



CUMULATIVE SMUGGLING AND CUSTOMS EVASION UNDER THE CRIMINAL LEGISLATION OF THE REPUBLIC OF MOLDOVA

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SUMAR

În prezentul articol sunt expuse doar careva viziuni teoretico-practice ce țin de calificarea infracțiunilor de bază din cadrul activității vamale a Republicii Moldova ce au diferit obiect generic de atentare: contrabanda, cu obiectul generic - trecerea peste frontiera vamală a Republicii Moldova a mărfurilor, încărcăturilor, obiectelor, valorilor, a unităților și mijloacelor de transport, a mijloacelor bănești și valorilor valutare, și respectiv eschivarea de la achitarea plăților vamale cu obiectul generic de atentare mecanismul juridic de încasare a plăților și taxelor vamale pentru a fi admise la trecerea peste frontiera vamală mărfurile, încărcăturile, obiectele, unitățile și mijloacele de transport.

The lawmaker included both smuggling and customs evasion in the Section of Economic offences of the Criminal Code of the Republic of Moldova.¹ Both offence components, though placed in the Economic crimes are recognized as customs offences, which are committed in the field of customs activity of the Republic of Moldova.²

The law enforcement authorities, especially customs authorities of the Republic of Moldova have the same opinion as well as the customs law enforcement authorities of Romania, Ukraine, the Russian Federation and other neighbor states.³

Both the documents in the customs institutions archives and the documents of procedure made by the subdivisions of the border custom-houses confirm us surely that the smuggling stipulated by Article 248 of Criminal Code of the Republic of Moldova and customs evasion Article 249 of Criminal Code of the Republic of Moldova are committed most frequently namely in the customs activity being considered in fact the basic offences in the customs field. These two offences are confused often not only by the customs officers,⁴ but also by the detection investigation officers, but in some cases by the criminal prosecution officers of the customs authorities and by the criminal prosecution officers of the other law enforcement authorities, who at are present competent to prosecute on these offences in accordance with the legislation of criminal procedure.⁵

The administration of the superior authorities of the Republic of Moldova and the civil society by means of the mass media are permanently informed of the commission of the principal customs offences – smuggling stipulated by Article 248 of Criminal Code of the Republic of Moldova and customs evasion Article 249 of Criminal Code of the Republic of Moldova.⁶

Currently, the law enforcement authorities, and first of all, the courts, striating from the court of first appearance up to the Supreme Court of Justice of the Republic of Moldova

are focused on the legal evaluation of the facts contributing to the commission of these cumulative offences, problems of smuggling classification stipulated by Article stipulated by Article 248 of Criminal Code of the Republic of Moldova and customs evasion Article 249 of Criminal Code of the Republic of Moldova.

According to the statistical data of the General Prosecutor's Office of the Republic of Moldova, the registered cases of smuggling in the framework of economic offences comprise 8,7 % in 2003, 10,6 % in 2004, 13,6 % in 2005, but 15,9 % - in the second half of 2006, but 0,9 % - in 2003, 1,7 % - 2004, 1,9 % - 2005 and in 6 months of 2006 – 3,1 % of the total of the offences registered.⁷

The cases of customs evasion stipulated by Article stipulated by Article 248 of Criminal Code of the Republic of Moldova represents an insignificant number of the offences registered, but some separate cases, which according to the statistical data of the General Department of Criminal prosecution of the Ministry of Internal Affairs of the Republic of Moldova are not registered.⁸

According to the statistical data presented officially by the law enforcement authorities result as a cases of customs evasion stipulated by Article 248 of Criminal Code of the Republic of Moldova are committed very rarely in comparison with the smuggling. According to the investigation sources of the information taken through the various channels both within the Republic of Moldova and abroad the customs evasion is committed more frequently than smuggling, especially in the field of foreign economic activity of the Republic of Moldova.

The synthetic analysis of the of the criminal prosecution authorities proves us that the considerable part of the smuggling cases are dismissed in the course of the criminal prosecution, but the other part of the criminal cases are acquitted by the courts.

The dismissal and acquittal of the criminal cases at the various levels by the criminal prosecution authorities and the



courts take place in our opinion namely, because the detectives, the law enforcement officers do not evaluate objectively and qualify the acts committed by the law breakers at the moment of transporting, crossing the customs border of the Republic of Moldova of the vehicles, the goods, shipments, objects, other values, which may form in some cases the material object of smuggling, infringement of the customs rules generally and only in some certain cases – an object of customs evasion, an offence stipulated by Article 249 of Criminal Code of the Republic of Moldova.

The customs legislation in effect of the Republic of Moldova foresees that all persons benefit from the equal rights to introduce in and to remove from the Republic of Moldova the goods and vehicles. Also, the lawmaker indicates that no one can be deprived of the right of introducing in and removing from the Republic of Moldova the goods and vehicles and be limited in this right, except the cases stipulated by the Customs Code of the Republic of Moldova and the other normative acts in effect.⁹

Thus, as a result the crossing the border by the travelers, passengers, vehicles as well as transporting the goods, objects, cargo, values and other material assets across the customs frontier are subject to the special legal mechanism of crossing and transporting based on the customs special rules. As a result of their execution and observation the customs officers take the legal measures of checking the persons and objects and only after controlling the observation of the provisions of the national customs legislation and the international normative acts, to which the Republic of Moldova adheres, allow the passengers, travelers, transporters, legal entities to transport the goods, objects, cargo, values, other material assets across the customs border.

