLLECTION
"SCIENTIFIC BULLETIN OF THE RESEARCH INVESTIGATION
PROBLEMS OF PRE-COURT INVESTIGATION"2025-1
ISSN 2786-7900
https://doi.org/10.61417/2786-7900.2025.1.3

FOREIGN EXPERIENCE IN DETERMINING THE EXTENT OF LEGAL LIABILITY FOR THE COMMISSION OF SMUGGLING OF GOODS

UDC 343.343.5

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Abstract. The current stage of development of many countries is characterized by a significant expansion of international relations in various fields of activity. Integration processes stimulate the natural growth of foreign economic activity, strengthening of economic ties, growth of trade turnover, simplification of customs procedures and improvement of international law governing these relations. However, this also brings with it problems related to controlling the movement of goods across customs borders, compliance with customs and tax laws, and preventing criminal activity in the foreign economy.[7,8]

Smuggling is one of the most dangerous criminal activities in the world, as it causes significant economic losses to the interests of each country. In particular,

smuggling of weapons, drugs, works of art, rare wild animals and other goods is of particular concern. Criminal law plays a key role in combating such crimes. The effectiveness of counteraction depends on the economic development of the country, its historical traditions, and the culture of foreign economic relations. Legislative approaches to criminal liability differ from country to country, due to a number of factors, including the type of punishment imposed for smuggling.[13]

The article analyzes the theoretical and practical aspects of criminalization of smuggling of goods, as well as approaches to the definition of the term “smuggling” in different countries. The author examines the significance and economic consequences of this type of crime for national and international economies. Particular attention is paid to the comparative analysis of criminal legislation of different countries, as well as to the peculiarities of smuggling regulation in Ukraine. The author analyzes how different countries define what constitutes smuggling of goods and how this affects legislative initiatives, criminal liability and the effectiveness of combating this phenomenon. Specific examples of criminal sanctions for smuggling are considered, as well as the criteria by which countries determine which goods are subject to criminalization.

Keywords: *smuggling of goods, criminalization, economic security, international law, criminal liability, law enforcement, comparative analysis.*

Statement of the problem. Violations related to smuggling have long been a massive negative phenomenon that threatens the important economic interests of any state. There is a constant increase in the number of criminal offences related to the illegal movement of goods and resources across the border. Countering these acts often requires coordinated action by two or more states simultaneously. Different approaches to regulating liability for smuggling may create certain difficulties. For example, actions that are similar in terms of the degree of public danger may be criminalised in

some states, while in others they may be subject to administrative sanctions. Ukraine should seek to find new areas of cooperation with foreign countries that demonstrate the accumulation of positive law enforcement experience in this area. In this context, it is important to consider the differences caused by the content of legal provisions that provide for criminal liability for smuggling.

The current stage of development of most countries is characterised by the expansion of international relations in almost all areas of activity. Integration processes contribute to the natural growth of foreign economic activity of countries. Stable economic ties are being established, trade turnover is increasing, customs procedures are being simplified, and the rules of international law governing these relations are being improved. At the same time, problems arise related to control over the movement of goods across the customs borders of states, compliance with customs and tax legislation, and prevention of crimes in the field of foreign economic activity.

In most countries of the modern world, smuggling is recognised as one of the most dangerous types of criminal activity, as it causes the greatest economic damage to the interests of any country. Smuggling of cultural goods, weapons and ammunition, drugs, works of art, valuable wildlife, etc. is of particular concern. Criminal liability legislation plays an important role in the system of combating crimes in the field of foreign economic activity. The intensity of counteraction depends on the level of economic development of a particular state, historical traditions, and the culture of foreign trade relations. Accordingly, the approaches of legislative bodies to the regulation of criminal liability in different countries may differ.

