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CURRENT ISSUES AGAINST SMUGGLING IN UKRAINE

Formulation of the problem. Smuggling as a social phenomenon threatens many spheres of life. First, it is a threat to the national security of Ukraine or the security of other countries in the event of illegal export (import) of weapons of mass destruction, firearms and ammunition. Secondly, the threat to economic security due to the export of strategic raw materials and goods, currency values, resulting in a shortfall in customs duties and therefore a decrease in the revenue side of the budget. Third, it threatens human life and health by smuggling toxic, potent substances, especially drugs. Fourth, the threat to the national historical and cultural heritage in the smuggling of cultural values.

Thus, combating smuggling is one of the priorities of the state. Therefore, both at the legislative and practical levels, there should be an established mechanism for combating smuggling, as well as a clear distinction between administrative and criminal liability in this area.

Analysis of recent publications. It is important to note that, despite the exceptional importance and urgency of the legal regulation of smuggling, domestic and foreign science has not paid enough attention to certain issues of combating smuggling. The lack of definitions and adequate conceptual apparatus indicates significant gaps in the current legislation of Ukraine.

At the same time, in the legal scientific literature of theoretical and methodological nature, many ideas and well-founded provisions related to this issue are concentrated. The works of such legal scholars as P. Andrushko, I. Burakovsky, O. Busol, P. Kravchuk, V. Lukianova, M. Melnyk, A. Muzyka, O. Omelchuk, A. Pavlova, O. Pratsiuk, Y. Suchkova, V. Tymoshenko and others are devoted to the theoretical aspects of the problems of the concept and essence of smuggling.

Despite the significant theoretical basis of the study of smuggling, in the scientific field insufficiently disclosed issues of criminalization of new types of smuggling, delimitation of criminal and administrative liability for offenses in the field of smuggling, certain aspects of combating smuggling in Ukraine. Therefore, this issue requires further research, especially in the visa-free regime.

The aim of the study. Based on the relevance and significance of the problem, the purpose of the article is to identify current issues of criminal and administrative liability in the field of smuggling.

To achieve this goal, the following tasks were set: 1) to analyze the essence and normative content of smuggling; 2) determine the classification of contraband in accordance with the law; 3) to identify subjects of counteraction to smuggling in Ukraine; 4) consider further prospects for amendments to the legislation in the field of legal regulation of smuggling.

Results of the research. It is with the emergence of borders between countries and the collection of duties for the movement of goods through them that one of the most common types of crime is smuggling. In almost all countries, smuggling (contra – against, bando – government decree) means the movement across the customs border (state border) of goods and other items outside customs control or with concealment from customs control.

The definition of smuggling is also provided in Ukrainian legislation. According to Art. 201 of the Criminal code of Ukraine (further CCU), smuggling is movement across customs border of Ukraine out of customs control or with concealment from customs control of cultural values, poisonous, powerful, explosives, radioactive materials, the weapon or ammunition (except smooth-bore hunting weapons or ammunition). to it), parts of firearms, as well as special technical means of covert information [1].

In addition to Art. 201 of the Criminal Code, the Criminal Code of Ukraine provides for such types of smuggling as:

- movement across the customs border of Ukraine outside customs control or with concealment from customs control of timber or lumber of valuable and rare species of trees, unprocessed timber, as well as other timber prohibited for export outside the customs territory of Ukraine (Article 201–1 of the Criminal Code);

- smuggling of narcotic drugs, psychotropic substances, their analogues or precursors or falsified medicines (Article 305 of the Criminal Code).

In addition to criminal liability, Ukraine provides for administrative liability for smuggling in accordance with Section XVIII of the Customs Code of Ukraine. Violation of customs rules is an administrative offense, which is an illegal, culpable (intentional or negligent) acts or omissions that infringe the established by this Code and other legislation of Ukraine the procedure for moving goods, commercial vehicles across the customs border of Ukraine, presentation their bodies of revenues and fees for customs control and customs clearance, as well as transactions with goods under customs control or control over which is entrusted to the bodies of revenues and fees by the Customs Code of Ukraine or other laws of Ukraine, and for which the Customs Code of Ukraine provides for administrative liability. Administrative liability for offenses under the Customs Code of Ukraine occurs if these offenses do not entail criminal liability [2].