These are the relations that concern the application of the legal mechanism of crossing and transporting across the customs border of the Republic of Moldova, based on the customs rules stipulated by the national customs legislation and the international Agreements and Conventions in the field of customs, to which our country is the member, is a general object of breaking the customs rules, which further depending on their size and special legal status of crossing the customs border is evaluated and qualified as smuggling.

For example, the economic company of the town of Soroca, Republic of Moldova, C., the participant of the foreign economic activity, made a sales contract with the economic company P.M. of the city of Amsterdam, the Netherlands, under which a consignment "Prepared tomatoes" in the quantity of 18 058 kg was exported from the Republic of Moldova. At the exit from the Republic of Moldova a customs seal was applied on the consignment, though transported by the truck of the Netherlands, without opening the TIR card. At the entry in Romania, after leaving the Republic of Moldova, the customs service of Romania made the transporter open the TIR card, after which he was allowed to go with the consignment to the place of destination.

When reaching the territory of the Netherlands, the consignment transported legally was subject to the customs

supervision, as a result of which it was established that in 4 from 44 plastic barrels of 226 kg each under the goods "Prepared tomatoes" 100 kg of cocaine was concealed from the customs control. We point out that the customs seals of export and the customs seal of the Romanian customs, which accepted the crossing of the consignment through the territory of Romania were integral with no traces of deterioration.¹⁰

In our opinion in this case at the exit from the Republic of Moldova a classical offence of smuggling was committed, with goal not to pay the customs duties stipulated under Article 249 of Criminal Code of the Republic of Moldova. To achieve results it would have been necessary that the customs authorities with the police make an investigation and internal inquiry to establish the fact where from the lot of cocaine under the tomato paste appeared, to establish the guilty persons in order to decide further on instituting criminal proceedings on the illegal circulation of narcotic drugs – cocaine under the Article 217 of the Criminal Code of the Republic of Moldova¹¹, which was committed as a cumulative offence with smuggling under Article 248 of Criminal Code of the Republic of Moldova at the exit from the Republic of Moldova.

The archives files of the customs authorities confirm that frequently the smuggling is committed by not declaring or declaring unauthentic data in order to commit customs evasion. The following case is the example of such smuggling scheme .

The economic company of Great Britain made a sales contract of a lot of the expensive English cigarettes with the economic company of the city of Chisinau, K., according to which it was foreseen the import of the expensive English cigarettes in the Republic of Moldova monthly in the course of a year. According to the contract terms and conditions the company "K" of the city of Chisinau should have paid the excises, charges and customs duties at the entry in the country in cash, which was introduced by the consignee, who had received it earlier from the consignor. We should mention that at the same moment the charges and customs duties, especially the excises were paid for the entire lot of the cigarettes in the quantity of 950-1000-1150 of cartons of the cigarettes, depending on the volume of the semitrailer or the trailer, in which they were transported in the Republic of Moldova under the TIR card. When the semitrailers, on which all integral seals were applied during all the way from the consignor to the consignee, reached the place of unloading repeatedly it was established that only 84-110-126 cartons of cigarettes were unloaded from the back rows of the vehicle, which were indicated under the contract and included according to the name, quantity, tonnage in the accompanying goods documents and in the TIR Card, but in the rest of the cartons there were the other goods – "Toilet paper", which was later sold at the internal consumers' market.¹²

In the case, where the infringements committed at the entry in the country by the transporter and the consignee were detected, their acts needed to be qualified as smuggling by



means of *unauthentic declaration of the lot of toilet paper* in stead of the lot of cigarettes.

Some representatives of the customs authorities, especially those of the financial control that in these cases the excises, customs charges and duties were paid entirely in the state budget and consequently the financial damage was not caused to the state.

This opinion is rather poor and we do not agree with this position categorically, since the entire group of offences that were committed prejudice the image of the Republic of Moldova at the world arena and especially in the external consumers' market.

Second, the consignor, the economic company of our country, "K" Ltd., by its offences on illegal closing violated the requirements of ITR International Convention, making fraud documents so that the entire lot of cigarettes reached the destination, under the conditions established in the contract, while the 90 % of the lot of cigarettes remained on the territory of Great Britain, being sold illegally at their internal consumers' market. Of course, it was convenient for the consignee of Great Britain to pay for their account the excises, customs charges and duties, since on the territory of Great Britain they were sold more expensively in 5-6 times than within Republic of Moldova, obtaining the profit of 320%-350% of their value without paying the customs charges and duties as well as the sales tax on the internal consumers' market.

The elaboration of these schemes of breaking the customs rules began to receive the name of schemes of "fictitious export" with the agreement with the consignor to execute the scheme of "fictitious import".