The success of countering smuggling depends on many factors, including the type of punishment imposed. The main types of penalties for this offence are a fine and imprisonment for a fixed term. In some countries, such as Ukraine, the sanction of the article may include an additional penalty in the form of confiscation of property. Other

penalties for smuggling include correctional labour and restriction of liberty (Kazakhstan, Belarus), deprivation of the right to hold certain positions or engage in certain activities. The availability of alternative punishments that do not involve isolation from society is a positive experience that provides for the possibility of choosing a punishment depending on the nature and degree of public danger of the criminal offence.

The analysis of the CIS legislation shows that, despite the similar approach of the legislator to the construction of the rules on smuggling, some differences should be noted. In particular, this is the calculation of the amount of punishment for the offence. The indication of different sentences indicates a different approach of the CIS states to determining the social danger of smuggling. Most CIS countries have a uniform approach to determining the maximum term of imprisonment for smuggling of goods - up to five years in prison, but some states have determined the term of imprisonment for such an act - up to 3 years in prison. At the same time, we are interested in the approach of states with a more developed system of factors to counteract smuggling of goods by applying the law on criminal liability. In European countries, as practice shows, the legislator's approach to regulating criminal liability for smuggling is not identical.

Despite the long existence of the European Union, which has a common market that provides for the free movement of goods, services and works, the legislation on liability for smuggling cannot be called unified. In addition to criminal laws, issues related to the imposition of penalties for smuggling offences are regulated by other legal acts, such as customs regulations, tax regulations, etc. In some European Union countries, national criminal law does not provide for liability for the illegal import or export of goods at all (Belgium, Norway, Austria, etc.). [5,8,9]

Therefore, it is advisable to divide the countries into subgroups:

- states whose legislation does not criminalise smuggling of goods (Austria, Belgium, Norway);

- States whose legal systems provide for criminal liability for smuggling in other laws than the criminal code;

- countries whose criminal laws provide for criminal liability for smuggling;

- countries in which the death penalty is provided for drug smuggling (Afghanistan, China, Egypt, India, Iran, Qatar, Somalia, Zimbabwe).[6]

- States in which the perpetrators of economic smuggling are held criminally liable. For example, they move counterfeit goods or means of their identification across the border (Dutch Criminal Code). These can be counterfeit money (Article 209), false, forged or illegally manufactured stamps, seals and marks or objects on which they are illegally affixed (Article 220). Article 337(1) regulates the conditions for criminal prosecution for smuggling: counterfeit or illegally manufactured trademarks, goods or containers with illegally used trade names or trademarks, etc. The Swedish Criminal Code is also focused on combating economic smuggling. Article 1, Chapter 11, Part 2 of this criminal law establishes criminal liability for a person declared bankrupt who exports property from the country to conceal it from bankruptcy proceedings.[6,10]

In foreign countries, the legislator has criminalised a wide range of acts that can be attributed to both economic smuggling and smuggling of restricted or prohibited items. This group can be divided into two subgroups.[11,12]

The countries of the first subgroup are mainly focused on counteracting the import and export of certain items or goods into (out of) the territory of states. For example, the Criminal Code of San Marino provides for criminal liability for violation of the rules for the importation of narcotic drugs (including negligence) (Articles 244, 250) and for smuggling of weapons and explosive devices (Article 251).

The maximum penalty for these offences is 3 years (Art. 244) and 1 year of imprisonment (Art. 251). At the same time, the most severe punishment is provided for smuggling nutrients and substances used for medical purposes into the territory of the Republic - up to 10 years in prison (Article 242)."[12]

The states of the second subgroup are primarily focused on combating smuggling that infringes on the economic interests of the state. The Criminal Code of Argentina criminalises ‘anyone who has counterfeited money in legal circulation in the Republic, as well as anyone who has imported, sold or put into circulation such counterfeit money’ (Article 282). Article 283 prohibits, under penalty of law, the reduction of weight or alteration of coins in legal circulation, as well as their importation, sale or introduction into circulation. Pursuant to § 169 of the Danish Criminal Code, any person who imports counterfeit money or securities shall be held criminally liable. Section 170 criminalises the importation of a bearer bill of exchange as a means of payment for narrow or wide circulation or that can be used in a similar manner. This provision does not apply to foreign banknotes."[12]

