

Smuggling in Sensitive Goods and Resources: Features of Objective Aspect of Crime

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Abstract: Considerable changes in the legislation of the Russian Federation related to the formation of the Eurasian Economic Union and arising corrections of smuggling norms in the Criminal Code of the Russian Federation (hereinafter - the CC of the RF) create certain difficulties for executor of law on the issues of qualification of smuggling of sensitive goods and resources, including those associated with the lacking definition of "illegal movement across the state border of the Russian Federation with the member states of the Eurasian Economic Union". The article is devoted to the study of features of objective aspect of smuggling of sensitive goods and resources. The main purpose is to reveal the features of Article 226.1 of the Criminal Code of the Russian Federation based on the analysis of notions used for characteristics of its objective aspect. It is established that it is inadmissible to use the notion of the illegal movement across the customs border that is determined by clause 25, Part 1, Article 2 of the Customs Code of the Eurasian Economic Union in case of illegal movement across the state border of the Russian Federation with the member states of the Eurasian Economic Union. The author's definition of illegal movement across the state border of the Russian Federation with the member states of the Eurasian Economic Union is offered.

1 INTRODUCTION

The current considerable changes in the legislation of the Russian Federation related to the formation of the Eurasian Economic Union and arising corrections of smuggling norms in the Criminal Code of the Russian Federation create certain difficulties for law enforcement authorities on the issues of qualification of smuggling of sensitive goods and resources (Zaigraeva, 2019).

The principle of formal juridical security supposing the accuracy and clarity of regulations and being an integral element of the rule of law is a necessary guarantee of efficient protection from arbitrary prosecution, conviction and punishment in the legislation.

We share the opinion of particular authors stating that smuggling constitutes a threat in each country (Kulish, Yunin, Us, Shapovalova, 2021). Globalization processes lead to free movement of goods across the customs border due to their hiding from customs control that represents a threat to the

economic security of the state and requires searching the measures to counteract the goods smuggling (Andriichenko N, Reznik O., Tkachenko V, Marina V. Belanuk M., Skliar Y., 2020).

Often, the forms of smuggling and its cost effectiveness are determined by imperfect provisions of law, their inconsistent use and differences in various scopes of regulation (Kemp, Galemba, 2020), as well as by non-regulated activity of law enforcement authorities on detection and investigation of customs offenses (Ibragimov, Kapsalyamov, Kapsalyamova, 2019)

The efficient achievement of purposes on suppressing crimes in many aspects depends on the building the system of implementation of provisions of law (Albov, Batyukova, Kobzeva, Ponomareva, 2021). Particular authors consider the forensic equipment and methods to be critically important in suppressing smuggling (Usova, Malykhin, 2020).

The methods of illegal movement of the goods across the customs border that are lacking in the disposition of Article 226.1 of the CC of the RF

should be recognized a deficiency of forming the specified norm. To understand them, executors of law have to analyze significant regulatory framework for various branches of legislation (international, customs, etc.) in the conditions of lacking criteria on which the violations made should be referred to the features of objective aspect of smuggling.

The smuggling forming features previously contained in Article 188 of the CC of the RF have been developed by many generations of lawyers both during the soviet period and after 1991, and are based on pre-revolutionary legislation built on more than a hundred year law enforcement practice.

The notion “illegal movement” used by the law-maker instead of specific features is not explained in the disposition of Article 226.1 of the CC of the RF. The blanket version of Article 226.1 of the CC of the RF makes reference to the norms of other branches of legislation containing the notion of illegal movement of the above items across the customs border of the Customs Union and (or) the state border of the Russian Federation.

The notion of illegal movement of the goods contained in clause 25, Part 1, Article 2 of the Customs Union of the Eurasian Economic Union refers only to movement across the customs border of the Customs Union but not the state border of the Russian Federation and provides for wrongful nature of acts only in cases when the fraudulent actions relate the customs control and no other kinds of the state control undertaken at the state border of the Russian Federation.

2 MATERIALS AND METHODS

The methodological basis for the scientific article is made up by a system of methods and techniques of scientific knowledge pertaining to the jurisprudence science. In particular, the comparative law, dialectic, structural functional and logic legal methods were used in the research.

3 RESULTS AND DISCUSSION

The objective aspect of smuggling of sensitive goods and resources as provided by Part 1, Article 226.1 of the CC of the RF should be deemed a socially dangerous act of the subject expressed in the illegal movement of sensitive goods and resources on a large scale across the customs border of the Customs

Union in the framework of the Eurasian Economic Union or the state border of the Russian Federation with the member states of the Customs Union in the framework of the Eurasian Economic Union.

