

THE CONCEPT OF VIOLATION OF CUSTOMS LEGISLATION, ITS CRIMINAL DESCRIPTION

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ABSTRACT

This article describes the concept of violation of customs legislation, issues of criminal law. It also states that violation of customs legislation is a form of encroachment on the economic interests of the Republic of Uzbekistan and is flexible in these circumstances and manifests itself in various forms. The article establishes liability in the Criminal Code for violation of customs legislation, and the opinion that the description of the criminal law has been used as its definition, and that the boundary between an administrative offense and a crime can not be absolute. The author of the article states that one of the main characteristics of a crime in criminal law is its social danger and the degree of social danger is a criterion that allows to distinguish crime from administrative offenses. Although it has the characteristics of a crime, but due to its insignificance, the crime is not legally socially dangerous, is said in this. In addition, this article provides relevant recommendations on improving the concept of violation of customs legislation, its criminal-legal description.

KEYWORDS: *Customs, Law, Documents, Violation, Crime, Punishment, Goods, Exchange, State, Customs Service.*

1. INTRODUCTION

The processes of globalization and economic and political integration taking place in the world today have brought the country's international relations and foreign economic activity to a new level. Indeed, the growing investment attractiveness of the country and the resumption of close neighborliness and mutually beneficial cooperation with neighboring countries require the rapid development of all areas. In today's developed market economy and globalization processes, no country can live on its own shell and live only on the products that produces itself. As long as there is a world market, there will be an international division of labor between countries, as well as export-import operations for the exchange of goods. The type and quantity of such goods will, of course, depend on the existing needs in a particular country.

During the years of independence, Uzbekistan has also faced the task of defining its own independent policy in the field of customs, creating its own customs system and regulating customs in its territory, strengthening the customs border.

Uzbekistan has adopted a number of laws on the organization and regulation of the state customs service. In particular: 1) Presidential Decree No. 284 of October 25, 1991 "On the establishment of the Customs Committee of the Republic of Uzbekistan"; 2) Decree No. 451 of August 10, 1992 "On the establishment of the State Customs Committee of the Republic of Uzbekistan" (today these documents have lost their force); 3) Decree No. 744 of January 18, 1994 "On transformation of the Main State Tax Administration of the Republic of Uzbekistan into the State Tax Committee

of the Republic of Uzbekistan"; 4) Decree of the Cabinet of Ministers of July 30, 1997 No. 374 "On the organization of the State Customs Committee of the Republic of Uzbekistan" in the regulation of the activities of the state customs service number decision is of particular importance.

This legislation provides to ensure international participation in the prevention of illicit trafficking in historical heritage and spiritual property, the fight against smuggling, violation of customs rules and taxes in the movement of goods and other items across the customs border, customs issues of the Republic of Uzbekistan, including drugs, psychotropic substances, weapons, cultural and other substances.

After the establishment of the Customs Committee of the Republic of Uzbekistan, the customs legislation of the republic began to develop rapidly. Adoption of the Customs Code of the Republic of Uzbekistan on December 26, 1997 allowed to speak about the emergence of an independent branch in the legal system of the Republic of Uzbekistan - customs law.

It should be noted that a number of organizational and practical measures are being taken to transform the national customs system into a unified service for the fate of the nation, which fully meets international standards. In particular, in 2016 a new version of the Customs Code was adopted. On April 12, 2018, the Decree of the President of the Republic of Uzbekistan "On radical improvement of the activities of the State Customs Service of the Republic of Uzbekistan" and the Resolution "On measures to organize the activities of the State Customs Service of the Republic of Uzbekistan" were adopted. This decree designates January 26 as the professional holiday "Day of employees of the State Customs Service of the Republic of Uzbekistan." The decision of the Cabinet of Ministers on August 7, 2018 approved the official symbols of the State Customs Service - the flag and insignia - as a sign of respect and additional responsibility for hard-working professionals. Also, the adoption of a new version of the Law "On the State Customs Service" on October 18, 2018 serves to increase the effectiveness of regulating the activities of customs authorities. From December 1, 2018, the system of medium and high risk for checking documents on customs clearance - "yellow" and "red" corridors - has been fully launched. From March 1, 2019, a "green corridor" system was introduced, which does not carry out customs control forms for the release of low-risk goods, and a "blue corridor" system, which carries out customs control forms after the release of medium-risk goods. In addition, the introduction of the institution of "authorized economic operator" in the country has given the right to use simplified procedures to law-abiding and honest entities registered with the customs authorities.