Let us consider the experience of countries where criminal law measures to combat smuggling of restricted or prohibited goods are a priority. For example, in Japan, the Criminal Code provides for criminal liability for the illegal movement of opium or opium smoking devices across the border (Articles 136-138). In Israel, smuggling of materials that may affect state and social foundations, as well as materials that call for disobedience, is also punishable. For example, smuggling weapons is punishable by up to 15 years in prison, and importing materials that incite disobedience is punishable by up to 5 years in prison. The importation of counterfeit bills of exchange or precious coins is punishable by 7 years in prison.

In Switzerland, there is criminal liability for smuggling goods that threaten ‘elementary values’ (e.g., public health, property rights or information security). The

importation of materials depicting cruelty, such as photographs or images that violate elementary values, is punishable by law (Article 135). In addition, the importation of food harmful to animal health (Article 236) or software for illegal data decryption is also subject to criminal liability (Article 150). Acts related to the violation of these norms may be punishable by hard labour prison for up to 5 years."[5,10]

These examples demonstrate how different countries cover a wide range of smuggling-related offences, including those that infringe on public safety and moral values.

The following classification of smuggling is based on the object of criminal law protection that is encroached upon by the person smuggling the goods.

Attacks on personal integrity. In countries such as France, smuggling can be seen as a threat to personal integrity. For example, in France, the Criminal Code provides for liability for drug smuggling in the section on illegal drug trafficking, which is part of the chapter on offences against physical or mental integrity. In Switzerland, the importation of materials depicting scenes of cruelty is included in the chapter on Crimes against life and health.

Crimes related to falsification and deception. In countries such as Argentina, Denmark, Holland, Israel, North Korea, Thailand and the Netherlands, smuggling counterfeit currency or monetary instruments is considered a crime of forgery or deception. These acts are classified as counterfeiting, falsification or substitution and are usually regulated in the relevant sections of the criminal codes. For example, in Argentina, the object of such offences is public trust.

Crimes against public order and security. In some countries, smuggling certain goods is considered a crime against public order, security and health. For example, the importation of hazardous substances or drugs is considered a felony, and the importation of weapons and explosives is considered a misdemeanour. In Switzerland,

such acts are classified as crimes against public health, and in Israel, arms smuggling is classified as a crime against state and public foundations.

Crimes against the state economy and intellectual property. In countries such as the Netherlands and Thailand, smuggling of intellectual property is considered an economic crime. For example, in San Marino, smuggling of goods with counterfeit trademarks or copyrighted works is punishable, and in Thailand, importation of goods with counterfeit trademarks is punishable.

Crimes against environmental safety. In some countries, smuggling that threatens the environment is also punishable by criminal law. For example, in Germany, smuggling of nuclear or radioactive substances is classified as an offence against environmental safety.

These categories reflect the diversity of approaches to criminalising smuggling in different countries, depending on which values and interests legislators consider most important to protect in the first place.

Conclusion. The countries whose experience we have taken into account in this study approach the analysis of the term ‘smuggling of goods’ very carefully and in detail, emphasising the importance of precisely defining what exactly is meant by it. Different countries have different practices regarding which goods can be considered smuggled and which cannot. While some countries have clear rules governing smuggling of goods, other countries either do not have such a definition at all or it is very generalised and vague."[13]

An example is our country, where the word ‘goods’ in the context of smuggling does not have a specific definition, which raises many questions. For example, when a person transports several pieces of electronics, such as iPhones or iPads for personal use, it can be perceived as smuggling, which is hardly in line with common sense and

the purpose of the law on criminal liability. This demonstrates legal uncertainty and the risk of misapplication of the law.

The challenge for states is to make the right analysis as to which types of smuggling are damaging to their economy and society and which can be treated as lesser offences that require only administrative sanctions."[13]

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