

Comparative analysis in the field of customs offenses and criminal regulations in certain states in relation to the legislation of the Republic of Moldova

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Abstract

The study tries to highlight the specificity of the criminal laws of foreign states in the area of customs criminalization. The author discusses the criminal regulations in the laws of some Western European, Central European, Asian states, as well as in the legislation of some ex-Soviet states. The analysis carried out aims at: investigating the incriminating framework in the field of criminal offenses in the criminal law of some foreign states; determining the similarities and differences between criminal laws under analysis; identifying the legal problems by comparing the incriminating framework registered in the Criminal Code of the Republic of Moldova with those included in the criminal laws analyzed; taking good practice. Different research methods were used in the study, including: analysis, synthesis, deduction, induction. However, the most used method was comparative considering the specifics of the subject under investigation. In order to intensify the fight against the phenomenon of crime in the customs sphere, some proposals have been advanced to improve the legal framework of incrimination. All this is a consequence of taking good practices from the comparative analysis of criminal regulations in the field of customs offenses.

Keywords: *customs offence, criminal provisions in criminal laws of foreign states, smuggling, evasion of customs payments.*

JEL Classification: K14, K42.

1. Introductory aspects of the comparative law study on customs offenses

The major problem identified is the removal of the legislative loopholes allowed by the legislator to adopt the norms of the Special Part of the Criminal Code of the Republic of Moldova (hereinafter referred to as CC of the RM)² aimed at criminalizing the acts in the customs sphere by confronting the current legal framework with the similar legislative models of some states foreign.

Studying the experience of foreign states in legislative matters, including criminal law, allows the national legislator to focus his attention on improving the

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² The Criminal Code of the Republic of Moldova, adopted by the Parliament of the Republic of Moldova on 18.04.2002. Official Gazette of the Republic of Moldova, 2002, nr. 128-129, republished in the Official Gazette of the Republic of Moldova, 2009, no.72-74.

existing regulatory framework, which is necessary to develop the ideas of reforming the legal system. Legislation of foreign states, especially Western European states, is today a landmark of the primary importance of reforming concepts in the national legislative system. In the criminal law theory, it is noted: "In several countries of the world smuggling offenses are recognized as some of the most dangerous types of criminal activity. Like crime in general, smuggling offenses will obviously exist as long as there are state frontiers. Even in developed countries like the United States of America, Germany, Great Britain, France there is smuggling. In these countries, there is no question of the total eradication of these types of crimes. The efforts of the criminal prosecution bodies are focused only on reducing the level of smuggling to the controlled limits"³. We do not question the existence of such a phenomenon even in advanced economies. In the field of comparative law, there is a particular concern not of the phenomenology of crime in the customs sphere, but of the existing regulations in this field. Knowing the legal experience of some foreign states could determine their appropriation by the Moldovan legislator in order to streamline the process of preventing and combating crimes in general and customs offenses in particular. It is precisely from these reasoning that a comparative analysis of the criminal regulations in the field of customs criminalization is required.

The present scientific approach is highlighted by the fact that it contains a comprehensive analysis of the legal provisions in the criminal law of several foreign states in the field of customs crimes, among which the European and Asian ones. The study contains an analysis of the latest criminal regulations.

Different research methods were used in the study, including: analysis, synthesis, deduction, induction. However, the most used method was comparative. In this context, the comparative analysis is subject to the criminal regulations of some sixteen states in the field of customs offenses.

The scientific material is structured into five sections: 1. Introductory aspects of the comparative law study on customs offenses; 2. Comparative analysis of criminal law in the field of customs offenses in accordance with the laws of the former Soviet Union states; 3. Comparative law study on customs offenses according to the laws of some Western European and Central European countries; 4. Comparative law study of incriminations in the customs sphere under the laws of Asian States; 5. General conclusions.

In order to intensify the fight against the phenomenon of crime in the customs sphere, some proposals have been advanced to improve the legal framework of incrimination. All this is a consequence of taking good practices from the comparative analysis of criminal regulations in the field of customs offenses.

³ Lacusta N. *Elemente de drept penal comparat în materia infracțiunii de contrabandă*, „Legea și Viața”, 2012, no.7, p. 26.

2. Comparative analysis of criminal law in the field of customs offenses in accordance with the laws of the former Soviet Union states

Since the Republic of Moldova has detached itself from the communist "block", customs and criminal law have preserved some influences from the former Soviet Union. In fact, criminal charges in the Moldovan criminal code entered the domestic legal framework through the Russian branch. And this is due to the historian of the Republic of Moldova. The socialist footprint was also on Romanian legislation, even if to a lesser extent on the legislation. For these reasons, our focus will be on the analysis of the Russian Federation's regulatory framework in the field of customs crimes, as well as on those in other former Soviet Union member states. Last but not least, comparative analysis will be subject to criminal regulations in the legislation of other states, especially European ones.