The customs officers of the Republic of Moldova know these schemes of "fictitious export", when the consignee declares to the customs authorities according to the accompanying goods documents, the customs detailed declaration, that he exports the consignment from the country and though he confirms by the customs seals applied on the goods documents of the goods export, in fact the goods remain in the country and are sold illegally at the internal consumers' market without paying the customs charges and duties stipulated under Article 117 of the Customs Code of the Republic of Moldova.¹³

Thus, for instance, the representation of the company from the USA "D.S." in the person of the citizen of the Republic of Moldova made the contract for services with the enterprise "S." SRR – the company of the Free Economic Zone "Expo-Business-Chisinau", under which the USA company must have imported the tree bark corks in the sacks at the value of Euro 18 million in the Free Economic Zone "Expo-Business-Chisinau" on four vehicles under TIR card.

After a month from their arrival in the Free Economic Zone "Expo-Business-Chisinau", the citizen B. presented a Power of Attorney of the winery of Ukraine indicating that the consignment - tree bark corks – are readdressed to the region of Odessa, Ukraine to the winery "Azavinmeks" to be used for bottling the sparkling wine. Having made the

accompany goods documents, the citizen B. made also the detailed customs declaration, under which he requested the export the tree bark corks from the Free Economic Zone "Expo-Business-Chisinau" by presenting them for the customs checking and certification by the Free Economic Zone "Expo-Business-Chisinau". The customs officer confirmed the export of the consignment from the Free Economic Zone "Expo-Business-Chisinau", which went to the check point at the exit from the Republic of Moldova. Having a prior arrangement with the customs officers of the state border of the Republic of Moldova, the citizen B. confirmed basing on the seal the accompanying goods documents, allegedly making and closing the export, in fact the consignment was left illegally within the customs territory of the Republic of Moldova. On this scheme the criminal prosecution authorities of the Ministry of the Interior initiated the criminal proceedings on the qualifying evidence of the Article 248, paragraph 8 of the Criminal Code of the Republic of Moldova.¹⁴

In our opinion the criminal prosecution authorities of the Ministry of the Interior evaluated the situation justly, qualifying the criminal acts as serious smuggling under Article 248, paragraph 5 of the Criminal Code of the Republic of Moldova, since during the investigation on this case it was established that when the goods were introduced in the country both at the customs check-point and at the entry in the Free Economic Zone "Expo-Business-Chisinau" the accompany goods documents of the fictitious character. Also, the contract for services No. 05/3-2S made between the parties on March 02, 2003 was fictitious, according to which under the fictitious Power of Attorney No. 23 dated January 15, 2003 made in Chisinau the consignment was removed from the Free Economic Zone "Expo-Business-Chisinau", on the territory of which it was under the customs regime "Free zone (Free business zone)" under point I) of Article 23 of the Customs Code of the Republic of Moldova.¹⁵

Besides this, when the contract for services was made between the parties the provisions of the UN Convention were violated on the contracts of international sale of the goods signed on April 11, 1980 in Vienna, to which the Republic of Moldova adhered on May 20, 1994.¹⁶

In the same situations the customs officers, especially those of the Free Economic Zone "Expo-Business-Chisinau" did not have any right to allow the export the above consignment from the Free Economic Zone "Expo-Business-Chisinau" under the contract for services, which was the basis of the accompany goods documents, in accordance with which the goods was transported from the Free Economic Zone "Expo-Business-Chisinau" in six various stages, starting from December 2002 and ending in September 2003.

To our mind in the case of the illegal export from the Free Economic Zone "Expo-Business-Chisinau" the criminal prosecution authorities must initiate the criminal proceedings on the customs evasion under Article 249 of the Criminal Code of the Republic of Moldova.



We support this position since crossing and transporting across the customs border, which corresponds to the state frontier at the Port of Entry and at the entry to the territory of the Free Economic Zone “Expo-Business-Chisinau” the offenders violated the legal mechanism and order of transpiration of the consignment “Tree bark corks”, presenting the accompanying goods documents of the fictitious character to the customs control. The charge for the customs procedure was collected, but the other charges and duties were not collected, since the consignment was admitted to the zone on the basis of facilitated customs regime, which does not foresee the payment of all other customs charges and duties.

When removing the consignment from the Free Economic Zone “Expo-Business-Chisinau” the offenders applying the customs good documents of the fictitious character evaded the payment of the customs charges and duties under the Article 117 of the Customs Code of the Republic of Moldova, making the lot of the goods disappear on the customs territory of the Republic of Moldova without paying the customs charges and duties stipulated by the customs and tax legislation in effect.

Thus, the offenders committed the acts that affected the legal mechanism of collection of customs charges and duties stipulated by the customs and tax legislation in effect, which is a generic object of trespass, being different from the legal mechanism of the customs rules applied at the crossing, transporting of the consignment “Tree bark corks” admitted to cross the customs border at the state frontier and across the external fence of the Free Economic Zone “Expo-Business-Chisinau”, a generic object of smuggling. As a result, the offenders committed two components of separate offences: smuggling stipulated by Article 248 of Criminal Code of the Republic of Moldova and customs evasion Article 249 of Criminal Code of the Republic of Moldova, which have a different legal object of criminal trespass.

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