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SMUGGLING AND ILLEGAL TRADE AS FORMS OF ECONOMIC CRIME

ABSTRACT: Economic crime is a very complex criminological and legal category. The modern economic crime is characterized by a variety of manifestations. It tends to become increasingly better organized which, among other things, makes its detection, the collection of the evidence material and the criminal prosecution of the culprits much more difficult. In view of the importance as well as the complexity of the economic crime subject-matter, this paper discusses smuggling and illegal trade. The research included a criminological analysis of the economic crime, a normative analysis of the criminal acts mentioned above, as well as an analysis of the presence of the adult persons being reported, charged with and convicted of the previously mentioned criminal acts in the total values for the group of criminal acts against economy and at the level of Serbia, for the year of 2019.

Keywords: *Economic crime, Smuggling, Illegal trade, Criminal Law, Republic of Serbia.*

1. Introduction

It became clear a long time ago that social rules and norms are not always complied with. People most often observe them (especially speaking of grave offences) out of the fear of punishment. However, it is impossible to make a strict division of citizens into those who comply with the established

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rules and those who do not. Whether someone is going to commit a particular offence often depends on the circumstances in which the person found themselves, their way of life up to that moment, their personal and family situation, their health, financial, or emotional state, or other circumstances.

In addition, the way a society treats specific forms of deviant behaviour of individuals (or groups) mostly depends on the mentality, culturological development, and attitude of a specific community towards the criminal acts. Equally decisive in this respect are the criteria of economic stability and political situation in certain locations. In this context we can say that what is stigmatized and defined as a wrongful act in one society does not have to be defined as such in another.

On the other hand, whatever the attitude of a social community towards deviant behaviours and offences in a broader sense, it must be admitted that in a most general sense crime is, in view of many such attitudes, defined as “a shadow of civilization” (Bhusal, 2009, p. 12).

Crime is “a very complex phenomenon, equally damaging in all societies and on all development levels. For the concept of crime to be understood, it must be considered by applying a multidisciplinary approach, i.e. by applying knowledge from different theoretical disciplines” (Matijašević, 2012, p. 52). While stating this, we must emphasize that “multidisciplinarity as an approach to analyzing criminality is not a matter of choice, but represents a necessary approach to this complex social phenomenon” (Bjelajac & Matijašević, 2014, p. 534).

In principle, “every form of human activity is more or less exposed to damaging effects, and wherever there are people and their activities, there may appear lower- or higher-risk effects on the surroundings. Economy as a form of human activity is not protected against crime, and is very often the place of various criminal acts and offences” (Đekić, 2016, p. 783).

Bošković and Marković (2015) state that “Economic crime is a form of delinquency and a typology of criminal phenomena depending on violations of regulations in economic and financial operations. In their opinion, it is a phenomenon with different definitions, depending on the wrongdoing classification criteria and the scientific-methodological approach. Some views are based in the criminal-law provisions relating to acts against economy, and others in the object of criminal-legal protection, i.e. acts aimed towards abuses and other forms of illegality, with regard to the organization and functioning of the economic system and financial operations” (p. 209).

The modern definition put forward by Banović defines Economic crime as “a sum of all punishable behaviours (commissions or omissions) which

develop in economic relations and relating to those relations, by legal entities and natural persons alike who, as subjects in those relations, have certain powers with regard to the property that those relations are based upon, which punishable behaviours cause direct damage to that property and violate or jeopardize the economic relations” (Banović, 2002, p. 28).

In view of the importance, as well as the complexity of the Economic crime subject-matter, this paper will discuss Smuggling and Illegal trade as very widespread forms of this kind of criminality. The research will include a criminological overview and analysis of this subject-matter, a normative analysis of the eponymous criminal acts, as well as an analysis of the presence of the criminal acts of Illegal trade and Smuggling in relation to total criminality in Serbia.

2. A criminological view of Smuggling and Illegal trade as forms of Economic crime

According to Bošković and Marković (2015), “the concepts of Smuggling and Illegal trade stem from expressions which signify the so-called grey economy phenomenon, which stands for an irregular economic market, which is however not strictly autonomous, participating in segments of regular activity forms. Being interconnected, the courses of their further development are subject to certain rules. At the beginning, illegal practices in the economic and financial-operations market are widespread, until there is a critical mass of sufficient (“initial”) capital accumulation, after which business is conducted partly legally, and partly illegally. In this way grey economy appears as a parallel economy, and organized crime as a kind of significant and influential corporational organization of business and influence on the economic trends of the market in which it is present” (p. 225).