The *Criminal Code of the Russian Federation* (hereinafter referred to as the CC RF)⁴ includes in the category of customs offenses: illegal export of technologies, scientific and technical information, services, products, materials and equipment used in the production of weapons of mass destruction, Military equipment (art. 189 CC RF); the return of cultural values on the territory of the Russian Federation (art.190 CC RF); avoidance of the obligation to repatriate money in foreign currency or in the national currency of the Russian Federation (art. 193 CC RF); evasion of payment of customs payments (art. 194 CC RF); Smuggling of money in cash and/or financial instruments (art.200.1 CC RF); smuggling of alcoholic products and/or tobacco products (art.200.2 CC RF).

It is worth mentioning that the offense against customs security previously enters the act of economic contraband. This was incriminated in Article 188 CC RF. By Russian Federation Act of December 7, 2011, no.420, article 188 of the CC RF has been repealed, so that the act of economic smuggling (with goods not possessing special qualities) no longer constitutes a crime, according to the legislation of the Russian Federation. At the same time, smuggling of substances with a strong effect, with poisonous, toxic, explosive, radioactive, radiation, nuclear, firearms or their main parts, explosives, ammunition, weapons of mass destruction, means their delivery, other weapons, other military equipment, as well as materials and equipment that can be used to create weapons of mass destruction, means of delivering them, as well as strategic goods and resources or cultural values, or the most valuable wildlife and aquatic biological resources, has been re-classified in Chapter XXIV "Crimes against public security" of Section IX "Crime against security and public order" in the Special Part of the Criminal Code (art.226.1 CC RF). At the same time, the smuggling of narcotic, psychotropic substances and their precursors or analogues, plants containing narcotic, psychotropic substances or their precursors, or parts thereof, containing narcotic,

⁴ The Criminal Code of the Russian Federation: Law of the Russian Federation No. 63-F3 of June 13, 1996, adopted by the State Duma on May 24, 1996, approved by the Federation Council on June 5, 1996, entered into force on January 1, 1997, Legislative Assembly of the Russian Federation, 1996, No. 25.

psychotropic substances and their precursors, with instruments or equipment Under special control and used for the manufacture of narcotic drugs or psychotropic substances, has been redeployed within Chapter XXV for the protection of public health and social coexistence (art.229.1 CC RF).

In the context, we underline the following fact: the content of art. 248 CC RM largely took over the content of the former art.188 CC RF. This takeover is due to the pronounced influence of the legislation of the Russian Federation on that of the Republic of Moldova, considering that the latter is a former member of the Soviet Union.

Under the current criminal law of the Russian Federation, we point out the following defining issues regarding the customs offenses according to CC RF:

- the existence of incriminating norms in the Russian Federation's criminal law which are missing from the Moldovan criminal law (in the case of the offense of escaping the execution of the repatriation obligation in foreign currency or in the national currency of the Russian Federation);
- incrimination in a separate article of the act of non-return to cultural values in the territory of the Russian Federation, compared to the criminal law of the Republic of Moldova, where, from a technical and legislative point of view, such a criminal offense is incriminated within art. 248 CC RM, together with the other offenses under the generic name of smuggling;
- the express specification in the framework of the norm of art.194 CC RF of the natural and legal person as a subject of the evasion offenses from the payment of the customs payments;
- aggravation of liability and penal punishment for avoidance of payment of customs duties: a) by a person in charge of using the service situation (letter a), paragraph (3) art.194 CC RF) and b) with the application of violence against a person performing customs or border control (letter b) paragraph (3) art.194 CC RF);
- the existence of distinct rules aimed at criminalizing smuggling of certain goods (which contain special qualities).

In the field of customs offenses, a special place is dealt with by the criminal law of the neighboring state - Ukraine. In Article 201 of the *Criminal Code of Ukraine* (hereinafter CC Uk)⁵, the smuggling act, defined as passing over the customs border of Ukraine, by circumventing or concealing from the customs control of cultural values, poisonous substances with a strong effect, Explosives, radioactive materials, weapons and ammunition (except for a smooth-hitting gun), as well as special technical means for obtaining hidden information. Criminal liability aggravates if the offense is committed by an organized criminal group, by a person previously convicted of committing an offense under the same article or by a person in charge of using the job.

We note that the Ukrainian legislator included in the list of material entities susceptible of illegal crossing over the customs border only those entities that

⁵ The Criminal Code of Ukraine as amended on 18.09.2012. The document is available online at <http://meget.kiev.ua/kodeks/ugolovniy-kodeks> (accessed on 09.10.2016).

possess certain special qualities. Passing over the customs border of Ukraine goods or goods without the presence of special qualities is not subject to criminal law. Similar to the Russian legislature, the Ukrainian considered such behavior to be without social danger. Similarly, as compared to the legislation of the Republic of Moldova and that of Romania, in the list of material objects of the smuggling offense, according to art. 201 CC Uk, does not enter the smooth-hunting gun. At the same time, special technical means for the hidden information are included in the category of material objects.

