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CONCERNING THE ISSUE OF THE CRIMINALIZATION OF GOODS SMUGGLING UNDER THE CURRENT CONDITIONS OF THE DEVELOPMENT OF CRIME IN UKRAINE

According to Article 201 of the Criminal Code of Ukraine (hereinafter – the CCU) smuggling is the movement through the customs border of Ukraine outside the customs control or with the concealment from customs control of cultural property, poisonous, strong, explosive substances, radioactive materials, weapons or ammunition (except for smooth-bore hunting weapons or ammunition for it), parts of the fire rifle weapon, as well as special technical means of secretly receiving information. For this Article 201 of the CCU provides for punishment in the form: for Part 1 of this Article – imprisonment for a term of three to seven years; Part 2 – imprisonment for a term of five to twelve years with the confiscation of property (if contraband was committed by a group of persons under a previous conspiracy or by a person previously convicted for a crime envisaged by this Article, or an official using the official position). This crime is recognized as an offense in the sphere of economic activity, while its item is not considered: 1) goods in large quantities (for example, cigarettes, alcoholic beverages, vehicles, currency values, electric, thermal and other types of energy, etc.), which are excluded from the list the items of smuggling took place on the basis of the Law of Ukraine «On Amending Certain Legislative Acts of Ukraine regarding the Humanization of Responsibility for Offenses in

the Sphere of Economic Activity» of November 15, 2011 No. 4025-VI; 2) narcotic drugs, psychotropic substances, their counterparts or precursors or counterfeit medicines (their movement through the customs border of Ukraine outside the customs control or with concealment from customs control forms the composition of the crime, stipulated by Article 305 of the CCU «Smuggling of narcotic drugs, psychotropic substances, their analogues or precursors or counterfeit medicines») [1].

However, according to our belief, the current state of crime in Ukraine is extremely relevant to consideration of the issue of renewal of criminal responsibility for smuggling goods in large quantities. Cigarette smuggling is particularly indicative in this respect. According to a study by KPMG, Ukraine continues to rank first in the ranking of source countries for import of smuggled cigarettes into the EU (more than 4.8 billion smuggled cigarettes come from Ukraine, accounting for almost 11% of the total smuggling to EU countries and over 1 billion euro budgetary losses of the EU) [2]. Thus, the total losses of the Consolidated Budget of Ukraine from the smuggling of tobacco products are estimated at about 1.5 billion UAH [3]. All this gives grounds for asserting that the decriminalization of smuggling of goods in large quantities did not have a positive effect, it is impossible to overcome it only by administrative measures (in particular, in accordance with Article 483 of the Customs Code of Ukraine, movements or actions aimed at the movement of goods across the customs border of Ukraine with concealment from customs control entails the imposition of a fine of 100 % of the value of goods – direct items of violation of customs rules with the confiscation of these goods, and the commission of such actions by a person who during the year was brought to responsibility for the commission of an offense provided for in this Article or Article 482 of the Code – entails a fine of 200 % of the value of goods – direct items of violation of customs rules on confiscation of the goods), and therefore should restore criminal penalties for such actions.

Even in 2011, the authors of the monograph «Criminal Responsibility for Smuggling: National and International Experience» rightly argued that: firstly, smuggling of goods causes direct economic losses to the state related to non-payment of customs duties and other taxes (payments); secondly, there are the most dense links between the

object and the item of smuggling; thirdly, it is necessary to keep an indication in Article 201 of the CCU for goods in large quantities (if their value is one thousand or more times exceeds the non-taxable minimum income of citizens) as an items of smuggling (punishment for this should be the imprisonment for a term of three to five years with the forfeiture of smuggling items); fourthly, qualifying signs of smuggling should recognize the commission of actions provided for in Part 1 of Article 201 of the CCU, repeatedly or at the prior conspiracy of a group of persons, or with the use of violence that is not dangerous to the victim's life or health or the threat of the use of such violence, and also if the items of these actions were irrespective of their size cultural values or strategically important commodities, for which legislation establishes appropriate rules for moving across the customs border of Ukraine (they must be punishable by imprisonment for a term of four to seven years with the forfeiture of smuggling items); fifthly, especially the qualifying signs of smuggling, the actions provided for in Paragraphs 1 or 2 of this Article should be recognized if they are committed by an organized group or by the use of violence that is dangerous to the victim's life or health or the threat of such violence, or through a breakthrough of the customs border, or an official using his official position (they must be punished by imprisonment for a term of seven to twelve years with forfeiture of smuggling items and confiscation of property, and from deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years) [4, p. 45, 49, 270].

