

Customs Incriminations as Criminal Offenses Against State Fiscal Revenues

Dr. Ljube Nikleski*

University Mother Teresa, Republic of North Macedonia.

*Corresponding author: Ljube Nikleski, University Mother Teresa, Republic of North Macedonia.

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Abstract

Economic crime as an integral part of any society is a kind of element or indicator of the level of development of each modern state and is characterized by disrespect for the boundaries of channeled behavior, which is the primary feature of economic phenomena. In the modern world, the most common perpetrators of economic crime are educated and above all people in high positions and positions in the state hierarchy, who enjoy the reputation and trust that their position brings in both economic and political life, with privileges arising from their position in the public or private sector.

Economic crime on the territory of our country is most prevalent through the crimes that will be explained below in the paper, which are: financial fraud, customs fraud, professional fraud, tax evasion, money laundering, smuggling.

Knowledge of the phenomenology of this crime is the basis for planning and taking operational measures to detect it. Economic crime is constantly changing its forms, due to which the detection of this type of crime shows the worst results. Due to its characteristics, it is most important to take measures for timely detection and preventive action using the most appropriate methods, which will largely depend on the expertise and skill of the responsible staff.

Keywords: Crimes, Financial Fraud, Smuggling, Tax Evasion, Financial Fraud.

Economic Crime

Economic Crime as a form of Organized Crime

For several decades, economic crime has raised concerns within European societies. The contemporary recommendation of the Council of Europe is based precisely on the assumption that economic crime leads to a loss in public revenues and has a negative impact on society as a whole.

Organized criminal groups form criminal enterprises with the aim of committing criminal acts. Economic crime, on one hand, utilizes legally established enterprises for legitimate business, which are then used for fraud and corruption to remain competitive in the legal market.

Tax and customs fraud is reported by all countries as a primary field of criminal activity. Specifically, this type of fraud often starts with fictitious companies or companies registered with false (stolen) data, which are used for trading and then disappear or declare bankruptcy when it is time to pay taxes, leaving

other legitimate means. With these schemes, organized criminal networks often register companies, open bank accounts, and establish contacts with state-owned companies for the purpose of buying and selling.

Avoiding payment of customs taxes occurs by underreporting the value of imported goods, for example, oil, as transit through the country, while the actual goods are sold on the local black market and smuggled across the border. Smuggling of oil in the region, which is particularly pronounced and profitable during sanctions against Serbia, is still present but to a lesser extent.

Success in concealing tax evasion, through the introduction of value-added tax (VAT) evasion schemes, varies from country to country. However, in some countries where success is lower, criminals continue with VAT evasion and are often supported by fictitious companies created for import-export, based on false data, which are used to claim and recover VAT.

- **Public procurement:** In addition to the trade sector, a significant portion of economic activities in the region takes place in the public sector. Therefore, concluding contracts in the public sector represents a significant market for criminals in all countries of the region. In this domain, sometimes scams and corruption occur, but cartels and threats are also used to gain access to public procurement contracts.

The Privatization Process's Frauds have Raised Significant Concerns in the Countries of the Region

Banking fraud: Ongoing reforms in financial institutions offer significant opportunities for organized economic crime. For example, savings banks, organizations that lend money, and banks are abused in a way that they obtain loans at lower interest rates only to lend money at usurious interest rates, counterfeit documents to obtain bank loans, or loans are not used for their intended purposes, and the goals for which they were approved are falsified.

All countries are more or less convinced that economic crime represents a significant threat to their economy and society. One of the reasons for this is that the consequences are felt within the country, which is not always the case with other forms of organized crime. Moreover, economic crime not only leads to a significant loss of public revenue and undermines the legal market but also undermines trust in the economic and legal system.

Customs Offenses

In most European countries, depending on the legislative focus, customs offenses, as the most severe form of violation of customs regulations, are usually either a distinct part of their penal codes or are systematized within the penal provisions of non-criminal (customs or tax) regulations. Both approaches have their advantages and disadvantages. Countries that opt for the first stance, namely that smuggling, which is most commonly identified with customs offenses, may be part of their penal legislation in the form of blanket norms, gain in terms of simplicity since penal-legal provisions from non-criminal laws become an integral part of the system to which they belong according to their penal nature.