Please note that, according to Ukraine's criminal legislation, the list of methods of committing the border crossing act is more restrictive. As methods of committing the act, the legislator establishes only the concealment and circumvention of customs control. Previously, smuggling, according to the criminal law of Ukraine, was placed in the category of crimes against the state; but nowadays, the smuggling is located within Chapter VII "Offenses in the Economic Activity" of the Special Part of the Criminal Code.

The smuggling of narcotic drugs, psychotropic substances, precursors and their analogs with counterfeit medicines is criminalized in Art. 305 CC Uk, within Section XIII "Infringements in the sphere of narcotic, psychotropic and healthcare circulation".

In the *Criminal Code of Azerbaijan* (hereinafter referred to as - CC Az)⁶ customs offenses are located within Chapter XXIV - Offenses in the sphere of economic activity. Here we highlight the following customs offenses: a) smuggling (art.206 CC Az); b) non-return to the territory of the Republic of Azerbaijan of objects from the artistic, historical and archaeological heritage (art.207 CP Az); c) non-return of the foreign currency abroad (art.208 CC Az); d) avoidance of payment of customs payments (art.209 CP Az).

The main defining aspects of customs offenses, according to Azerbaijan's legislation, are:

- incrimination in a separate article of the act of non-return to the customs territory of Azerbaijan of the cultural values that make up the artistic, historical and archaeological heritage;

- criminalization of the foreign exchange non-return of the foreign currency. It should be mentioned that, according to the legislation of the Republic of Moldova, such an act constitutes a fiscal violation, punishable by a fine. Thus, according to the Law of the Republic of Moldova on the regulation of repatriation of money means, goods and services resulting from foreign economic transactions, no.1466 of 29.01.1998⁷, control over the repatriation of money, goods and services from foreign economic transactions is carried out by to the bodies of the State Tax Service during the inspections carried out at the economic agents, in the manner

⁶ The Criminal Code of the Republic of Azerbaijan, Ed. THEM. Ragimova. St. Petersburg: The Legal Center Press, 2001.

⁷ Law of the Republic of Moldova on regulation of the repatriation of funds, goods and services from foreign economic transactions, adopted by the Parliament of the Republic of Moldova on 29.01.1998, Official Monitor of the Republic of Moldova, 1998, no. 28-29.

established by the legislation. The finding of the violations and the application of the pecuniary sanctions are carried out by the State Tax Service bodies based on the results of the verification of the data regarding the failure of the economic agents to pay the repayment terms of the money and material means. Failure to observe the repayment terms of money, materials and services shall be sanctioned by a fine imposed on economic agents in the amount of 0.1% of the amount (value) of non-repatriated funds for each calendar day of delay;

- the presence of the aggravating circumstance "with the application of violence against the person performing the customs control" in the article that criminalizes smuggling;

- the exclusion of the smooth-hunting gun and the appropriate ammunition for it from the list of material entities susceptible to crossing the customs border in the context of the offense provided for in art. 206.2 CC Az;

- including weapons of mass destruction in the list of material entities with special status which may constitute a material object of smuggling. According to the criminal law of the Republic of Moldova, such an act falls within the scope of art. 140¹ CC of the Republic of Moldova (use, development, production, otherwise acquisition, processing, possession, storage or preservation, direct or indirect transfer, in the mass);

- the presence of the special ground of criminal liability of the perpetrator for the evasion of the payment of customs payments. In order to operate the said ground for the release of criminal responsibility, it is necessary to meet cumulatively the following conditions: a) the perpetrator has committed such an act for the first time; b) the offender has repaired the damage caused by the offense.

In the *Criminal Code of Armenia* (hereinafter referred to as CC Ar)⁸, as well as in the criminal laws of most of the former Soviet Union states, customs offenses are located within the chapter of the Special Part of the Criminal Code for the Protection of Economic Activity. It is also worth noting that the Armenian lawmaker only criminalized contraband.

In the standard version of paragraph (1) of Art. 215 of the CC Ar, as a material object, along with the goods lacking in special qualities, the cultural values appear. At the same time, the methods of committing the offense are as follows: a) circumvention of the customs control; b) concealment of customs control; c) fraudulent use of customs documents or other types of documents. At the same time, the legislator did not provide as methods: non-authentication or non-authentication.

Compared with the norm of paragraph (1) art. 215 of the CC Ar, in the paragraph (2) the legislator omitted to specify in general the method of committing the offense, which is not a constitutive sign.

Criminal liability aggravates in the case of committing the offense: a) by a person released from certain forms of customs control or by a person authorized to cross over the customs border of certain goods or means of transport released from

⁸ The Criminal Code of the Republic of Armenia. The document is available online at <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=rus> (accessed on 09.10.2016).

customs control (point 2 paragraph (3) art. 215 CC Ar); b) by an organized criminal group (paragraph (4) art. 215 CC Ar).

As for the aggravating circumstance recorded in art. 215 para. 3 point (2) of the CC Ar, we find that this presupposes the presence of a special quality of the subject of the offense or of the goods passed over the customs border.