This will encourage honest entities, increase the effectiveness of crime prevention, reduce the time spent on customs clearance. At the same time, a number of benefits are provided, such as unloading of goods in their warehouse, transportation without customs control, delay or installment payment of customs duties in the prescribed manner. The Decree of the President of the Republic of Uzbekistan No. 6005 of June 5, 2020 "On reforming the customs administration and improving the activities of the State Customs Service of the Republic of Uzbekistan" states: The practice of creating a special group - "front-offices" to fill out the customs declaration quickly and free of charge was introduced. It should be noted that the speed of registration of customs documents is a key indicator of the efficiency of customs officers. Today, this figure averages 3-4 hours for exports and 10-12 hours for imports. It is now planned to publish information on the time of customs clearance on the official website of the committee on a monthly basis in all customs posts. From March 1, 2019, the process of customs inspection is carried out in places equipped with a video surveillance system of the committee. As a result of the reforms, in 2018 it was ranked 165th out of 190 countries in the World Bank's Doing Business International Rating, and in 2020 it rose to 18th place in the Doing Business Index.

The state guarantees freedom of economic activity, entrepreneurship and labor, equality of all

forms of property and equal legal protection, taking into account the priority of consumer rights.

It is important that the goods entering the territory of our country meet the established standards, type and quality. The import of low-quality and substandard goods into the country poses a threat not only to the health and life of the population, but also to national security. For this reason, criminals who try to make less profit by making less effort try to smuggle (export) such goods into the territory of the country in different ways, in different ways. Therefore, in order to prevent and combat such cases in all countries, customs control is established in the border areas of the country. As in all countries, the Republic of Uzbekistan pursues a single customs policy in the border areas, which is an integral part of domestic and foreign policy of the Republic of Uzbekistan.

On the Strategy of Actions for the Development of the Republic of Uzbekistan dated February 7, 2017 Decree No. 4947 was adopted "In order to improve the investigation of criminal cases in accordance with international standards and best international practices, the implementation of the principles of the rule of law and inevitability of liability, further improvement of criminal procedure legislation".

Based on the Concept of "Improvement of Criminal and Criminal Procedure Legislation of the Republic of Uzbekistan" approved by the Resolution of the President of the Republic of Uzbekistan dated May 14, 2018 No.3723 "On measures to radically improve the system of criminal and criminal procedure legislation" to continue a strict criminal policy against those convicted of serious crimes, including terrorism, extremism and corruption, as well as those convicted of crimes using torture within an organized group or criminal organization.

2. RESEARCH METHODOLOGY

In the analysis of this article, historical, systematic, logical (analysis, synthesis), comparative-legal, statistical, social surveys, analytical study of the practice of law enforcement were used.

3. ANALYSIS:

According to Article 6 of the Customs Code of the Republic of Uzbekistan, the main objectives of customs policy are:

- a) ensuring compliance with customs legislation in the movement of goods and means of transport across the customs border, transportation, storage and processing of goods;
- b) ensuring timely and accurate payment of customs duties;
- c) ensuring compliance with economic policy measures, requirements and conditions of customs regimes;
- d) suppression and prevention of violations of customs legislation.

According to the Law of the Republic of Uzbekistan "On the State Customs Service", one of the main tasks of the customs authorities is to carry out customs control and clearance, as well as to protect the economic interests of the Republic of Uzbekistan and ensure its economic security.

Violation of customs legislation is a form of aggression against the economic interests of the Republic of Uzbekistan. It is flexible to these conditions and appears in a variety of appearances. Liability for violation of customs legislation is established in the Criminal Code, and its description in the criminal law is used as its definition. The disposition of Article 182 of the Criminal Code is as follows: "If it is done a large amount of goods or other valuables crossing the customs border of the Republic of Uzbekistan by evading or concealing customs control or using fraudulent documents or documents similar to customs documents or means, or without a declaration or under a different name, occurs after the imposition of an administrative penalty".

Although the universality of this definition is very convenient for the investigation and judicial authorities to qualify the act, the identity of the offender, the reasons for his crime, the lack of classification of methods contribute to the latent high level of crime in violation of customs legislation. The results of the analysis show that in the process of specialization of methods (types) of violation of customs legislation, ie the modernization of these methods of crime, the ineffectiveness of measures to combat the crime of violation of customs legislation today.

Chapter XII of the Criminal Code is entitled "Crimes against the Fundamentals of Economics", and Article 182 defines the concept of a crime of violation of customs legislation. According to it, "if it happened large amounts of goods or other valuables are smuggled across the customs border of the Republic of Uzbekistan by evading or concealing customs control or by fraudulently using documents or similar documents, or without a declaration or under a different name, from the imposition of administrative penalties". This definition is a criminal legal definition of a violation of customs legislation.

The article on liability for violation of customs legislation is included in the list of crimes against the fundamentals of economics in the criminal law. This rule is primarily due to the fact that the state, based on economic interests, determines the procedure for the movement of goods or other valuables across the customs border of the Republic of Uzbekistan. In particular, certain goods or items cross the customs border without any restrictions, and the movement of a number of goods or other valuables is correspondingly restricted or prohibited [1, p.527].

