

VIOLATION OF CUSTOMS LEGISLATION AS A TYPE OF CRIME AGAINST THE FUNDAMENTALS OF THE ECONOMY: QUALIFICATION AND DIFFERENTIATION OF CRIMES OF SIMILAR CONTENT

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Abstract: this article examines the issues of qualifying the violation of customs legislation as a type of crime against the foundations of the economy and differentiating it from crimes of similar content. The article gives a general description of the concept of qualification of crimes and analyzes the issues that need to be paid attention to when qualifying violations of the customs legislation. In particular, emphasis is placed on the features that reflect the social danger, guilt and punishability of the act, features that distinguish it from other crimes and offenses, features that are directly specified in the law or directly derived from its interpretation, features that are not derived from other signs, and features that are characteristic of all of these types of crimes. given Also, this article examines the issues of distinguishing this crime from crimes with a similar content. In particular, proposals were put forward for the correct classification of crimes related to the violation of the customs legislation and the improvement of the criminal legislation in this regard. In addition, the article deals with the violation of customs legislation in the form of smuggling, illegal crossing of the border, falsification of documents, abuse of power or official authority, deviation from its scope, import and export of cash, possession of property obtained through criminal means. issues of differentiation from crimes are thoroughly analyzed. In this regard, attention is paid to the current legislation, norms and explanations given in the decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan. In this case, the author's conclusions and fundamental views are substantiated for each analyzed case.

Keywords: violation of customs legislation, crime against the basis of economy, qualification of crimes, smuggling, economic smuggling, property obtained through criminal means, forgery, currency values, abuse of power or authority.

Introduction.

In order to carry out justice, it is necessary to correctly qualify the relevant crime in accordance with the specific content of the criminal law and the actual circumstances of the crime. The concept of qualification of crimes is the conformity of a certain act with the signs of one or another crime structure provided for in the criminal law [1, 3-p.; 2, 122-p.; 3, 12-p.], in other words, it can be defined as determining whether the signs of a socially dangerous act in the committed act correspond to the signs of the crime provided for in the norms of the General and Special parts of the Criminal Code, and coming to a conclusion about the application of one or another article of the Code [4, 11-p.; 5, 25-p.]. From this point of view, the correct qualification is one of the guarantees of justice in criminal cases related to violation of the customs legislation. Only if the crime is properly qualified, the

sentence handed down by the court can be a legal sentence representing the assessment given on behalf of the state to the crime committed and the person of the convicted person.

Material and methods.

In the course of this research, we tried to find answers to the following two questions: first, what should be considered in the correct qualification of the violation of the customs legislation?; secondly, how can this crime be distinguished from crimes of similar content?

By finding answers to these questions, the legislation, practical materials of its application and the works of scientists on this issue were used in this research, and the author's conclusions and opinions were developed.

Systematic, logical (analysis, synthesis), comparative-legal analysis methods of scientific knowledge were used in the implementation of this research.

Research results.

The general doctrine of the composition of the crime serves as the legal basis for the presence or absence of the analyzed crime in the person's act and the theoretical basis for the criminal-legal qualification of the committed act. In this case, the official investigating the case must determine the important, separately defined, necessary and sufficient signs of the crime structure to qualify the violation of the customs legislation and legally strengthen them in the procedural documents. Such signs include properties that satisfy the following requirements:

firstly, the characteristics that reflect the social danger, guilt and punishment of the act;

secondly, the characteristics that distinguish it from other crimes and offenses;

thirdly, the features directly specified in the law or directly derived from its interpretation;

fourth, features that are not derived from other characters;

fifth, the characteristics common to all crimes of this type.

In the process of qualification, we will consider the features of determining these signs of violation of the customs legislation from this point of view.