In recent years, the Ukrainian legislator has tried to correct the mistakes made by him regarding the decriminalization of the smuggling of goods in large quantities in 2011, and a number of draft laws were registered in the Verkhovna Rada of Ukraine. For example, in the draft Law of Ukraine of May 14, 2015, No. 2840 it was proposed: 1) Part 1 of Article 201 of the CCU after the words «... with concealment from customs control» add the words «... excise and counterfeit goods (products) in large quantities;»; 2) supplement Article 201 of the CCU a Note with the following contents: «N o t e. The smuggling of excisable and counterfeit goods (products) is considered to be committed in large quantities if their value is two hundred and fifty times higher than the non-taxable minimum income of citizens.» [5].

In another draft Law of Ukraine (No. 3254 of October 7, 2015) it was proposed to smuggle the movement across the customs border of Ukraine outside the customs control or with the concealment from the customs control of exclusively alcoholic beverages, tobacco products committed in substantial amounts (must exceed a hundred times or more non-taxable minimum incomes of citizens). It was proposed to consider the qualified and especially qualified compositions of smuggling the committing it in large (one thousand times or more than the level of non-taxable minimum incomes of citizens) and especially large amounts (five thousand times or more than the level of non-taxable minimum incomes of citizens) respectively. Part 2 of this Article was proposed to be considered as Part 5 and to read as follows: «Acts envisaged by Parts One, Two, Three or Four of this Article, committed by prior conspiracy by a group of persons or a person previously convicted for a crime envisaged by this Article, or an official using the official position». The maximum penalty for smuggling should be the imprisonment for a term of five to fifteen years with the forfeiture of smuggling items and confiscation of property, as well as the confiscation of goods, vehicles with specially manufactured storage facilities (caches) used for the transfer through customs the border of Ukraine outside the customs control or with the concealment of smuggling from the customs control [6].

Draft Law of Ukraine of March 29, 2016, No. 4327 proposed to criminalize the smuggling of excisable goods in a separate article, and therefore to supplement the CCU by Article 201-1 of the following: «Movement through the customs border of Ukraine outside the customs control or with the concealment of the customs control of excisable goods». In the main composition of the crime, responsibility should come for commission such actions in large quantities (Part 1), and in the case of a qualified composition of the crime – for the commission of such actions concerning excisable goods in especially large amounts, or by a prior conspiracy by a group of persons, or by a person previously convicted for a crime envisaged by this Article, or an official using the official position (Part 2). Under the large quantities of excisable goods it should be understood their value, which is five hundred times and more exceeds the non-taxable minimum income of citizens; under an especially large amounts of

excisable goods should be understood as their value, which is one thousand times and more exceeds the non-taxable minimum income of citizens [7].

Another proof that the legislator should return to the criminalization of smuggling are the important steps made by him in 2018 to establish criminal responsibility for the transfer of specific goods – timber products (Article 201-1 of the CCU «Movement through the customs border of Ukraine outside customs control or with concealment from the customs control of timber or lumber of valuable and rare breeds of trees, unprocessed timber, as well as other timber products banned for export outside the customs territory of Ukraine») [1].

In any case, the problem of smuggling and trafficking in tobacco products is public because such actions contribute to the spread of the tobacco epidemic, which has dangerous consequences for public health, affect the efficiency of state customs and tax policy, create conditions for the development of the shadow» economy and corruption, undermine the image of Ukraine on the international scene, can be a source of financing for organized crime and terrorism, etc. It is no coincidence that the Cabinet of Ministers of Ukraine in 2017 defined its main directions in the Strategy for combating the illicit production and circulation of tobacco products for the period up to 2021: a) a clear distinction between criminal and administrative responsibility for the commission of offenses in the sphere illicit manufacture and circulation of tobacco products, unification of the conceptual apparatus used in the legislation on criminal responsibility and legislation on administrative offenses; b) introduction of criminal responsibility for the illegal movement of tobacco products across the customs border of Ukraine [8].

In this approach, in the near future, serious changes to the CCU should be expected in terms of the criminalization of smuggling of goods, which inevitably should affect the reduction of crime in Ukraine.

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