According to the *Criminal Code of Kazakhstan* (hereinafter CC Kz),⁹ customs offenses are provided in Chapter VII of the Special Part of the Criminal Code entitled "Offenses in the Field of Economic Activity". The following are considered customs offenses: a) economic contraband (art. 209 CC Kz); the return of the foreign currency and the national currency abroad (art. 213 CC Kz) abroad; evasion of payments and customs duties (art. 214 CC Kz).

Just like the Russian legislature, the Kazakh has decided to separate the smuggling of certain goods with special qualities. It is smuggling with forbidden or limited goods in the civil circuit (art.250 CC Kz). According to the Kazakh legislator, smuggling with such entities, in the principal plan, hurts public security, but not the economy of the country. As the doctrine shows, the social danger of smuggling with narcotic drugs is equivalent to that of smuggling with weapons, and the social relations of public security are being damaged.¹⁰

Customs offenses in the *Uzbekistan Criminal Code* (henceforth CC Uz)¹¹ are located in Chapter XII of the Special Part - "Crimes Against the Basis of the Economy". In the category of customs offenses is included the act of violation of the customs legislation (art.182 CC Uz). In general terms, the offense provided for in Article 182 CC Uz is the same as in paragraph (1) of article 248 CC RM. The smuggling of goods forbidden or limited in the civil circuit is incriminated in art. 246 CC Uz, being placed within the chapter for protection of public security. It should be noted that according to the Uzbek legislation, only passage of goods over the customs border of goods forbidden or limited in the civil circuit is considered as smuggling. The illegal crossing of goods other than those forbidden or restricted in the civil circuit over the customs border is described as a violation of customs legislation, but not as smuggling. In other words, in the sense of the Uzbek legislature, the country's economy is challenging the act of violating customs legislation (art. 182 CC Uz). *Per a contrario*, smuggling attacks public security.

As regards the act of violation of the customs legislation, compared to the criminal law of the Republic of Moldova, for the criminal liability for the illegal crossing of certain goods in large proportions through the express methods provided by the law (which are similar to those of art.248 CC RM), it is obligatory

⁹ The Criminal Code of the Republic of Kazakhstan. The document is available online at http://online.zakon.kz/Document/?doc_id=1008032 (accessed on 09.10.2016).

¹⁰ Savchishkina G.I., Stepanova O.G., *Зарубежное уголовное законодательство об ответственности за контрабанду наркотических средств, психотропных веществ или их аналогов (Foreign criminal legislation on liability for the smuggling of narcotic drugs, psychotropic substances or their analogues)*, „Вестник Челябинского государственного университета” (“Bulletin of Chelyabinsk State University”), 2013, no. 17 (308), p.74.

¹¹ The Criminal Code of Uzbekistan. The document is available online at http://lex.uz/pages/getact.aspx?lact_id=111457 (accessed on 09.10.2016).

that the perpetrator had previously been subjected to contravention for committing a similar act. We consider the insertion in the text of the law by the Uzbek legislature of the qualifying sign that the passing of the goods across the customs border will be considered a crime only after the application of the contravention sanctions. Such a situation, when repeating offenses constitutes an offense, inevitably leads to a violation of the principle of non-admission to criminal liability twice for one and the same act. That is why, we agree with the position of the local authors S. Brînză and V. Stati who state: "the act of contravention in the past, for which the perpetrator has already borne the appropriate sanction, can not serve in the future as a probation, pretext or ground for the application of criminal liability"¹².

3. Comparative law study in the field of customs offenses according to the laws of some Western European and Central European countries

As far as the criminal laws of the Western European states are concerned, we are surprised by the tendency to criminalize customs offenses in special laws, similar to the Romanian legislature. Thus, in *Italian criminal law*, smuggling is incriminated by the Unified Text of Customs Laws¹³. The respective normative act is a correlation of the 1940 Customs Law, adapted to the new economic conditions. According to art. 282 of this normative act, smuggling is an offense consisting in the evasion of goods brought into or out of the country from the payment of customs duties and customs control. In addition to punishment, the law provides for the obligation of the perpetrators to pay customs duties and the measure of confiscation of the goods. The criminal doctrine states that customs smuggling, according to Italian law, does not imply any deception (specific fraud), the desire to place the goods on the territory of the state beyond the customs control, whatever the intention of the customs destination, is sufficient¹⁴. Concerning participation, the jurisprudence has held that the liability of those involved in one way or another must be the same, that is to say, the authors, accomplices and instigators are subject to the same sanctioning treatment¹⁵.

In art. 295 of the respective normative act the following forms of aggravated smuggling are envisaged: a) the use of means of transport belonging to persons other than the perpetrators. The purpose of this regulation was to discourage offenders from using other people's means of transport in order to avoid confiscation, and it is irrelevant if the perpetrator knows the owner of the means of transport or if he has given his consent to the use of the vehicle; b) The commission

¹² Brînză S., Stati V. *Despre oportunitatea modificării art.320 „Neexecutarea hotărârii instanței de judecată” din Codul penal. Partea I.*, „Revista Națională de Drept”, 2013, no. 5, p.5.