The law maker included in the crime the following features of the objective aspect: a socially dangerous act (illegal movement), a place of crime (the customs border of the Customs Union in the framework of the Eurasian Economic Union or the state border of the Russian Federation with the member states of the Customs Union in the framework of the Eurasian Economic Union).

The place of smuggling of sensitive good and resources is the customs border of the Customs Union in the framework of the Eurasian Economic Union or the state border of the Russian Federation with the member states of the Customs Union in the framework of the Eurasian Economic Union.

Earlier, the customs border of the Customs Union in the framework of the Eurasian Economic Union was determined by the Customs Code of the Customs Union through the notion of the Uniform Customs Territory of the Customs Union, the part of the territory of all member states of the Customs Union, as well as artificial islands, facilities, constructions and other objects located outside the territories of the member states of the Customs Union and with regard to which the member states of the Customs Union have exclusive jurisdiction.

With the formation of the Eurasian Economic Union, the notion “the customs border of the Customs Union in the framework of the Eurasian Economic Union” and “the state border of the Russian Federation with the member states of the Customs Union in the framework of the Eurasian Economic Union” have become null and void, thus, the actual place of illegal movement of sensitive good and resources does not coincide with the place of crime as provided by disposition of Article 226.1 of the CC of the RF that entails no element of crime in the act.

In this connection, the reluctance of the law maker to introduce the relevant terminological amendments to Article 226.1 of the CC of the RF and other norms of the CC of the RF, thus excluding the acquittance of the persons involved in smuggling for formal grounds, is bewildering. For details about determination of the place of smuggling, see: Zheludkov M.A., Slobin S.O. Disputable issues of the criminal qualification in transit movement of narcotic drugs in the territory of Russia (Zheludkov, Slobin, 2021), and Zaigraeva V.K. To the issue of determination of the place of smuggling of sensitive good and resources (Zaigraeva, 2017).

Taking into account our position and the position of particular authors (Nikolskaya, 2015, Podroikina, Kruglikova, 2018) concerning immediate need in bringing the terminology of the legislation of the Russian Federation in line with the international treaties and acts constituting the law of the Eurasian Economic Union, as well as concerning no impediments to thereto, hereinafter we will use the updated terminology in full compliance with the specified acts, namely: "member states of the Eurasian Economic Union", "customs territory of the Eurasian Economic Union", "customs border of the Eurasian Economic Union", etc.

The notions of movement across the customs border of the Eurasian Economic Union and illegal movement across the customs border of the Eurasian Economic Union are defined by the Customs Union of the Eurasian Economic Union:

"movement of goods across the customs border of the Eurasian Economic Union - import of goods to the customs territory of the Eurasian Economic Union or export of goods from the customs territory of the Eurasian Economic Union (subclause 27, clause 1, Article 2)";

"illegal movement of goods across the customs border of the Eurasian Economic Union - movement of goods across the customs border of the Eurasian Economic Union beyond the places through which the movement of goods across the customs border of the Eurasian Economic Union should or can be made according to Article 10 of the Customs Code of the Eurasian Economic Union, or beyond the working time of the customs body located in these places, or by hiding from customs control, or by inaccurate customs declaring procedure or non-declaring the goods, or by using the documents containing unreliable information about the goods, and (or) by using the counterfeited identification means or those related to the other goods (subclause 25, clause 1, Article 2)".

It should be noted here that the Customs Code of the Customs Unit (hereinafter - the CC of the CU) (effective until January 01, 2018, namely, until the Customs Code of the Eurasian Economic Union comes into force) gave the other definition of "illegal movement of goods across the customs border" - "movement of goods across the customs border beyond the established place or beyond the established working time of the customs bodies in these places, or by hiding from customs control, or by inaccurate customs declaring procedure or non-declaring the goods, or by using the documents containing unreliable information about the goods, and (or) by using the counterfeited identification

means or those related to the other goods, as well as attempt of such movement (subclause 19, clause 1, Article 4)".

Therefore, the given definition made equal the commitment of all possible actions aimed at illegal movement of goods across the customs border and the attempt of such movement.

Along with this, the situation has changed today, as the Customs Code of the Eurasian Economic Union provides no attempt of illegal movement across the customs border.

The notion of import of goods to the customs territory of the Eurasian Economic Union is defined as "commitment of actions related to customs border crossing, as a result of which the goods have arrived at the customs territory of the Eurasian Economic Union in any way, including sending by the international mail, use of pipeline service and power lines, until they are released by the customs bodies (subclause 3, clause 1, Article 2)".