1. When qualifying a violation of customs legislation, it should be taken into account that this act is characterized as socially dangerous, guilty and punishable according to the criminal law. In this case, the absence of even one of the indispensable signs violates this description. Because of this, it may not be appropriate to associate every sign of violation of the customs legislation with all the conditions of criminal responsibility for this crime. For example, a person's sanity is directly related to guilt and punishment as an indicator of the nature of the crime of violation of customs legislation, however, this sign does not determine the social danger of the act (because socially dangerous acts can also be committed by mentally retarded persons). On the other hand, committing a criminal act, for example, transferring objects across the customs border without proper documentation, affects the determination of the level of social danger of the act, however, it does not indicate that a person is guilty of committing a crime of violation of customs legislation. For example, a violation of customs legislation can be committed indirectly, and an act

can be committed in an innocent state. Thus, the person carrying out the qualification of the crime should proceed from the system of signs of the crime of violation of the customs legislation, determining the social danger, guilt and illegality of the act.

2. In carrying out the qualification, the signs of the crime make it possible to distinguish the violation of the customs legislation from other crimes or offenses in the field of customs work.

3. All signs of violation of the customs legislation, which must be determined in the process of qualifying the crime, must be specified in the criminal law or clearly understood from the interpreter of the criminal law. The issue of whether or not it is possible to determine the content of the violation of the customs legislation based not on the signs directly expressed in the criminal law (Article 182 of the Special Part of the Criminal Code, General Part or other articles of the Criminal Code), but also on the "considered" signs that are determined during the interpretation of the law. From the point of view of solving the tasks of strengthening the legality, it is desirable that all the signs of the crime are fully indicated in the criminal law. But in order to realize this point of view in investigation and judicial practice, the law needs to be perfect. However, since this is not available in all cases, it is required to determine the "considered" elements of the violation of customs legislation. In turn, this forces us to turn to the field of judicial practice to determine the signs of violation of the customs legislation.

4. The signs used in the qualification of an act should describe the features of its existence, which are not a derivative of other properties, which cannot be derived from other signs of the composition of this crime, and due to which it is required to determine each time in the criminal procedure. In this way, in practice, the composition of the crime is compact. For example, the violation of the customs legislation does not include some features of the object, but it is not difficult to derive them from other features of the act and the subject of the crime, which are included in the content. As soon as their existence is determined, the need to justify that the violation of the customs legislation will encroach on social relations disappears.

5. In the process of qualifying the violation of the customs legislation, the signs characteristic of all these types of crimes are determined. This means that any character identified must fall within the framework of the composition committed in cases where the violation of customs legislation aggravates the main or liability, and may not change the qualification of the act carried out under Article 182 of Criminal Code. From the point of view of determining the general conditions for the qualification of the violation of the customs legislation, it is also important to classify the signs of its composition according to the method of their legal representation and the level of stability. Indeed, in most cases, in the process of qualifying the violation of the customs legislation, the characteristics of determining the signs of its composition are related to the same properties of these signs.

In the theory of criminal law, the signs of any crime are positive and negative depending on the way they are expressed by law, and depending on the degree of stability - fixed, variable, blanket and relative.[6, 127-p.].

Most of the signs of violation of customs legislation are **positively defined** in the criminal law. They are expressed in positive concepts. At the same time, some signs of this crime are expressed in negative concepts that indicate the absence of one or another of its properties, qualities, characteristics. These signs of crime can be used in practice to qualify the crime. Because of this, we will dwell in more detail on the content of the negative signs of violation of the customs legislation and the features of their identification.

Negative signs of violation of customs legislation describe the objective aspect of the crime, more precisely, the methods (evading customs control or hiding from customs control or using fraudulently made customs documents or instruments, moving objects across the customs border without a declaration or using a declaration written in a different name) of its commission. In such cases, it may be necessary to clarify the content of negative signs in more detail when determining the legal requirements. From a logical point of view, They can always be replaced by positive signs, since “any confirmation in a certain respect is a denial in another respect” [7, p. 70]. But this is a difficult task. Consequently, when qualifying a violation of customs legislation, negative signs can be used without turning them into positive signs. At the same time, in the case of difficulties in determining the content of negative signs when qualifying the violation of customs legislation, it should be assumed that there is always the possibility of turning them into positive signs.