Based on the definition of smuggling and directly the objects of smuggling, we can distinguish between different types of smuggling. In particular, depending on the legal liability arising from the commission of smuggling, smuggling can be divided into: 1) smuggling, for which criminal liability is provided; 2) smuggling, for which administrative liability is provided.

Depending on the subject of smuggling it can be divided into : 1) smuggling of historical and cultural values; 2) smuggling of explosives, radioactive

materials, weapons or ammunition (except for smooth-bore hunting weapons or ammunition), parts of firearms; 3) smuggling of timber or lumber of valuable and rare species of trees, unprocessed timber, as well as other timber prohibited for export outside the customs territory of Ukraine; 4) smuggling of narcotic drugs, psychotropic substances, their analogues or precursors or falsified medicines; 5) smuggling of special technical means of covert receipt of information; 6) others.

In addition to the listed items of smuggling, criminalization requires the smuggling of valuable and rare species of animals and plants and (or) endangered animals and plants, microbiological or other biological agents or toxins, transplant organs or human tissues, etc.

A separate type of smuggling in the Criminal Code of Ukraine is the smuggling of narcotic drugs, psychotropic substances, their analogues or precursors or counterfeit medicines (Article 305 of the Criminal Code).

The legislation defines drugs as chemical substances of plant or synthetic origin that cause a change in the mental state of a person, the systematic use of which forms dependence on them; drugs in a broad sense are narcotic drugs, psychotropic substances, their analogues and precursors, the circulation of which is regulated by law [3]. Depending on the subject of smuggling of narcotic drugs, psychotropic substances, their analogues or precursors or falsified medicines: 1) smuggling of narcotic drugs; 2) smuggling of psychotropic substances; 3) smuggling of analogues or precursors; 4) counterfeit medicines. Despite the rather wide range of types and forms of smuggling, some types of smuggling need to be criminalized, especially offenses in the field of transportation of goods and materials.

Thus, smuggling of goods is excluded from the disposition of Art. 201 of the Criminal Code, for which administrative liability is now provided. Nevertheless, the draft law "On Amendments to the Criminal and Criminal Procedure Codes of Ukraine on Criminalization of Smuggling of Goods" № 8543 of July 3, 2018 was submitted to the Verkhovna Rada of Ukraine, where it is proposed to add movement across the customs border of Ukraine outside customs control or with concealment from customs control of goods in large quantities, as well as in large and especially large sizes.

If we consider goods in the meaning provided by the Customs Code of Ukraine, the goods are any movable property, including those to which the law applies to the regime of immovable property (except commercial vehicles), currency values, cultural values, as well as electricity, moving by power lines [2]. In addition to the above-mentioned bill, the draft Law "On Amendments to the Criminal Code of Ukraine on Criminalization of Smuggling of Alcoholic Beverages and Tobacco Products" № 3254 of 07.10.2015 was also considered. control of alcoholic beverages, tobacco products committed in significant amounts.

Also Art. 201 of the Criminal Code is supplemented by clauses on smuggling of alcoholic beverages, tobacco products committed in large amounts and in especially large amounts, as well as committed by prior conspiracy by a group of persons or a person previously convicted of a crime under this article or an official using official position.