According to the definition of Nikolić et al. (2006), grey economy represents:

- “the economic activity of individual legal entities and natural persons over which the state has no control;
- a parallel existence of regular and irregular unlawful economic activity;
- acquisition of benefits for individuals and firms in the form of evasion of the payment of taxes, contributions, customs duties, etc.;
- causing damage to the state and individuals who operate legally;
- a wide range of irregularities concerning the smuggling of goods, running, non-payment of stipulated levies to the state, etc.” (p. 161).

Based on the formal-legal criterion, grey economy may be defined as “a permitted form of economic activity, which however does not take place in the framework of the applicable formal-legal regulations for that form of activity. Namely, it is an activity which is economically legitimate, but illegal in terms of law” (Tomaš, 2010, p. 33). In addition, „grey economy actors may decide to carry out a legal activity in a clandestine form for different reasons. The four most common reasons are quoted in theory: 1. Evasion of payment of value-added tax or any other tax; 2. Evasion of payment of insurance contributions; 3. Avoidance of application of stipulated standards (minimum wages, maximum working hours, safety at work etc.); 4. Avoidance of implementation of stipulated administrative procedures (submitting statistical business reports)” (Tomaš, 2010, p. 33).

In this context Madžar (2013) states that “tendency towards grey economy does not only represent a consequence of citizens’ unscrupulousness. On the contrary, in case of irrational use of budget funds, as well as an inadequate and poor supply of public services and public commodities, grows a society’s inclination towards grey economy. In addition, in case of a state’s inefficiency in resolving economic and social problems, citizens’ inclination towards engaging in grey economy also grows. Eventually, with the existence of negligible or sporadic sanctions for carrying out activities in the grey economy area, and with corruption being rife on different levels of power, grey economy gradually starts encroaching on all sectors of society. As a result, with time, it develops into a more lucrative form of business dealing compared to legal economy” (pp. 61–62). Thus, Šikman (2013) concludes that “in many countries in transition, and in our country as such, grey economy is a significant obstacle to the development of a powerful entrepreneurial sector, in particular for building a functional market economy” (p. 64).

Smuggling is characterized by the fact that the goods in question are “subject to customs supervision, that they are transported across the customs line circumventing customs supervision measures. Most often the goods being smuggled are intended for illegal trade” (Matijević & Marković, 2013, p. 401).

As Aleksić and Milovanović (1991) point out, “smuggling is illegal carriage of goods of higher value across a state border in an organized way, and in the form of occupation of individuals or organized groups of professional perpetrators of criminal acts. Smuggling consists in bringing goods of domestic or foreign origin in and out across a state border without customs control” (p. 115).

Smuggling and Illegal trade in contemporary international conditions make possible “in the conditions of fast communications and the possibility

of clandestine transactions of international criminal organizations, the realization of large sums of money and other valuables acquired through the sale and resale of various kinds of goods: narcotics, weapons, alcoholic drinks, art works, precious metals and diamonds, nuclear technologies, biohazardous waste and raw materials, trafficking in persons and human body parts, rare and protected animals and plants” (Bošković & Marković, 2015, p. 225).

Analyzing smuggling, Nicević and Ivanović (2012) point out that “Smuggling as a form of action of organized (transnational) criminal groups belongs in the field of Economic crime and consists in organized carriage of goods of domestic or foreign origin in and out across a state border, avoiding customs supervision measures. In literature, this form of criminality is also termed “running”, “black market”, “contraband”, etc., and depending on the kind of goods, or the object of smuggling, we can distinguish between the following: the smuggling of weapons and ammunition, the smuggling of narcotics, the smuggling of cultural heritage, the smuggling of technology products, the smuggling of consumer goods, the smuggling of nuclear and other hazardous waste, the smuggling of precious metals etc.” (p. 93–94).

The “grey economy” concept was the basis for the development of the concept of illicit trade, and the criminological term of illegal trade. This concept “signifies every illegitimate activity aimed at acquiring economic benefits which cause financial and other damage primarily to the state, as well as other subjects doing business in compliance with regulations” (Bošković & Marković, 2015, pp. 225–226). As Matijević and Marković (2013) point out, „objects of smuggling most often found in crime investigation practice are consumer goods, money, valuables, motor vehicles, cultural goods, weapons, ammunition and drugs” (p. 402).

Persons engaged in smuggling “pay attention to the market situation, i.e. the demand for and deficiency of specific goods, their main intention being to obtain property gain by selling the smuggled goods. Familiarity with the market situation, i.e. the effect of the laws of supply and demand relating to particular goods, is a fact which must not be ignored in the performance of activities of customs authorities and law enforcement authorities in the detection of goods transported across the customs line without customs supervision” (Bošković, 2005, p. 233).