¹³ *Codice doganale*. The document is available online at www.agenziadoganemonopoli.gov.it/wps/wcm/connect/internet/ee (accessed on 09.10.2016).

¹⁴ Cudrițescu P.G. *Infracțiunea de contrabandă*, „Revista de Drept penal”, 2000, no.3, p. 95.

¹⁵ Streteanu Fl., Chiriță R. *Răspunderea penală a persoanei juridice*, Bucharest: Rosetti, 2002, p. 141.

of an offense by an armed person. In the Italian criminal doctrine, in comparison with the Romanian one, the term "armed person" means that criminals must wear the weapons visibly to intimidate; c) the commission of the crime by three or more persons between whom there was a tacit or express agreement; d) committing smuggling in competition with another offense (such as forgery or corruption).

In *France*, customs offenses are incriminated by the Customs Code (henceforth CC Fr)¹⁶. These are located under Chapter VI of Title XII entitled "Repressive provisions". From art. 408 CC Fr, there are five classes of customs contraventions and three classes of customs offenses.

The French Customs Code distinguishes between import and export smuggling. Thus, any introduction into the customs territory in an illegal way constitutes smuggling. There is a smuggling offense and when the import is done by a closed legal, but temporary, international traffic¹⁷.

The definition of smuggling is provided in paragraph (1) art.417 CC Fr: import or export performed outside customs offices, as well as any violation of legal or regulated provisions regarding the possession and transportation of goods within the customs space.

They may constitute, *inter alia*, smuggling, Class I offense, as is apparent from the provision of paragraph (2) of art.417 CC Fr: fraudulent landing or embarkation within or outside ports; the removal or substitution during shipment of goods dispatched under suspension arrangement; non-compliance with legitimate reasons for scheduled itineraries and schedules; imports or exports without a declaration when the goods are passed through a customs office and removed from control by hiding in specially arranged hideouts or in empty spaces which are not normally intended for the storage of the goods.

According to art.415 CC Fr, class II offenses punishable more severely than class I offenses are: the attempt or use by export, import, transfer or compensation of a financial operation between France and other countries related to funds known to derive, directly or indirectly, from an offense provided for in the Customs Code or from an offense against the substance of poisonous substances or plants considered to be narcotic.

The class III offenses refers to the smuggled offense and consists in committing the offense by more than six persons or by three or more persons if they have used a vehicle, a ship or any marine or fluvial craft.

As far as the customs offenses in CC Fr are concerned, they are divided into five classes, covered by articles 410-413 bis. They are sanctioned by gravity only by fine or fine and imprisonment from 10 days to one month, with the confiscation of the goods. Thus, as is apparent from article 410 CC Fr of the first class, for example: any omission or inaccuracy relating to one of the indications which customs declarations must contain if the irregularity has no influence on the

¹⁶ *Code des douanes* Version consolidée au 19 août 2015. The document is available online at <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071570> (accessed on 09.10.2016).

¹⁷ Lacusta N., *op. cit.*, p.27.

application of the duties or prohibitions; any infringement of the quality or packaging rules imposed on importation or exportation where this does not have the purpose or effect of obtaining a refund, an exemption, a reduced charge or a financial advantage. Class II contraventions contained in art. 411 CC Fr are, *inter alia*: deficits on the number of parcels declared or transported with a free pass or proof document; presenting at destination with the broken or falsified seal of the goods shipped with lead seals or other customs seals. Class III contraventions (art.412 CC Fr) form: any false statement about the type, value or origin of the goods imported, exported or under a suspensive regime when a customs duty or any charge is eluded or diminished; any false statement about the designation of the actual recipient or real sender; any diversion of unrestricted goods from their privileged destination; absence of the customs list or failure to present the original of the list; any difference in the nature of the goods entered on the lists or declared summary. Class V contraventions, referred to in art. 413 bis of the CC Fr, are: the non-declaration of the money or the performed operations; the act of the person to whom the clearance or clearance of customs clearance has been withdrawn and which continues either to carry out directly or indirectly the customs formalities for the detailed declaration of the goods or to benefit directly or indirectly from all or part of the remuneration provided for by law.

Goods may be considered to be smuggled into the country when there is a lack of documents justifying the origin or false, inaccurate, incomplete or inapplicable documents presented to the customs authority. It is also considered to be smuggled and any commodity that exceeds the quantity entered in the documents or is not entered in the documents¹⁸.

The analysis of the legislation of some countries shows that smuggling is not always considered a special crime. Thus, the *UK Customs Law* of 1979 does not use the notion of smuggling for any of the customs offenses provided in articles 123-135¹⁹. However, considering the content of the criminalization texts, it can be appreciated that there is a similarity between what the neo-Latin legislation considers and the customs offenses under British law are.