The process of counteracting smuggling and prosecuting covers the system of state bodies with the appropriate powers in this area. According to the most common classification of state bodies by the criterion of the breadth of competence, there are state bodies of general and special competence. If we adhere to this classification, the general bodies of counteraction to smuggling are state bodies of general competence, which are:

- The Cabinet of Ministers of Ukraine as the highest body in the system of executive bodies, takes measures to ensure the defense and national security of Ukraine, public order, the fight against crime, directs and coordinates the work of ministries and other executive bodies [4];

- The President of Ukraine as a guarantor of state sovereignty, territorial integrity of Ukraine, observance of the Constitution of Ukraine, human and civil rights and freedoms;

- The Verkhovna Rada of Ukraine is the parliament as the only legislative body in Ukraine that determines the basic principles of combating smuggling.

The bodies of special competence are the security forces, judicial and law enforcement agencies. Some are designed to combat smuggling others have the power to prosecute in this area. According to the Law of Ukraine "On National Security of Ukraine" of 21.06.2018 for № 2469-VIII, security forces are law enforcement and intelligence agencies, state bodies of special purpose with law enforcement functions, civil defense forces and other bodies to which the Constitution and laws of Ukraine assigned functions to ensure the national security of Ukraine [5].

Thus, law enforcement agencies are part of the security forces, which by the laws of Ukraine are entrusted with the functions of ensuring the national security of Ukraine.

There is no single definition of the concept of law enforcement agencies in the legislation, it is provided in various regulations. Thus, according to the Law of Ukraine "On State Protection of Court and Law Enforcement Officials" of December 23, 1993, 3781-XII, law enforcement agencies are the prosecutor's office, the National Police, the security service, the Military Law Enforcement Service in the Armed Forces of Ukraine, the National Anti-Corruption the Bureau of Ukraine, state border guards, bodies of revenues and fees, bodies and institutions of execution of punishments, pre-trial detention centers, bodies of state financial control, fishery protection, state forest protection, other bodies that perform law enforcement or law enforcement functions [6].

According to the "Instruction on the procedure for conducting control measures by the control and audit department of the State Judicial Administration of Ukraine", law enforcement agencies are the prosecutor's office, internal affairs, security services, state control and audit service and state tax service [7].

"The procedure for inspection by the State Audit Office, its interregional territorial bodies" defines law enforcement agencies as prosecutors, security services, the National Police, tax police units of the SFS, the National Anti-Corruption Bureau, formed in accordance with the law and other bodies performing law enforcement functions [8].

Thus, the definition of law enforcement agencies contains only a list of such bodies, without the main tasks facing them. Quite meaningful is the definition provided by the "Agreement on the stay and interaction of law enforcement officers in the territories of the Commonwealth of Independent States", this document defines law enforcement agencies as state bodies that in accordance with national legislation ensure security of state, society, citizens and fight against crime [9].

Therefore, the definition of law enforcement agencies is carried out through the implementation of the functions entrusted to them, in particular law enforcement one. Anti-smuggling law enforcement agencies are state bodies that implement the law enforcement function of the state, which have the authority to apply measures to detect, prevent, eliminate crimes and other offenses related to smuggling, to bring to justice those guilty of such offenses. and may, if necessary, use state coercion.

Administrative jurisdiction in the field of prosecution for smuggling provides that in accordance with Art. 522 of the Customs code, cases of violation of customs rules provided for in Articles 468–470, 474, 475, 477–481, 485 of the Customs Code are considered by the bodies of revenues and fees. Cases of violation of customs rules provided for in Articles 471–473, 476, 482–484 of the Customs Code, as well as all cases of violation of customs rules committed by persons under 18 years of age, are considered by local courts (judges) [2].

In criminal proceedings, justice is administered only by a court. Prosecution of smuggling is carried out by the courts of first, appellate and cassation instances. According to Article 216 of the Criminal Procedure Code, security investigators are conducting a pre-trial investigation of crimes under 201, 201-1, 305 of the Criminal Code of Ukraine. According to Art. 38 of the CPC, the bodies of pre-trial investigation (bodies that carry out inquiries and pre-trial investigation) are the investigative units of the security authorities. Administrative liability for violations provided by the Customs Code occurs if these offenses do not entail criminal liability. Thus, cooperation in combating smuggling most often takes place between units of the Security Service of Ukraine, the Ministry of Internal Affairs, the State Border Guard Service of Ukraine, the State Fiscal Service of Ukraine, the prosecutor's office, other law enforcement agencies and the court.