This legislative technique makes penal-legal regulations challenging to comprehend for educated lawyers, as interpreting blanket norms requires knowledge of the laws from which these provisions are derived. This is why many advocates that it would be better for these punitive acts to be a part of the corresponding special regulations, as this would clarify their mutual material connections. There is another argument: if the law refers to a sub-legal act (because not all situations are regulated solely by law), it does not mean a breach of the legality principle, because significant elements or conditions of criminality are not regulated by law but by a sub-legal act. In this context, it should be noted that regardless of how much emphasis is placed on the separation of these two concepts, the strict division cannot be consistently maintained because accepting the concept of "sub-legal regulation of customs offenses" does not exclude the possibility of covering all offenses directly or indirectly related to the abuse of customs regulations.

Smuggling

In the Criminal Code of the Republic of North Macedonia (Article 278-a of the Criminal Code), the criminal offense of "Smug-

gling" is incriminated for criminal cases when someone engages in the illegal transportation of undeclared goods or goods different from those declared through customs lines, avoiding customs control, or when avoiding customs control, they transport undeclared or different goods from those declared of significant value.

Incriminations of this criminal offense are expressed through basic forms of transporting goods of significant value and transporting goods of large dimensions. As qualifying forms, it includes the organization of a network of vendors or intermediaries for the distribution of non-customs goods, gang activity, and the use of firearms or violence or threats.

Furthermore, the legislator, in addition to individuals, has provided liability for legal entities. Likewise, the confiscation of goods subject to the criminal offense of "smuggling" is foreseen, whether of greater or significant value or of large dimensions, as well as the means for their transportation and distribution from the perpetrator, even in cases of third-party ownership, but when it is known or should have been known that they would be used for transportation or distribution. Moreover, if these goods are not available for confiscation from the perpetrator, other property corresponding to their value at the time of the offense shall be confiscated.

The object of the criminal offense of smuggling is the goods that are illegally introduced, with the aim of avoiding customs duties or to introduce goods for which the law has prescribed some kind of permit or prohibition for import or export. Specifically, the connection of the criminal offense of smuggling with the real economy is in terms of the purpose of committing this criminal offense, meaning that criminal activities related to the evasion of customs duties and other legal provisions provided for import, export, and transit of goods, often involve "playing" with customs officials. On the one hand, smuggling is carried out through illegal activities (illegal import and export, smuggling), and on the other hand, customs officials are often involved because of it because one of the consequences of criminal behavior is the acquisition of property at the expense of the state (a consequence of criminal behavior). Through smuggling, imported goods for resale on the black market are introduced into the country, or these products are sold at a lower price and destroy the formal competition.

In this way, the smuggling of imported goods for resale on the market contains elements of an unregistered economy, especially in the area of street trading. In the Republic of North Macedonia, continuous efforts are being made to follow and implement international norms in this area. The Republic of North Macedonia has so far ratified the most important multilateral agreements to combat crime.

Concealment of Goods Subject to Smuggling

In the Criminal Code of the Republic of North Macedonia, the criminal offense of "Concealment of Goods Subject to Smuggling and Customs Fraud" is incriminated for criminal cases when someone buys, sells, distributes, receives as a gift, conceals, keeps in custody, uses, or accepts for safekeeping goods with a higher value on any basis and knows or should know that they are subject to smuggling and customs fraud. Liability is also provided for legal entities.

With these amendments, a step forward has been taken in the criminal and legal regulation of customs crimes, i.e., in the fight against customs criminality.

According to Article 278-b, anyone who buys, sells, distributes, receives as a gift, conceals, keeps in custody, uses, or accepts for safekeeping goods that are the subject of the offenses under Articles 278 and 278-a is punishable.