As Bošković (2005) points out further on, “the conveyance of goods across the customs line without customs supervision is constantly being perfected by the perpetrators, so that there is the occurrence of new forms of smuggling which involve an organized activity across a broader space of one or more countries, with marked professionalism of the perpetrators and a perpetual

tendency towards internationalization. The perpetrators of those criminal acts plan their criminal activities in detail based on previously screening the market, collecting important facts and verified vital information, and in realizing their activity apply up-to-date technological devices and corresponding scientific and technological achievements” (Bošković, 2005, p. 234).

3. The criminal act of Illegal Trade

Article 235 of the Criminal Code (2005) stipulates sanctions for the criminal act of Illegal Trade, as follows:

„(1) Those who, without having a permission for trade, obtain goods or other objects of higher value for the purpose of sale, or who, in an unauthorized way and on a large scale, deal with trade or mediation in trade, or deal with the representation of organizations in domestic or foreign trade in goods and services, shall be punished by a fine or imprisonment of up to two years.

(2) Those who deal with trade in the goods the manufacture of which they have organized without a licence, shall be punished by imprisonment from three months to three years.

(3) The punishment from the previous paragraph shall also apply to those who, in an unauthorized manner, sell, buy, or conduct the exchange of any goods or objects trade in which is prohibited or restricted.

(4) If the perpetrator of the acts referred to in the previous three paragraphs organized a network of resellers or intermediaries, or obtained a property gain exceeding the amount of four hundred fifty thousand RSD, they shall be punished by imprisonment in the duration of six months to five years.

(5) Any goods or objects of illegal trade shall be confiscated”.

According to the legal definition, the basic form of the criminal act is committed by a person who, with criminal intent, and without having an authorization for trade, commits one of the following alternatively specified actions:

- 1) procures goods or other objects of higher value for the purpose of sale,
- 2) deals with trade or mediation in trade in an unauthorized manner and on a larger scale,
- 3) represents an organization in the domestic or foreign trade of goods and services.

Any person who commits any one of the alternatively specified actions may be a perpetrator of a criminal act.

The action of committing the basic form of the act consists in acting (the procurement of goods or other objects, unauthorized mediation, representation of an organization in the domestic or foreign trade of goods and services).

The punishment stipulated by the legislator for the basic form of the criminal act is a monetary fine or, alternatively, a prison sentence of up to two years.

Provisions of paragraphs 2 and 3 of this article of the Criminal Code specify two distinct forms of the act.

Namely, a prison sentence of three months to three years shall apply to anyone who deals with the sale of goods the manufacture of which they have organized without authorization (the first distinct form), and anyone who carries out unauthorized sale, purchase or exchange of goods or objects trade in which is prohibited or restricted (the second distinct form).

The perpetrator of both distinct forms can be any person who, with criminal intent and in an unauthorized manner, organizes the manufacture of the goods and sells those goods in the same unauthorized way, and who with criminal intent and without authorization buys, sells or conducts an exchange of goods or objects trade in which is prohibited or restricted.

According to Čejović and Kulić (2014), “as opposed to the basic form, which only involves unauthorized trade in goods, or objects that may be manufactured by anyone, the organizer of trade in the first distinct form is the person who sells the manufactured goods. In this case one and the same person organizes both the unauthorized manufacture and sale of the goods. Consequently, the brunt of incrimination with this criminal act lies with the unauthorized organization of manufacture of the goods which are then sold, in the same unauthorized way. The organization of manufacture, as the action of this criminal act, refers to any activity which enables the manufacture of goods intended for sale” (pp. 475–476).

Provisions of paragraph 4 of this article of the Criminal Code define a more serious form of the act. Namely, a more serious form of the act exists if the perpetrator of the basic and both distinct forms of the act organized a network of resellers or intermediaries, or obtained property gain exceeding the amount of four hundred fifty thousand RSD. In case of existence of this more serious form of the act, the perpetrator shall be punished by prison of six months to five years.

Paragraph 5 of article 235 of the Criminal Code stipulates the measure of confiscation of goods and objects of unauthorized trade.

As stated by Čejović and Kulić (2014) further on, “the very name of the criminal act, which signifies dealing with trade, points to the conclusion that this is a case of a collective criminal act in the form of occupation. In view of

that, we can pose the question of whether this criminal act only exists when the action of the criminal act has been committed more than once, or even when it has been committed only once. Although there are different opinions, the prevailing interpretation is that one instance of the action is sufficient, if any other circumstances suggest that the perpetrator has the intention and inclination to repeat the action of the criminal act, i.e. to practise it. The afore-said refers in equal measure to all forms of the criminal act of illegal trade” (p. 476).