Thus, article 123 of the United Kingdom Law provides for an offense of illegal import consisting of: a) bringing goods from abroad or from a free zone without the announcement of the customs authorities under the conditions stipulated by law; b) the use or transfer of goods from warehouses without the permission of the customs authorities; c) the unloading of non-declared goods, those originally loaded for export or those admitted for export by offsetting or exemption from ships, without the permission of the customs authorities or by any means of circumvention, d) ship loading of goods without being mentioned in the manifest (*cargo manifest*) and without being declared to the customs authority; if the goods were discovered before the ship leaves the port, the deed is considered an

¹⁸ Pasat O. *Stabilirea și analiza juridico-vamală și penală a infracțiunilor comise pe teritoriul statelor limitrofe*, „Revista Națională de Drept”, 2014, no. 5, p.70.

¹⁹ *Customs and Excise Management Act 1979*. The document is available online at <http://www.legislation.gov.uk/ukpga/1979/2> (accessed on 09.10.2016).

attempt to make an illegal (tentative) import; if the owner of the goods is not found, responsibility for these goods shall be the responsibility of the master of the ship²⁰.

Further our attention will be focused on the analysis of criminal regulations in the customs field of the legislation of the neighboring state - Romania. *Ab initio* we note that the Romanian legislator differs from the Moldovan one, considering the technique of the first to insert the customs offenses into the normative act dedicated to regulating the relations in the customs sphere (the Customs Code), compared to the Moldovan one, which used the location all criminal offenses, including those in the customs sphere, in the single criminal law - the Criminal Code. Therefore, the *new Customs Code of Romania* in the editorial office of 2006 (hereinafter CC Ro)²¹ stipulates in paragraph (1) art.270 the act of introducing in or removing from the country by any means the goods or goods through places other than those established for customs control. According to paragraph (2) art.270 CC Ro, it also constitutes a smuggling offense and is punished according to paragraph (1): a) introduction into or removal from the country through the places established for customs control, by evading the control Goods or goods to be placed under a customs procedure if the customs value of the stolen goods or goods exceeds RON 20,000 for products subject to excise duties and more than 40,000 RON for other goods or commodities; b) the introduction into or removal from the country, twice in a year, through the places established for customs control, by removal from customs control of the goods or goods to be placed under a customs regime, if the customs value of the goods or stolen goods is less than RON 20,000 for products subject to excise duty and less than RON 40,000 for other goods or commodities; c) the alienation of goods in customs transit in any form.

According to paragraph (3) of the same article, they are assimilated to smuggling and punishable according to paragraph (1) collecting, holding, producing, transporting, taking over, storing, selling, selling and selling the goods or merchandise to be placed Under a customs regime knowing that they are smuggled or intended to be committed.

Qualified smuggling is criminalized in art.271 CC Ro, in accordance with which it is a criminal offense to introduce into or remove lawfully from arms, ammunition, explosives, drugs, precursors, nuclear materials or other radioactive substances, toxic substances, waste, residues or hazardous chemical materials.

The act of using some unrealistic acts is incriminated in art.272 CC Ro, according to which it is a criminal offense to use, at the customs authority, the customs, transport or commercial documents referring to other goods or goods or other quantities of goods or goods than those presented to customs. In art.273 CC Ro there is the offense of using falsified acts, constituting an offense the act of using customs documents, customs documents, transport or falsified commercial documents.

Finally, the aggravated variant of the offense is stipulated in art.274 CC Ro, according to which the criminal responsibility for the criminal offenses

²⁰ Lacusta N., *op. cit.*, p.28.

²¹ Law on the Customs Code of Romania, no. 86/2006. Official Gazette of Romania, 2006, no.350.

stipulated in art.270-273 CC Ro aggravates if the deeds are committed by one or more persons armed or two or more people together.

From the comparative analysis of the criminal regulations enunciated in relation to those included in the Criminal Code of the Republic of Moldova we can distinguish the following differences in the field of customs criminalization:

- in the CC Ro there is no norm analogous to that of art.249 CC RM sanctioning the evasion of the payment of the customs payments;

- the essence of paragraph (1) art.270 CC Ro leads us to the idea that the value or the kind of goods that are trying to be crossed over the border does not matter, but the manner in which they materialize "by any means" and by places where they are not carried out customs control. So we note that in order for the rule of criminality to be infringed, it is necessary for the goods to have been introduced or taken out of places other than those established for customs control;

- in comparison with article 248 CC Ro, where the value of the goods crossed over the customs border must exceed the large proportions (in the case of the norm from paragraph (1) art.248 CC Ro) or particularly large proportions (in the case of the letter d) paragraph (5) art.248 CC RM), for the application of paragraph (1) art.270 CC Ro no matter the value of the goods brought in or out of the customs territory of Romania. As an exception, this only counts in the case of the offense referred to in letter a) paragraph (2) art.270 CC Ro where the legislator establishes the need for the material/immaterial entity to possess certain quantitative parameters. *In concreto*, the value of the goods or goods to be placed under a customs procedure and which are introduced into or out of the country through the places established for customs control, but by removal from customs control, shall be: a) 20,000 RON in the case of products subject to excise duties or b) 40,000 RON in the case of other goods or commodities. It is not necessary to have the respective quantitative indices when the above-mentioned criminal offense is committed twice in the course of one year, an act falling under letter b) paragraph (2) art.270 CC Ro;