Immutable signs of violation of customs legislation are signs that remain unchanged during the period of validity of the criminal law and are not related to the specific circumstances of the committed crime. Accordingly, signs whose content can change without changing the text of the disposition of the criminal law are called variable signs.

The invariable signs of the composition of violation of customs legislation are stable both in time and space (in the first case, the criminal law remains unchanged until it changes, in the second case, the norm on violation of customs legislation means the same thing in the entire territory where it is in force).

Immutable signs of violation of customs legislation are stable only within the framework of the application of a specific criminal law. As the criminal law changes, the corresponding sign also changes or acquires a new meaning. The task of inquiry, investigation and judicial bodies applying to the permanent signs of this crime is to correctly determine their content and whether they are present in the actions of the guilty person in the process of qualifying this crime.

Variable signs of violation of customs legislation differ from fixed signs in that their content may change during the period of validity of the criminal law. Variable characters are blank and relative.

Most of the signs of a violation of customs legislation are defined in the law as **blanket signs**. This method of expressing the signs of violation of the customs legislation by law means that their content is covered by the norms of other branches of law, as well as a number of normative documents under the law. In order to determine the content of the blank signs of the violation of the customs legislation, it

is necessary to refer to the Customs Code of the Republic of Uzbekistan and other laws, as well as to the normative legal documents under the law.

On the surface, the blank signs of violation of customs legislation seem stable: the text of the provision of Article 182 of the Criminal Code has been unchanged for many years. However, in practice, the content of the violation of the customs legislation, the content of the blank marks, during the period of the criminal law, has changed many times and significantly due to the changes in the norms of the Customs Code of the Republic of Uzbekistan and the legal documents under the law. For example, during the years 1994-2023, there were significant changes in the regulatory legal documents defining the list of objects of violation of the customs legislation, regulating the procedure and forms of registration and customs control of objects transported across the customs border, and determining the legal status of the customs border. In accordance with the implemented changes, the set of acts that fall within the scope of the norms of liability for violation of the customs legislation has also changed.

The **relative signs** of violation of customs legislation are characterized by the fact that their content is mainly determined by the legal consciousness of the lawyer who applies the criminal law, taking into account the requirements of the Criminal Code and the circumstances of the specific criminal case. The legislator gives the right to make a definitive decision on whether the committed act has relative signs or not to the jurists applying the criminal law on liability for violation of customs legislation. This decision is made taking into account the judgment of the legislator at the time when the criminal law was applied, the specific historical and political conditions, the tasks and requirements of the judiciary at that time, as well as all the circumstances of the criminal case of violation of the customs legislation. It is certainly not allowed to change the content of the relative signs of the crime contrary to their original meaning. If during the application of the criminal law a new meaning is assigned to it contrary to the current system of law, this is a gross violation of the principle of legality (Article 4 of the Criminal Code).

The judgment of the legislator at the time of application of the criminal law must be taken into account to the extent permitted by the text of the criminal law. In the process of qualifying the crime, regardless of how the relative signs of the violation of the customs legislation are interpreted, the stability of the basic legal principles inherent in the criminal law and the legal system as a whole must be ensured. It is provided by adopting the guiding explanations of the Plenum of the Supreme Court on criminal cases aimed at guiding the investigation and judicial practice. Detailed interpretation of the relative signs of violation of customs legislation is carried out by the court taking into account all the circumstances of each criminal case.

Violation of customs legislation is distinguished by its social danger and other specific features in the system of crimes provided for in the Special Part of the Criminal Code, in particular, crimes against the foundations of the economy. In turn, the object, objective side, subject and subjective side of this crime, as well as the issues of the subject of the crime, are similar to the cases in some crimes. For this

reason, distinguishing the structure of the analyzed crime from similar crimes is important for its correct qualification.