Customs Fraud

The criminal offense of "Customs Fraud" is incriminated in the Criminal Code of the Republic of North Macedonia in specific actions involving fraud in customs operations. It occurs when someone, with the intent to evade, either by themselves or through another person, avoids fully or partially paying the customs duties and taxes required by law for the import or export of goods.

They do this by providing false information to the customs authority regarding goods and other facts relevant to the calculation or refund of customs duties and taxes, or by failing to fulfill obligations as required by law, which influence the calculation or refund of customs duties and taxes, and the amount involved is of significant value or substantial size.

Additionally, the legislator has also provided for the liability of legal entities. In essence, this offense involves the complete or partial evasion of customs duties and taxes payable for goods. Customs fraud can take various forms and methods of execution, including providing false information to the customs authority regarding goods and other facts relevant to the calculation or refund of customs duties and taxes, failure to fulfill obligations as required by law that influence the calculation or refund of customs duties and taxes, or any other method that deceives the customs authority regarding the amount of customs duties and taxes payable, which involves a significant value.

In connection with the criminal offense of "Customs Fraud," its primary link with the civil economy lies in its core, as a result of customs fraud, goods are introduced into the market (manifested as illegal imports and exports, smuggling of various products into the domestic market), and partial avoidance of paying customs duties and other taxes, as well as activities involving the provision of false information about goods in connection with customs duties and taxes during imports or exports.

False reporting of the value, quantity, composition, and origin of goods can significantly impact the magnitude of financial flows that follow the goods' movement, as well as the amounts of customs, taxes, and other duties that participants seek to avoid, which should be paid to the state.

In essence, customs fraud reduces the registered economy in the field of international trade. The primary methods of execution include falsely reporting the value of goods in customs declarations, varying the customs rate for the importation of identical products, document forgery, and manipulation of rules regarding the origin of goods.

Generally, trade generates significant turnover, whether it's domestic or international. This suggests that this area exhibits the

highest prevalence of unregistered (gray) economy activities. A considerable portion of the goods consumed in the country originates from imports, and often a large number of companies participate in trading activities that are not regularly recorded. A significant part of the unregistered economy is also found in the realm of independent retail stores.

This segment of economic activity is quite widespread, and a significant portion of purchases and sales are not registered but occur through cash transactions. The most significant problem is the volatility and disorder of the market, along with the substantial share of illegal trade, often referred to as the "black market." However, solving these issues and conditionally strengthening the work of border authorities, while reducing the number of porous borders, could lead to improvements in this area's situation.

By regulating the market and enforcing the law, such as introducing stricter market regulations, the scope of the informal economy will significantly diminish. In terms of customs control measures aimed at preventing customs fraud, the TIR system offers clear advantages to customs authorities, as it reduces the customary requirements of national procedures for transit.

Simultaneously, there is a reduction in the need for infrastructure and labor to ensure effective control within the transit country, beyond checking seals and the external condition of cargo or containers. Moreover, the need to work with national guarantees and national documentation systems is eliminated.

Other benefits stem from the fact that international transit processes are covered by a single document, namely the TIR Carnet, which reduces the risk of providing incorrect information to customs authorities.

In cases of suspicion of customs fraud, customs authorities have the right to inspect goods under customs seals at any time and, if necessary, to interrupt TIR transport and/or take the necessary measures in accordance with national legislation.

Taking into account the strict provisions and the interest of all customs authorities and transport operators to apply these provisions, such interventions should only be applied in exceptional cases.

Therefore, customs authorities can minimize customs administrative procedures and allocate their limited resources to specific control measures based on risk assessments and confidential information.

Conclusion

- **Enhancing the Efficiency and Effectiveness of Customs Control:** Analyzing risk profiles to prevent or significantly reduce the smuggling of goods is crucial. By improving customs control measures, authorities can curtail illicit activities related to smuggling and customs fraud.
- **Enforcement of Proper Valuation and Classification:** To combat customs fraud effectively, it is essential to ensure that proper valuation and classification rules are followed. This prevents misrepresentation of goods' customs value, which can lead to significant revenue losses due to non-payment of customs duties.

