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SPECIFIC ASPECTS OF CRIMINAL LIABILITY FOR TRADE OF PEOPLE

Criminal liability for trafficking in human beings is stipulated in Art. 149 of the Criminal Code of Ukraine. One of the forms of the objective side of the crime may be: "trafficking in persons or other illegal transaction, the object of which is a person, as well as ... displacement ... committed for the purpose of exploitation, using deception, blackmail or a vulnerable state of a person" .

Also, in recent times, the movement of goods across the customs border of Ukraine outside customs control or with concealment from customs control, carried out in large quantities, is of particular concern. The situation arising in the foreign economic sphere of the country's activities is explained not only by the socio-economic crisis and the "transparency" of Ukraine's state borders with CIS countries and European countries, but also by the lack of active work of its law-enforcement bodies, an imperfect legal framework for combating smuggling.

Among the complex of urgent measures necessary for the intensification of the fight against smuggling, it is necessary to highlight the problem of improving criminal-law measures to combat this crime, and the importance of developing theoretical and applied research in this field that correspond to the present and needs of law enforcement practice.

Smuggling harms the economy of our country, its cultural heritage, health of the population and public security, promotes the expansion of the shadow economy sector, etc.

The complexity and extraordinary nature of this problem attracted the attention of many lawyers. In particular, the issue of

criminal liability and legal analysis of smuggling under Art. 201 of the Criminal Code of Ukraine were investigated by such scholars as P.P. Andrushko, A.F. Bantyshev, L.V. Bagriy-Shakhmatov, V.M. Volodko, V.O. Vladimirov, O.O. Dudorov, M.I. Melnyk, A.A. Music, V.O. Navrotsky, O.M. Omelychuk, V.M. Popovich, A.V. Savchenko, L.Yu. Rodina, M.I. Havronyuk.

The problem of the subject of crime in the science of criminal law is a rather controversial issue. In general, the position of scientists on this problem can be divided into three groups. Some scholars regard the subject of the crime as any material material world, with certain properties of which the criminal law links the presence in the actions of the person signs of a specific composition of the crime [3]. Some authors recognize the subject of a crime as things, certain values of the material world, acting on which the person infringes upon the good belonging to the subjects of social relations [4]. Other criminologists under the subject of crime understand things or other objects of the outside world, as well as intellectual values, affecting which, the guilty person causes damage to public law protected by law.

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Humanization of Liability for Offenses in the Sphere of Economic Activity" of 15.11. In 2011, significant changes were made to the disposition of Art. 201 of the Criminal Code of Ukraine "Smuggling". Thus, from part 1 of this article two types of contraband were seized, namely, goods of a large size and strategically important raw materials, for which the legislation establishes the relevant rules of export outside Ukraine. In addition, the editorship of the norm on historical values, which is now a kind of cultural property as a subject of smuggling, has been improved. To date, smuggling items include: cultural values, poisonous, potentially explosive, explosive substances, radioactive materials, weapons or ammunition (other than smooth-bore hunting weapons or military supplies to it), parts of firearms, as well as special technical means of secretly obtaining information [1].

At the same time, the legislator points out that all objects of smuggling, with the exception of cultural property, are in limited circulation and, as a rule, require special permission to move them across the customs border. This is primarily due to the fact that their use can cause significant damage not only to the life and health of a person, but also the surrounding environment and the state as a whole.

As we see, smuggling of goods is excluded from the disposition of Article 201 of the Criminal Code and is no longer a criminal offense, the responsibility for it passes into an administrative offense with the imposition of a fine. Thus, for smuggling instead of criminal liability, large financial sanctions were imposed - a fine of 100% of the value of the smuggled goods detected and its confiscation, as well as the confiscation of goods and vehicles with specially manufactured repositories used for transportation. For repeated during the year, the same penalty for a similar violation of the same fine is doubled (200% of the value of the contraband goods). Confiscate the vehicles used for the movement of goods-direct items of violation of customs rules through the customs border of Ukraine. In this case, the new edition of Art. Art. 351, 352 of the MK Ukraine is about any vehicles (aviation, water, rail, road transport), which were transported smuggled goods, even those that are not property of the offender (Clause 40, Article 1, Part 2 of Art. 326 MK of Ukraine) and do not contain hiding places for concealing smuggled goods into them. [2]

Recently, in the press and some foreign scientific publications, the phenomenon of "smuggling of people" has become widespread. In this regard, the question arose about the possibility of recognizing a subject of the crime under consideration - smuggling. In our opinion, the phrase "smuggling of people", at least at present, in domestic criminal law seems rather inappropriate. We admit the possibility of recognizing a person in certain legal relationships subject to encroachment [5, p. 42-43]. This will be entirely true in the case of the possession of a person associated with the movement across the state border of Ukraine, which, under certain conditions,

forms the crime, stipulated in art. 149 of the Criminal Code of Ukraine (trafficking in persons or other illegal transaction on the transfer of a person) - a crime against personal freedom of a person. As for the objective side of art. 149 of the Criminal Code of Ukraine, then in Part 1 and Part 3 of this article, in fact, "the lawful or illegal movement through the state border" and "illegal export of children abroad or their non-return to Ukraine" were indicated. These actions really provide for the crossing of the state border, which in certain cases makes this crime related to smuggling (Article 201 of the Criminal Code of Ukraine). But, first, the direct object of the crime, specified in Art. 149 of the Criminal Code of Ukraine is the freedom and (or) personal integrity of a person [6, p. 307]. Secondly, the subject of a criminal offense in the above article is a person, but to recognize a person as a subject of smuggling - there is no ground for economic crime.

Accordingly, the subject of smuggling, and taking into account the various sections of the Criminal Code of Ukraine, which contain the mentioned crimes, their coincidence does not go at all. So, with regard to the phrase "smuggling of people" as a criminal law, we consider it inappropriate and premature to make changes to the legislative framework of our country.

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COMPLIANCE WITH UKRAINIAN LEGISLATION ART. 10 EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Human rights and fundamental freedoms stipulated in art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") are the most controversial issues both in theory and in practice. This is particularly the case with the right to freedom to receive and impart information and ideas without interference by public authorities and regardless of frontiers. This is due not only to the complexity of art. 10 of the European Convention, but also a precedent for the European Court.

As can be seen from the contents of Art. 10 of the European Convention, it consists of three provisions: the freedom to observe their views; freedom to receive information and ideas; the freedom to distribute information and ideas. As the practice of the European Court shows, the restrictions contained in Part 2 of this article can not be applied to the first provision.

The European Court of Justice examines cases of freedom to receive information and ideas; the freedom to disseminate information and ideas, which is the first major requirement of Art. 10 of the European Convention is that any interference by a public