First of all, violation of customs legislation it should be distinguished from the contraband provided for in Article 246 of the Criminal Code. These crimes are differentiated by the level of social danger, the object of the crime, and the subject of the crime. Smuggling is a crime with a higher level of social danger than violation of customs legislation. The object of violation of customs legislation is the established procedure for the transfer of goods and other valuables through the customs border of the Republic of Uzbekistan and, in this regard, social relations that provide the foundations of the economy of the Republic of Uzbekistan [8, p.112]. The direct object of the crime of smuggling is social relations that determine the procedure and conditions for the transfer of goods and other objects excluded from free civil circulation or restricted from free civil circulation across the customs border of the Republic of Uzbekistan, and in this regard ensure public safety.

Contraband is the subject of a crime of items of destructive nature, which have special, unique properties, intended for use in combat purposes, as well as narcotic drugs or psychotropic and other harmful substances that pose a threat to public safety, in the case of violation of customs legislation, the subject is all material goods or valuables that cannot show any destructive effect, in other words, not provided for in Article 246.

According to paragraph 4 of the decision No. 18 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated September 6, 2013 “On judicial practice in cases related to violations of customs legislation and smuggling”, the following are the subject of the crime provided for in Article 182 of the Criminal Code: 1) any movable property being transferred across the customs border, including the national currency of the Republic of Uzbekistan, currency values and other securities; 2) electricity, thermal energy and other types of energy; 3) Vehicles recognized as goods in accordance with paragraphs 1-3 of Article 13 of the Customs Code; 4) objects of intellectual property (utility models, industrial samples); 5) cultural assets - movable objects of national, historical, artistic, scientific-educational, spiritual-ethical and other cultural significance of the material world (Article 3 of the Law of the Republic of Uzbekistan “On Import and Export of Cultural Assets” [9]); 6) objects of flora and fauna [10].

However, in our opinion, such an approach to the qualification of crimes related to the violation of customs regulations is also wrong. The reason is that goods and raw materials, except for the items provided for in Article 246 of the Criminal Code, are prohibited to be in free civil circulation (including goods prohibited for export or import) or restricted in free civil circulation (including requiring a permit or certificate for export-import) there are types, the illegal transfer of which through the customs border will cause significant damage to the country’s economy (not public safety) or create a threat of such damage.

In particular, the list of items prohibited to be imported (imported) to the Republic of Uzbekistan was approved by Decree No. PF-5286 of the President of the Republic of Uzbekistan on December 15, 2017 [11].

In addition, on December 11, 2003, the Law of the Republic of Uzbekistan “On Safeguards, Anti-dumping and Countervailing Duties” [12] was adopted. This Law aims to regulate relations in the field of application of protective measures, anti-dumping and compensatory duties in order to eliminate the serious damage caused to the economic sector by the import of goods or the risk of such damage. According to the law, if the import of goods into the customs territory of the Republic of Uzbekistan is carried out in the volume (in absolute terms or in relation to its production in the Republic of Uzbekistan) and conditions that cause serious damage to the economic sector or pose a risk of such damage, based on the results of the inspection of the competent body, the decision of the Cabinet of Ministers of the Republic of Uzbekistan protective measures are applied. Protective measures are applied in the amount and in the period necessary to eliminate the serious damage caused to the economic sector or the risk of such damage caused by the increase in the import of goods.

If, according to the results of the inspection, it is determined that the importation of goods at dumping prices into the customs territory of the Republic of Uzbekistan causes serious damage to the economic sector or creates a risk of such damage, anti-dumping duty may be applied to the goods that are the subject of such importation.

If it is determined according to the results of the inspection that the importation of any goods that have received special subsidies from a foreign state (union of foreign states) into the customs territory of the Republic of Uzbekistan in the process of production, export or transportation causes serious damage to the economic sector or poses a risk of such damage, such a countervailing duty may apply to one commodity.