- within the framework of paragraph (3) art.270 CC Ro the legislator incriminates a special form of favoring smuggling offenses;

- the qualified smuggling variant of the CC Ro contains the following entities as precursors, nuclear materials, residuals and dangerous chemical materials as compared with article 248 CC of RM. *De lege ferenda*, we recommend the Moldovan lawmaker to establish criminal liability for smuggling with precursors. At the same time, Romania's legislation does not criminalize in a special norm the smuggling of cultural values, as the Moldovan legislator does;

- in comparison with the Moldovan legislator, the Romanian one criminalizes the act of using some unrealistic acts and the use of falsified acts;

- in the content of art. 248 CC RM (article that criminalizes smuggling offenses) the legislator explicitly specified the illegal methods of passing goods across the customs border;

- the content of the aggravating circumstantial elements of the customs offenses differs.

In the *Criminal Code of Serbia* (hereafter CC Sr)²² customs offenses are located under Chapter XXII of the Special Part entitled "Offenses against Economic Interests". It should be noted that Serbia's Criminal Code only criminalizes smuggling in the customs sphere. In accordance with paragraph (1) of article 230 CC Sr, the criminal offense of the person who crosses the goods over the customs frontier shall be punishable by circumventing the customs control or the passing of the goods across the customs frontier by evading the customs control committed by a group armed or by force or threat. According to paragraph 2 of that article, the offense committed by a person in engaging in the sale, distribution or concealment of smuggled goods across the customs frontier or the act of organizing a network of dealers or intermediaries for the distribution of such goods constitutes an offense.

In a careful analysis of the cited legal provisions, we catch the following defining remarks in relation to the criminal law of the Republic of Moldova in the field of customs offenses:

- only the passage of goods of general qualities is contraband;
- as a means of unlawfully crossing the customs frontier, the legislator establishes: the evasion of the customs control; application of force; threat;
- like the Romanian legislator, the Serb assimilates smuggling favoring this crime.

In the *Criminal Code of Denmark*, the import and export of narcotic, psychotropic, weapons and explosive devices are located within Chapter XX - "Offenses posing a threat to society"²³. The *Austrian Criminal Code*²⁴ in Section VII "Offenses against the environment" contains article 177a which establishes, *inter alia*, criminal liability for the import, export and transit of weapons of mass destruction. An analogous rule is set out in the *Polish Penal Code*²⁵, placed under the environmental chapter. Thus, in accordance with § 2 art.183 of this Criminal Code, the act of illegal import of substances harmful to the environment is subject to criminal liability.

4. Comparative law study of incriminations in the customs sphere under the laws of some Asian States

It is worth considering the analysis of the criminal law of the People's Republic of China in the field under investigation. The Chinese legislator has devoted more rules to criminalizing economic smuggling, smuggling with various prohibited or limited goods in the civil circuit, and some smuggling-related facts.

²² *Criminal Code of the Republic of Serbia*. The document is available online at <http://legislationline.org/documents/section/criminal-codes> (accessed on 09.10.2016).

²³ The Criminal Code of Denmark, Ed. S.S. Belyaeva. Moscow: Publishing house of Moscow University, 2001.

²⁴ *Criminal Code of the Republic of Austria*. The document is available online at <http://www.legislationline.org/documents/section/criminal-codes> (accessed on 09.10.2016).

²⁵ *Criminal Code of the Republic Poland*. The document is available online at <http://www.legislationline.org/documents/section/criminal-codes> (accessed on 09.10.2016).

According to paragraph (1) of article 151 of the *Criminal Code of the People's Republic of China* (hereinafter referred to as CC Ch)²⁶, the first type-variant is the smuggling of arms, munitions, radioactive material and false money. At paragraph (2) of article 151 CC Ch is established the criminal liability for smuggling of cultural values, gold, silver and other precious metals, as well as with precious animals. In paragraph (3) of article 151 of the CC Ch can find smuggling of rare plants and their products.

The smuggling of pornographic films, video tapes, audio tapes, images, printed materials and other pornographic materials is criminalized in art.152 CC Ch. However, the Moldovan legislator, to a certain extent, establishes criminal responsibility for committing such acts art.208¹ CC RM (child pornography), a rule sanctioning, *inter alia*, the import and export of images or other representations of one or more children involved in explicit, real or simulated sexual activities, or images or other representations of the sexual organs of a child, represented in a lascivious or obscene manner, including in electronic form. So the Moldovan lawmaker does not sanction the import and export of images or other representations with adult persons involved in sexual activities, or images or other representations of sexual organs of adults.