Almost all developed foreign countries have criminal liability for violating customs legislation. The criminal laws of Kazakhstan, Armenia, Azerbaijan, Moldova, Georgia, Ukraine, the Republic of Belarus and the Russian Federation provide for liability for violation of customs legislation, the definition of which is similar to the definition given in the Criminal Code of Uzbekistan. At the same time, the criminal law of some foreign countries defines the responsibility for violating the customs legislation by different types of crimes.

Articles 151-157 of the Criminal Code of the People's Republic of China establish liability for acts related to customs and smuggling. Prohibiting social relations related to customs and smuggling in China with the threat of punishment, criminal liability for acts listed in these articles is based on their object: smuggling of weapons, ammunition, nuclear materials or counterfeit currency, cultural property, gold, silver and other precious metals, as well as smuggling of valuable animals and their products from the state border into the country, as well as the import of pornographic films, videos, audio tapes, pictures, printed materials [2, pp. 98-102].

The U.S. Model CC also does not provide for liability for a crime similar to the offense of violating customs legislation. In the 1967 New York State Criminal Code, a violation of customs law was defined as a criminal act in which an individual committed certain illegal acts related to crossing the border or smuggling (§ 136.60) [3].

In Switzerland, the Criminal Code also does not contain a separate criminal offense called "violation of customs legislation." However, liability is provided for certain forms of violation of customs legislation. For example, Article 246 of the Swiss Criminal Code criminalizes the use of forged documents when crossing customs, Article 264 criminalizes the violation of the rules of international customs documents ratified by Switzerland, and Article 321 criminalizes the customs clearance of goods and mail. [4]

Article 226-18-1 of the French Criminal Code criminalizes the passage of goods through customs with goods or identity documents that do not legally belong to him [5].

In the German Criminal Code, criminal liability is established for violation of border control, submission of inaccurate documents [6]. There are certificate or technical note, illegal importation

of goods prohibited by customs in completely lost or missing legislation, import of large quantities concealment from customs control when importing large quantities of prohibited goods.

A. Otajonov says that the social danger of violating the customs legislation is determined not only by the economic damage to the Republic of Uzbekistan, but also by the fact that it creates the basis for other serious crimes [7, p.95].

The fact that this crime was committed after the imposition of a large amount of administrative penalties is a necessary sign of violation of customs legislation.

According to Yu.Suchkov, it is reasonable to consider the illegal movement of goods and other items in free circulation across the customs border as a violation of customs rules [8, p.39]. He believes that economic smuggling, human smuggling, as well as the smuggling of items that have been withdrawn or restricted from circulation should be distinguished. A similar view was expressed by prof. BV Volzhenkin also puts forward. He expresses his views on the use of the term "smuggling" to describe socially dangerous acts that directly affect public safety, but not economic interests [9, p.182].

A.I. Chuchaev defines the concept of customs crime, based on the fact that in addition to the division of customs crimes into separate groups, they have the same object. According to him, smuggling as a customs crime violates the "activities of customs to ensure the movement of goods and means of transport across the customs border in accordance with the established rules" [10, pp.41-43].

However, a superficial analysis of the ideas put forward by scientists also shows that many of them point to the direct connection of these crimes or objects of these crimes with customs affairs (regulation of customs affairs, activities of customs authorities, etc.) [11, p. 31]. Customs case consists of the procedure and conditions for the movement of goods and means of transport across the customs border of the Republic of Uzbekistan, collection of customs duties, customs clearance, customs control and other means of implementing customs policy. Jonathan Herring points out that from the point of view of legislation, customs activity is considered as one of the areas of state economic activity where smuggling and other customs crimes are committed [12, p.936].

Prohibition of import or export of goods in accordance with customs legislation is aimed at ensuring state security, protection of public order, morality, human life and health, the environment, protection of historical, archeological and artistic monuments of the Republic of Uzbekistan and other countries, as well as in the interests of the Republic. Restrictions on the movement of goods across the customs border are set as a measure in response to the international situation, protection of the domestic market, as well as actions of foreign states and alliances that discriminate or harm the interests of the Republic of Uzbekistan [13, p.120].

When this crime is committed, the aggression is directed at the relations in the field of economics [14, p.120]. Violation of customs laws can be any goods or valuables that are freely circulated in the daily life of any person (clothing, radio equipment, jewelry, etc.) [15, p.238].

In accordance with the Customs Code of the Republic of Uzbekistan, citizens and officials violating the customs legislation are subject to administrative liability, and in the presence of criminal elements in their actions - to criminal liability.