Also, within the framework of this issue, by the decision of the Cabinet of Ministers of the Republic of Uzbekistan No. 129 of May 19, 2005, the regulation on the procedure for conducting inspections for the purpose of applying safeguard measures, anti-dumping and countervailing duties [13] and the procedure for calculating, collecting and returning special, anti-dumping and countervailing duties (list number 1718, September 20, 2007) was adopted [14].

It should be noted that serious damage to the economic sector is understood to mean an increase in the import of goods to the customs territory of the Republic of Uzbekistan, a significant decrease in the production, trade and financial indicators of the economic sector or a significant slowdown in the development of the economic sector as a result of the import of goods at dumping prices or the import of subsidized goods. It is self-evident that the illegal transfer of goods and raw materials of this nature across the customs border is a much higher level of social danger than the illegal transfer of goods in free circulation across the customs border. However, in practice, all such cases are qualified by Article 182 of the Criminal Code. This is, of course, due to shortcomings in the legislation.

Taking into account the above points, it is proposed to introduce a new Article 182¹ in the following wording to the Criminal Code:

“Article 182¹. Economic smuggling

Avoiding customs control or concealing from customs control or fraudulently using documents made to resemble customs documents or means, without declaration or using a declaration written in a different name, except for the items provided for in Article 246 of this Code, goods excluded from free civil circulation or restricted from free civil circulation or other goods transfer of valuables or raw materials and goods of strategic importance, goods subject to protective measures, anti-dumping or countervailing duties, as well as other items that cause serious damage to the economy, across the customs border of the Republic of Uzbekistan, –

shall be punished by imprisonment for five to eight years.

Those actions:

a) crossing the border, that is, by openly transferring the items specified in the first part of this article across the customs border of the Republic of Uzbekistan without obtaining the consent of the customs service;

b) by using force or threatening to use force against an employee performing customs control;

c) colluding in advance by a group of persons;

g) by a repeated or dangerous recidivist;

d) if committed by abuse of power or official authority, -

shall be punished by imprisonment for eight to ten years.

Those actions:

a) by or for the benefit of an organized group;

b) by a responsible official;

c) by an extremely dangerous recidivist;

g) If it was committed by transferring goods and other valuables in a situation that poses a threat to the security of the Republic of Uzbekistan or is clearly a threat to the security of the Republic of Uzbekistan, -

shall be punished by imprisonment from ten to fifteen years”.

The purpose of the placement of this article after Article 182 of the Criminal Code is to illegally transfer the objects referred to as economic smuggling across the customs border, first of all, to the country's economic network (not public security), only in some cases to state security (for example, in paragraph “g” of the third part of this article in the specified cases) causing damage or causing the risk of such damage.

So, to conclude, it is appropriate to divide the goods and other objects that are transferred through the customs border into 3 categories, taking into account their level of social danger:

1) Subjects provided for in Article 246 of the Criminal Code. Illegally transporting them across the customs border threatens public and national security. For this reason, such an act is qualified by Article 246 of the Criminal Code;

2) goods and other valuables in free civil circulation. Their illegal transfer across the customs border causes damage to the economic network or creates a threat of such damage. For this reason, such an act is qualified by Article 182 of the Criminal Code;

3) raw materials and goods excluded from free civil circulation or limited to be in free civil circulation, that is, not in free civil circulation, but not provided for in

Article 246 of the Criminal Code. Their illegal transfer across the customs border causes serious damage to the country's economic network or creates a threat of such damage. For this reason, such an act is qualified by Article 182¹, which is proposed to be included in the Criminal Code.

Now, let's return to the analysis of Articles 246 and 182 of the Criminal Code. Objectively and subjectively, both crimes are almost the same. The objective aspect of both crimes is to pass the objects through the customs border of the Republic of Uzbekistan by avoiding customs control or hiding from customs control or using fraudulently made customs documents or instruments, or without a declaration or using a declaration written in another name. From the subjective point of view, in both acts, the objects of the crime are committed by crossing the customs border with the right intention. In most cases, the motive and the goal are the same, and it consists of the desire to see material benefits. However, in some cases, smuggling may have other purposes, such as the implementation of terrorist intentions. In both crimes, the subject is a sane natural person who has reached the age of 16.