- **Distinguishing Between Criminal and Administrative Proceedings:** Customs officials should make a clear distinction between criminal and administrative procedures. Smuggling as a criminal offense should meet specific cumulative criteria, such as undeclared goods for customs control or concealed items with a value exceeding a certain threshold. For customs fraud, the focus should be on cases where imported goods have evaded customs duties through false declarations of their value.
- **Regional Nature of Economic Crime:** Economic crimes have a regional character, and they are continuously evolving. All countries acknowledge that economic crime poses a threat to their economies and societies. Some nations are particularly concerned about the power and potential influence of organized crime groups on governance structures and society, labeling corruption as the most harmful threat interlinking all aspects of organized and economic crime.
- **Legislation and Legal Framework:** Review and update customs legislation and legal frameworks to align with international standards and best practices. Ensure that penalties for smuggling and customs fraud are commensurate with the gravity of the offenses.
- **Continuous Monitoring and Evaluation:** Establish mechanisms for ongoing monitoring and evaluation of customs control measures' effectiveness. Use performance metrics to assess progress and make necessary adjustments.
- **Research and Analysis:** Invest in research and analysis to understand evolving trends in economic crime. Stay ahead of criminal tactics and adapt customs control strategies accordingly.
- **Regional Cooperation:** Collaborate with neighboring countries and regional organizations to address economic crimes collectively. Regional initiatives can help create a unified approach to combating smuggling and customs fraud.

Recommendations

Based on my personal observations and analysis regarding the prevention and reduction of criminal activities related to smuggling and customs fraud, I suggest the following recommendations:

- **Strengthen Risk Analysis:** Invest in advanced risk analysis tools and techniques to enhance the efficiency and effectiveness of customs control. Prioritize inspections and investigations based on risk profiles, focusing resources on high-risk areas.
- **Strictly Enforce Valuation and Classification Rules:** Ensure that importers adhere to proper valuation and classification rules, and implement measures to identify and penalize those who attempt to evade customs duties through misrepresentation of goods.
- **Training and Capacity Building:** Continuously train customs officials on the latest trends in smuggling and customs fraud. Equip them with the skills and knowledge necessary to detect and prevent illicit activities effectively.
- **International Cooperation:** Strengthen international cooperation and information sharing among customs agencies to combat cross-border smuggling and fraud effectively. Collaborate on joint operations and share intelligence to identify and dismantle organized crime networks involved in economic crimes.
- **Transparency and Accountability:** Promote transparency in customs processes and ensure accountability in customs administration. Implement mechanisms for reporting and addressing corruption or malpractice within customs agencies.
- **Public Awareness and Education:** Educate the public and businesses about the consequences of smuggling and customs fraud. Encourage stakeholders to report suspicious activities and engage in responsible trade practices.

In conclusion, addressing the challenges posed by smuggling and customs fraud requires a multi-faceted and collaborative effort. By implementing these recommendations, customs authorities can enhance their ability to prevent and reduce economic crimes and protect their economies and societies from the detrimental effects of such activities.

Despite these significant steps, much work remains to be done to build the capacity for a comprehensive fight against economic and financial crime. Two critical challenges persist. The first is that legal definitions for various offenses falling under the umbrella of economic or financial crime vary from country to country. This is especially true concerning the diverse range of potential new offenses, particularly in the realm of criminal activities conducted over the internet. Second, investigating economic and financial crime requires a high level of expertise, including financial analytical techniques that are not well-developed in many law enforcement institutions, especially in developing countries. Additionally, there is a need to strengthen international and regional mechanisms for cooperation in enforcing the law to combat economic and financial crime effectively. Criminal enterprises easily cross borders, while law enforcement agencies often struggle to coordinate their efforts.

A fundamental question for discussion is the need to create consensus among governments about the importance of preventing illegal economic activities in every economy. The key point to emphasize is not only that unlawfully grounded economic growth is unsustainable, but, even worse, it generates criminal networks that corrupt a country's politics, promote exploitative economic behavior, engender violence, and ultimately stifle genuine economic growth. Once this phenomenon is clearly understood, societies can compel their governments to uphold the rule of law.