Export of goods from the customs territory of the Eurasian Economic Union means "commitment of actions aimed at export of goods from the customs territory of the Eurasian Economic Union in any way, including sending by the international mail, use of pipeline service and power lines, including the customs border crossing (subclause 5, clause 1, Article 2)".

G.A. Rusanov aptly notes that "the law maker relates the movement across the customs border to a system of actions, i.e. defines the movement not as a single action but as a certain process in tact (Rusanov, 2011).

It should be also noted here that the CC of the CU gave another definition of "export from the customs territory".

Export of goods from the customs territory of the Eurasian Economic Union meant "commitment of actions aimed at export of goods from the customs territory of the Eurasian Economic Union in any way, including sending by the international mail, use of pipeline service and power lines, till the actual customs border crossing (subclause 4, clause 1, Article 4)".

At this, the content of illegal movement across the customs border of the Eurasian Economic Union used in Article 16.1 of the Administrative Offense Code of the Russian Federation is of interest and includes: "violation of the arrival procedure of goods and (or) international transportation means at the customs territory of the Eurasian Economic Union by importing outside of the places of movement of goods across the customs border of the Eurasian Economic Union or other places established by the

legislation of the member states of the Eurasian Economic Union, or beyond the working time of the customs bodies, or commitment of acts directly aimed at actual crossing of the customs border of the Eurasian Economic Union by goods and (or) international transportation means when leaving the customs territory of the Eurasian Economic Union outside of the places of movement of goods across the customs border of the Eurasian Economic, or other places established by the legislation of the member states of the Eurasian Economic Union, or beyond the working time of the customs bodies, or without the customs body permit; hiding the goods from customs control by using the hiding places or by any other means that prevent detecting the goods; or by making the goods with the appearance of the other goods when moving them across the customs border of the Eurasian Economic Union; notification to the customs body of false information about quantity of packaging units, their marking, names, gross weight and (or) volume of goods when arriving at the customs territory of the Eurasian Economic Union, leaving the customs territory of the Eurasian Economic Union, or movement of goods for customs transit, or to the temporary storage facility by submitting invalid documents or using the counterfeited identification means or genuine identification means related to the other goods and (or) transport means for these purposes”.

According to the note to Article 16.1 of the Administrative Offense Code of the Russian Federation, the administrative responsibility is imposed for submission not only of the documents containing unreliable information, but also of the counterfeited documents received illegally, the documents related to the other goods and (or) transport means, as well as other documents having no legal force.

However, this definition of the features of objective aspect of smuggling of sensitive goods and resources relates only to the illegal movement of goods across the customs border of the Eurasian Economic Union but not across the state border of the Russian Federation with the Republic of Belarus and the Republic of Kazakhstan as it is based on the provisions of the Customs Code of the Eurasian Economic Union that regulate the relations connected with movement of goods across the customs but not state border of the Russian Federation (clause 1, Article 1 of the Customs Code of the Eurasian Economic Union).

According to Order of the President of the Russian Federation No. 880 dated July 01, 2011 “On Cancellation of Agreed Kinds of Control at the State

Border of the Russian Federation with the Republic of Belarus and the Republic of Kazakhstan”, starting from July 01, 2011, “the customs, transport, sanitary-quarantine, veterinary, and quarantine phytosanitary control at the state border of the Russian Federation with the Republic of Belarus and the Republic of Kazakhstan” has been canceled.

Control over the movement of goods, cargoes and animals across the state border of the Russian Federation with the member states of the Eurasian Economic Union is performed by the border authorities of the Federal Security Service of the Russian Federation according to Law of the Russian Federation No4730-1 dated April 01, 1993 “On the State Border of the Russian Federation” and Statement on border control for persons, transport means, cargoes, goods and animals passing the state border of the Russian Federation approved by Decree of the Government of the Russian Federation No. 546 dated June 04, 2012.

Along with this, the feature of illegal movement of sensitive goods and resources across the state border of the Russian Federation is not determined in the mentioned regulatory acts.

There are no relevant explanations in Decree of the Plenum of the Supreme Court of the Russian Federation No. 12 dated April 27, 2017 “On Judicial Practice on Smuggling Cases” (hereinafter - the Decree of the Plenum).

Lacking legal definition of illegal movement of sensitive goods across the state border of the Russian Federation can be the reason for relieving from the responsibility of the persons exporting the sensitive goods of unknown and criminal origin to Kazakhstan and Belarus for their future export outside the Eurasian Economic Union.