Conclusions and prospects for further research. Ukraine has a well-established mechanism for combating smuggling, which includes criminal and administrative liability for offenses in the field of smuggling, as well as a system of state bodies for combating smuggling. Nevertheless, criminalization requires the smuggling of valuable and rare species of animals and plants and (or) endangered animals and plants, microbiological or other biological agents or toxins, transplant organs or human tissues, etc., as well as certain types of smuggling into sphere of transportation of inventory. Therefore, this issue requires further research.

References

1. Кримінальний кодекс України: Закон України від 05.04.2001 р. № 2341-III. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#n3095> (дата звернення: 15.01.2021).
2. Митний кодекс України: Закон України від 13.03.2012 р. № 4495-VI. URL: <https://zakon.rada.gov.ua/laws/show/4495-17#n3707> (дата звернення: 15.01.2020).
3. Стратегія державної політики щодо наркотиків на період до 2020 року: Розпорядження Кабінету Міністрів України від 28.08.2013 р. № 735-р. URL: <https://zakon.rada.gov.ua/laws/show/735-2013-%D1%80>(дата звернення: 15.04.2021).
4. Конституція України від 28 червня 1996 року. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#n4690> (дата звернення: 15.04.2021).
5. Про національну безпеку: Закон України від 21.06.2018 № 2469-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2469-19> (дата звернення: 07.04.2021).
6. Про державний захист працівників суду і правоохоронних органів: Закон України від 23 грудня 1993 року № 3781-XII. URL: <https://zakon.rada.gov.ua/laws/show/3781-12> (дата звернення: 15.04.2021).
7. Про затвердження Інструкції про порядок проведення контрольних заходів контрольно-ревізійним відділом Державної судової адміністрації України: Наказ Державної судової адміністрації України від 29.07.2011 N 120. URL: <https://zakon.rada.gov.ua/rada/show/v0120750-11> (дата звернення: 15.04.2021).
8. Про затвердження Порядку проведення інспектування Державною аудиторською службою, її міжрегіональними територіальними органами: Постанова Кабінету Міністрів України від 20 квітня 2006 р. N 550. URL: <https://zakon.rada.gov.ua/laws/show/550-2006-%D0%BF> (дата звернення: 15.04.2021).
9. Договір про порядок перебування і взаємодії співробітників правоохоронних органів на територіях держав – учасниць Співдружності Незалежних Держав від 04.06.1999. URL: https://zakon.rada.gov.ua/laws/show/997_836 (дата звернення: 15.04.2021).

S u m m a r y

Shustrova K. V., Bohatyrova M. O. Current issues against smuggling in Ukraine. – Article.

It is determined that in Ukraine there is an administrative and criminal liability for smuggling. Therefore, depending on the legal responsibility that is provided during the implementation of smuggling, smuggling is divided into: 1) smuggling, for which criminal liability is provided; 2) smuggling, for which administrative liability is provided. In addition, it is concluded that based on the definition of smuggling and directly the objects of smuggling, the following types of smuggling can be distinguished: 1) smuggling of historical and cultural values; 2) smuggling of explosives, radioactive materials, weapons or ammunition (except for smooth-bore hunting weapons or ammunition), parts of firearms; 3) smuggling of timber or lumber of valuable and rare species of trees, unprocessed timber, as well as other timber prohibited for export outside the customs territory of Ukraine; 4) smuggling of narcotic drugs, psychotropic substances, their analogues or precursors or falsified drugs; 5) smuggling of special technical means of covert receipt of information; 6) others. It has been established that in addition to the listed items of smuggling, criminalization requires the smuggling of valuable and rare species of animals and plants and (or) endangered animals and plants, microbiological or other biological agents or toxins, transplant organs or human tissues, etc., as well as some types of smuggling in the field of transportation of goods and materials. Therefore, it is proposed to supplement the definition of smuggling by moving across the customs border of Ukraine outside customs control or with concealment from customs control of alcoholic beverages, tobacco products committed in significant amounts. And also Art. 201 of the Criminal Code to supplement the provisions on smuggling of alcoholic beverages, tobacco products committed in large amounts and in especially large amounts, as well as committed by prior conspiracy by a group of persons or a person previously convicted of a crime under this article or an official using official position. It is determined that in accordance with the most common classification of state bodies by the criterion of the breadth of competence, there are state bodies of general and special competence. If we follow this classification, the general bodies of counteraction to smuggling are state bodies of general competence, which are the Cabinet of Ministers of Ukraine, the President of Ukraine, the Verkhovna Rada of Ukraine. The bodies of special competence are the security forces, judicial and law enforcement agencies.