The boundary between an administrative offense and a crime cannot be absolute. One of the main characteristics that characterizes a crime in criminal law is its social danger. The level of social danger is a criterion that allows to distinguish a crime from an administrative offense. However, the legislation of the Republic of Uzbekistan does not constitute a crime if the act, formally, "... has the characteristics of a crime under the Criminal Code, but due to its insignificance, the crime is not legally socially dangerous." "However, the low level of social risk does not preclude

administrative or other liability" [16, p.110].

In the customs legislation, minor offenses are included in the list of administrative offenses. It is important to distinguish between administratively prosecuted customs violations and criminal offenses, as well as to disclose the content of certain types of them, both theoretically and practically. Such a distinction is also necessary due to the fact that the criminal law literature on this issue is vague, and in some cases erroneous.

2013 of the Plenum of the Supreme Court of the Republic of Uzbekistan Resolution No. 18 of September 6 "On Judicial Practice in Violation of Customs Legislation and Smuggling Cases" states that any movement of goods and means of transport across the customs border in violation of the established procedure is illegal and entails administrative or criminal liability [17].

Pursuant to Article 182 of the Criminal Code, the transfer of goods or other valuables across the customs border of the Republic of Uzbekistan by any means, but only in part 1 of this article:

- 1) evasion of customs control or concealment from customs control
- 2) fraudulent transfer of goods or other valuables from documents made in the same way as customs documents or means □
- 3) movement of goods or other valuables across the customs border of the Republic of Uzbekistan without a declaration or using a declaration under another name.

Aggravating circumstances for violation of customs legislation may be related to the method of committing the offense, the amount of goods transferred and the subject of the crime.

An aggravating circumstance according to the method of committing a crime, the law considers: crossing the customs border of the Republic of Uzbekistan, ie open movement of goods or other valuables across the customs border of the Republic of Uzbekistan without the permission of the customs service.

Any criminal aggression is characterized by social danger, but they differ in the nature and level of social danger. Social danger - is a sign that reflects the objective features of the crime. Social danger is a sign that acts that cause damage to objects of legal protection or pose a real threat to damage should be included in the category of crimes [18, p.206].

Acts committed by the control of human consciousness and will are criminalized only if they damage or threaten to damage social relations protected by criminal law [19].

Social danger in criminal law is an objective sign of a crime that demonstrates that the act is harmful to society, that poses a real risk of harm or damage to the prevailing social relations, lifestyle. Damage can be economic, moral, it can affect the rights and legitimate interests of citizens, public order.

The social danger of a particular type of act is conditioned by the social need to prohibit it by threatening to impose appropriate sanctions by law. Depending on the nature and degree of social danger of the act in certain historical circumstances (content of the object of aggression, method, time and place of aggression, etc.), it is considered a crime by law.

Social danger is a sign that reflects the objective features of the crime. Social danger consists in the fact that acts that cause damage to objects of legal protection or pose a real threat to damage should be included in the category of crimes. It refers to the internal, social nature of the acts that violate the conditions of society, and to recognize them as a crime is to establish them in law, that is, to establish an assessment of this social nature. The level of social risk of certain types of crimes is highlighted by the legislation in the expression of the relevant crime structure.

So what is the social danger of this crime and why is it included in the list of crimes against the

fundamentals of economics?

The social danger of violating the customs legislation is reflected in the internal, social nature of the act, which violates the conditions of the economy of the Republic of Uzbekistan, and its recognition as a crime is enshrined in criminal law.

The social danger of this crime is embodied in the objective sign of its harm to society, the real danger of serious damage to social relations, way of life, economic damage to the interests of state and public security [20]. The degree of social risk of violating customs laws, on the other hand, depends on its purpose, motive, recurrence, and quantity. According to formal criteria, it is not allowed to be prosecuted for violation of customs laws without taking into account the real social danger of the act [21, p.110.].

In a speech to a joint session of the Oliy Majlis on January 24, President of the Republic of Uzbekistan Sh.M.Mirziyoev said that "those who have committed a crime in violation of customs legislation for the first time, but have paid the fines, should be released from criminal liability."

4. CONCLUSION.

Based on the above considerations and foreign experience, as well as the expediency of recovering damages to the state, we consider to supplement it with an incentive norm. [22]

Given the current development of methods of crime in violation of customs legislation, we believe that it is time to differentiate the crime of violation of customs legislation by methods and objects of damage. Also, the absence of an incentive clause on exemption from liability if a person voluntarily pays customs duties within 30 days and carries out customs clearance of goods, leads to an increase in this type of crime. Therefore, we believe that it is necessary to establish a norm on the application of the incentive norm for the crime of violation of the current customs legislation. [23]

Therefore, Part 3 of Article 182 of the Criminal Code should be supplemented with the following version of the incentive norm: [24]

"A person who has committed the crime provided for in the first part of this Article for the first time shall be released from liability if he has voluntarily paid customs duties and cleared the goods within thirty days from the date of receipt of the report of the crime."

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