After this digression, we still mention that art.153 CC Ch provides smuggling with other goods and objects committed with the evasion of payment of customs payments. Under art.155 CC Ch criminal liability is established for the illegal acquisition of smuggled goods. One of the forms of complicity qualified to commit smuggling is criminalized in art.156 CC Ch, according to which it is considered an offense the prior understanding with the smuggler, the granting of a credit to him or his financial means, the check, the provision of transport services, the retention services and of postal delivery. The second form of smuggling complicity is provided by art. 157 CC Ch, according to which the armed concealment of smuggling is punished.

In view of the fierce struggle of the Asian States in general and the People's Republic of China in particular with the illicit drug trafficking phenomenon, the Chinese legislature decided to incriminate in a separate chapter the smuggling of narcotic substances. Thus, article 347 CC Ch of the Criminal Code establishes criminal liability for smuggling with narcotic substances, irrespective of their quantitative parameters. Here too, criminal liability is provided for instigating minors to smuggle with narcotic substances.

In another context, with regard to the comparative study carried out, we mention that some forms of smuggling, as the most widespread customs offense, are placed in sections, different chapters than those in which economic smuggling is incriminated, which is the position of the legislative authority in these states - to defend other social values than those that derive from the national economy as a social value, by criminalizing such behaviors. It is worth mentioning the *Criminal*

²⁶ Criminal Code of the People's Republic of China, Ed. A.I. Korobeeva, D.V. Vicicova. St. Petersburg: Legal Center Press, 2001.

Code of Japan (henceforth CC Ja)²⁷, in which some forms of smuggling are provided in separate chapters. For example, Chapter XIV "Opium-related offenses" places article 138 that criminalizes the import of opium and other actions on opium or the means used to consume opium by customs administrators. The smuggling of opium by persons other than those authorized to administer the customs domain is sanctioned by article 136 CC Ja.

The *Mongolian Criminal Code*²⁸ establishes criminal liability for smuggling offenses under Article 175 of Chapter XII of the Special Part of the Criminal Code, entitled "Economic Crimes". In accordance with the provision of the criminalization rule, smuggling of prohibited goods or goods, animals or currency or other values in large proportions is considered a criminal offense. Criminal liability worsens if the offense is committed repeatedly, in a group, or in the use of a service situation, as well as in case of smuggling with cultural values. Extremely aggravating circumstances are the smuggling committed by a recidivist, a criminal organization, or if large amounts of damage are caused by committing smuggling.

5. General conclusions

As a result of the study, we advance the following general conclusions:

1) lawmakers of foreign states have different positions in relation to the number and content of customs offenses, as well as to the technical-legislative placement within the criminal law of the norms that criminalize them, positions which are conditioned, in particular, by the level of economic development, the established external relations, including the commercial ones, etc.

2) the criminal law of some foreign states lacks the rules corresponding to the art.249 CC of RM (for example, Ukraine, Armenia, Uzbekistan etc.). On the same position is the Romanian legislator, who does not consider the evasion of the payment of customs payments as a crime.

3) in most of the ex-Soviet States, in the legislation on customs criminality, the act of non-return to the customs territory of the cultural values that make up the artistic, historical and archaeological heritage is incriminated in a separate article.

4) according to Uzbekistan's law, as regards the violation of customs legislation, as compared to the criminal law of the Republic of Moldova, for the criminal liability for the illegal crossing of certain goods in large proportions through the express methods provided by the law (which are similar to those of art. 248 CC RM), it is mandatory for the perpetrator to have been subjected to contravention for committing a similar act.

5) the Romanian legislator differs from the Moldovan one, considering the technique of the first to insert the customs offenses into the normative act dedicated to regulating the relations in the customs sphere (Customs Code), as compared to

²⁷ The Criminal Code of Japan, Ed. A.I. Korobeev. St. Petersburg: The Legal Center Press, 2002.

²⁸ *Criminal Code of Mongolia*. The document is available online at <http://legislationline.org/documents/section/criminal-codes> (accessed on 09.10.2016).

the Moldovan one, which used the location of all the facts Criminal offenses, including those in the customs sphere, in the single criminal law - the Criminal Code.

6) compared to art. 248 CC RM, where the value of the goods passed over the customs border must exceed the large proportions (it is the case of the norm from par. (1) art.248 CC RM) or particularly large proportions (it is the case of the norm from letter d) paragraph (5) art. 248 CC RM), for the application of paragraph (1) art.270 CC Ro does not count the value of the goods imported or taken out of the customs territory of Romania. As an exception, this only counts in the case of the offense referred to in letter a) paragraph (2) art.270 CC Ro where the legislator establishes the need for the material/immaterial entity to possess certain quantitative parameters.

7) as far as the criminal laws of the West European countries are concerned, we tend to criminalize customs offenses in special laws, similar to the Romanian legislator.

8) some forms of smuggling, as the most widespread customs offense, are located in sections, chapters different from those in which economic smuggling is incriminated, which means the position of the legislative authority in these states - to defend other social values than those which derives from the national economy as a social value, by criminalizing such behaviors.

9) the Chinese legislator has devoted more rules to criminalizing economic smuggling, smuggling with various prohibited or limited goods in the civil circuit, and some smuggling-related facts.

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