Key words: smuggling, law enforcement agencies, security forces, drugs, precursors, goods, types of smuggling.

А н о т а ц і я

Шустрова К. В., Богатирьова М. О. Актуальні питання протидії контрабанді в Україні. — Стаття.

Визначено, що в Україні за контрабанду передбачена адміністративну та кримінальна відповідальність. Тому, в залежності від юридичної відповідальності, яка настає при здійсненні контрабанди, контрабанда поділяється на: 1) контрабанду, за яку передбачено кримінальна відповідальність; 2) контрабанду, за яку передбачено адміністративну відповідальність. Крім того, зроблено висновок, що виходячи з визначення контрабанди та безпосередньо предметів контрабанди можна відокремити такі види контрабанди: 1) контрабанда історичних та культурних цінностей; 2) контрабанда вибухових речовин, радіоактивних матеріалів, зброї або боєприпасів (крім гладкоствольної мисливської зброї або бойових припасів до неї), частин вогнепальної нарізної зброї; 3) контрабанда лісоматеріалів або пиломатеріалів цінних та рідкісних порід дерев, лісоматеріалів необроблених, а також інших лісоматеріалів, заборонених до вивозу за межі митної території України; 4) контрабанда наркотичних засобів, психотропних речовин, їх аналогів чи прекурсорів або фальсифікованих лікарських засобів; 5) контрабанда спеціальних технічних засобів негласного отримання інформації; 6) інші. Встановлено, що крім перелічених предметів контрабанди, криміналізації потребує контрабанда цінних та рідкісних видів тварин і рослин та (або) тварин і рослин, які перебувають під загрозою зникнення, мікробіологічних або інших біологічних агентів чи токсинів, трансплантаційних органів або тканин людини тощо, а також деякі види контрабанди у сфері перевезення товарно-матеріальних цінностей. Тому запропоновано доповнити визначення контрабанди переміщенням через митний кордон України поза митним контролем або з приховуванням від митного контролю алкогольних напоїв, тютюнових виробів вчинене у значних розмірах. А також ст. 201 КК доповнити пунктами щодо контрабанди алкогольних напоїв, тютюнових виробів вчинене у великих розмірах та у особливо великих розмірах, а також вчинені за попередньою змовою групою осіб або особою, раніше судимою за злочин, передбачений цією статтею, або службовою особою з використанням службового становища. Визначено, що відповідно до найбільш розповсюдженої класифікації державних органів за критерієм ширини компетенції, виділяються органи держави загальної і спеціальної компетенції. Якщо додержуватися такої класифікації, то загальними органами протидії контрабанді виступають державні органи загальної компетенції, якими виступають Кабінет Міністрів України, Президент України, Верховна Рада України. Органами спеціальної компетенції виступають Служба безпеки України, Міністерство внутрішніх справ, Державна прикордонна служба України, Державна фіскальна служба України, прокуратура, інші правоохоронні органи та суд.

Ключові слова: контрабанда, правоохоронні органи, сили безпеки, наркотичні засоби, прекурсори, товари, види контрабанди.