We should agree with the opinion of M.P. Kuznetsov stating that “the way out appears to be the normative consolidation of the legal unified notion of illegal movement of sensitive goods across the state border between the states for all member states of the Eurasian Economic Union” (Kuznetsov, 2015).

In our opinion, for the purposes of elimination of legal uncertainties in determining the features of objective aspect of crime as provided by Article 226.1 of CC of the RF, the mentioned article should be supplemented with the provision defining the notion “illegal movement across the state border of the Russian Federation with the member states of the Eurasian Economic Union”.

In addition, according to clause 10 of the Decree of the Plenum on criminal cases on the crimes provided by Article 226.1 of CC of the RF, in the

cases when illegal movement of the smuggling item is performed not only across the customs border of the Eurasian Economic Union but also across the state border of the Russian Federation with the member states of the Eurasian Economic Union; if there is a common intent of the person to commit the above listed actions, the committed action should be considered as the same offense.

It is impossible not to agree with the position of the Supreme Court of the Russian Federation, as it was mentioned above, in case of illegal movement of the smuggling items by a person across the customs border of the Eurasian Economic Union or the state border of the Russian Federation with the member states of the Eurasian Economic Union, the offenses differ not only by the place of crime, end time, but also including the method of commitment.

Based on the above, the point of view of A.V. Fedorov expressed in consideration of issues of the criminal evaluation of acts when smuggling of the same items is committed many times, including across different borders, that states "the common intent to commit different (but successively related) crimes gives no reasons for qualification of these crimes as the same crime, is considered to be correct (Fedorov, 2017).

In this connection, we think that even having the common intent, there are no reasons to suppose that commitment of the above actions should be considered as the same crime.

Based on the above, as well as for establishing the enhanced responsibility for illegal movement, including of sensitive goods and resources, not only across the customs border of the Eurasian Economic Union but also across the state border of the Russian Federation with the member states of the Eurasian Economic Union, we think it reasonable to supplement Part 2, Article 226.1 of CC of the RF with the qualifying feature:

"c) by a person who previously committed illegal movement across the customs border of the Eurasian Economic Union or the state border of the Russian Federation with the member states of the Eurasian Economic Union".

4 CONCLUSIONS

To conclude the conducted research, it should be noted that version of Article 226.1 of CC of the RF does not correspond to Resolution of the Constitutional Court of the Russian Federation No. 15-II dated July 13, 2010 stating that when forming the legal norms, the law maker must comply

with the requirements of security, clarity, and unambiguousness of such norms, their agreement in the system of the effective legal regulation, any crime must be clearly determined in the law so that based on the text of the relevant norm, everyone could foresee the criminal consequences of his acts (omissions). We should agree with the position of Lepina T.G. Stating that the structure of Article 226.1 of CC of the RF could be hardly called correct (Lepina, 2020). L.P. Klebanov notes that the approach to developing new smuggling norms is "mechanical" (Klebanov, 2012).

In view of no customs control at the site of the state border of the Russian Federation neighboring with the state borders of Belarus and Kazakhstan, commitment of fraudulent acts during movement of the mentioned items across the state border of Russia with the Republic of Belarus and Kazakhstan, if such acts were aimed at misleading the state supervision bodies, does not fall within Article 226.1 of CC of the RF due to formal causes.

To remove difficulties in applying the norms, as well as to ensure their extensive and inconsistent interpretation, the norm on smuggling of sensitive goods and resources we consider in our research should include clear definitions of what constitutes illegal movement of such goods across the customs border of the Eurasian Economic Union and the state border of the Russian Federation with the member states of the Eurasian Economic Union.

To remove gaps and ambiguity of interpretation of Article 226.1 of CC of the RF in terms of determination of illegal movement across the state border of the Russian Federation with the member states of the Eurasian Economic Union, the notion of the mentioned movement and proposal to supplement Article 226.1 of CC of the RF with note 5 as follows are given:

"5. For the purpose of this Article, illegal movement across the state border of the Russian Federation with the member states of the Eurasian Economic Union is the movement of goods and other items outside the pass points of the state border of the Russian Federation or beyond the working time of the customs bodies performing the state control (supervision) at the state border of the Russian Federation, or by hiding from the state control, by fraudulent using the documents containing unreliable information, falsified, invalid documents, or without marking and (or) applied information as provided by the legislation of the Russian Federation, as well as without document for goods and other items".

The results and conclusions of the research can be used in the practical activity of the customs and law enforcement authorities, as well as in improvement of the criminal legislation.

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