In some cases, the guilty persons carry out the contraband object together with illegal departure abroad or entry into the Republic of Uzbekistan. In this case, his actions should be qualified as total crimes under Article 246 and Article 223 of the Criminal Code. The reason is that deliberate illegal crossing of the border is a crime against the administrative order, and it encroaches on the integrity of the borders of the Republic of Uzbekistan.

In cases where the guilty person crossed the border of the Republic of Uzbekistan illegally, his actions should be assessed as a set of Articles 182 and 223 of the Criminal Code. On the other hand, deliberate illegal crossing of the border is considered a crime against the administrative order, as it encroaches on the integrity of the borders of the Republic of Uzbekistan. In cases where the guilty person crossed the border of the Republic of Uzbekistan illegally, his actions should be assessed as a set of Articles 182 and 223 of the Criminal Code. On the other hand, deliberate illegal crossing of the border is considered a crime against the administrative order, as it encroaches on the integrity of the borders of the Republic of Uzbekistan.

It is worth noting that the actions of receiving or transferring property brought into the territory of the Republic of Uzbekistan in violation of the customs legislation, knowing that it was found in a criminal way, without a prior promise, are subject to liability under Article 171 of the Criminal Code [15, p. 536].

In many cases, violations of customs laws are directly related to a serious crime, such as the illegal receipt or transfer of foreign currency. Often, criminals transfer currency values for sale across the state border, precious metals and stones for various criminal transactions. The components of these crimes are so closely intertwined that one crime cannot be imagined without the other.

If illegal transfer of seized currency, currency values or securities across the state border is carried out in violation of the rules on foreign exchange transactions, then criminal liability arises not only for violation of customs laws, but also for illegal receipt or transfer of currency values. It is known that the amount of cash imported and exported to our country is approved by the Law of the Republic of Uzbekistan

“On Currency Regulation” [16] and the decision of the Cabinet of Ministers No. 66 dated January 30, 2018. The rules of import and export through the customs border of the Republic of Uzbekistan are defined by [17].

If only a part of the cash that is imported or exported by a person to the Republic of Uzbekistan at the same time is declared, the person's actions are qualified based on the amount of the undeclared part of the cash [18, p. 366].

It should also be noted that the violation of the customs legislation is connected with corruption in the authorities, law enforcement agencies, and customs structures. For this reason, violation of the customs legislation occurs in conjunction with official crimes in the customs field, in particular, taking or giving bribes, abuse of official position by persons directly related to customs structures, as well as collusion with persons performing customs inspection or customs control. will be done.

Analysis of research results.

Based on the analysis noted in this study, the following results can be drawn in relation to the qualification of the violation of the customs legislation and distinguishing it from crimes with a similar content:

1. When qualifying a violation of the customs legislation, the features that reflect the social danger, guilt and punishability of the act, features that distinguish it from other crimes and offenses, features that are directly specified in the law or directly derived from its interpretation, features that are not derived from other signs, and all of these types of crimes it is necessary to pay special attention to the characteristic features.

2. Taking into account the nature and level of social danger of crimes related to the illegal transfer of goods or other valuables across the customs border, it is proposed to divide them into three types: 1) smuggling; 2) economic smuggling; 3) violation of customs legislation.

3. When distinguishing the crime under analysis from crimes of a similar content, it is necessary to pay attention to the composition of the committed act, including its object, objective side, subject and subjective side, as well as the requirements of the applicable laws and regulations governing the relevant field.

Summary.

Any socially dangerous act consists of many different situations and facts. However, at the same time as the symptoms of the corresponding crime are present, only the actual circumstances that affect the criminality and punishment of the act will have legal significance. After determining the actual circumstances of the crime, it is necessary to choose a specific criminal legal norm and qualify the crime committed by a person in accordance with it.

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