4. The criminal act of Smuggling

Article 236 of the Criminal Code defines the criminal act of Smuggling, in the following way:

- 1) „Whoever deals with the conveyance of goods across a customs line avoiding the measures of customs supervision, or whoever, while avoiding customs supervision measures, conveys goods across a customs line armed, in a group or with the use of force or threats, shall be punished by imprisonment of six months to five years and a monetary fine.
- 2) Whoever deals with the sale, distribution or concealment of uncleared goods, or organizes a network of resellers or intermediaries for the distribution of such goods, shall be punished by imprisonment of one to eight years and a monetary fine.
- 3) The goods which are the subject of the acts from the previous two points shall be confiscated.
- 4) A transportation or other vehicle the secret or covert spaces in which are used for the carriage of goods which are the subject of this criminal act, or which is intended for committing the actions of this criminal act, shall be confiscated if the vehicle owner or user knew that, or could have known, or was obliged to know that.”

According to the legal definition, the basic form of the criminal act is committed by a person who, with criminal intent, deals with the carriage of goods across a customs line avoiding the measures of customs supervision, as well as a person who, while evading the measures of customs supervision, carries goods across a customs line, at the same time being armed, or acting in a group, or using force or threats with the aim of committing a criminal act.

The perpetrator of a criminal act can be any person who commits any one of the alternatively specified actions.

The action of committing the basic form of the act consists in acting (the conveyance of goods across a customs line, with the perpetrator being either armed, or acting in a group, or using force or threats).

The existence of the act is characterized by the fact that the goods in question are subject to customs supervision, that they are conveyed across a customs line in one of the alternatively specified ways.

It is required “that the goods are conveyed across a border line without customs supervision, regardless of whether this is done in an organized manner or in individual cases, while it is also irrelevant how many times it is done, or what the quantity or value of the goods in question is” (Matijević & Marković, 2013, p. 401).

The punishment laid down by the legislator for the basic form of the criminal act is a prison punishment of six months to five years, with a cumulative monetary fine pronouncement.

Provisions of paragraph 2 of this article of the Criminal Code stipulate a more serious form of the act.

A more serious form of the act exists if the perpetrator deals with the sale, distribution or concealment of uncleared goods, or organizes a network of resellers or intermediaries for the distribution of such goods. In case of existence of this more serious form of the act, the perpetrator shall be punished by imprisonment of one to eight years and a monetary fine.

Paragraph 3 of article 236 of the Criminal Code stipulates the measure of confiscation of the goods which are the subject of the basic or more serious forms of the criminal act. Paragraph 4 of the same article stipulates that a transportation or other vehicle the secret or covert spaces in which are used for the carriage of goods which are the subject of this criminal act, or which is intended for committing the actions of this criminal act, shall be confiscated if the vehicle owner or user knew that, or could have known, or was obliged to know that.

In that sense, “the carriage of smuggled goods across state borders makes use of all kinds of transport vehicles. In this way smuggled goods are transported with other goods passing across borders legally, with the required supporting documentation, while there is also a frequent use of structural gaps, or special “bunkers” being made for the concealment of goods. The goods being smuggled are commonly accompanied by the so-called followers, who have the task to secure the entire transport, to organize any goods reloading, and prevent any surprises, either from competitors or from control authorities” (Matijević & Marković, 2013, p. 402).

5. The incidence of the criminal acts of Illegal Trade and Smuggling compared to the total criminality in Serbia

Under this subtitle we shall analyze the relation of the persons reported, charged with and convicted of the criminal act, to the total number of reported, accused and convicted adult persons at the Republic of Serbia level, for 2019.

In this paper, we applied the analytic method in theoretical content analysis, the deductive method in drawing the conclusions, and a basic quantitative data analysis in the part dealing with research. The research in the paper is based on the official data of the Statistical Office of the Republic of Serbia.

Table 1. The relation of the adult persons reported, charged with and convicted, by the criminal act, to the total number of reported, accused and convicted adult persons at the Republic of Serbia level, for 2019

	Reported adult persons	Accused adult persons	Convicted adult persons
Republic of Serbia – IN TOTAL	92,797	32,360	28,112
Criminal acts against economy	2,461	1,345	1,008
Illegal Trade	261	137	125
Smuggling	14	18	17

Source: Republički zavod za statistiku (2020). *Bilten – Punoletni učinioci krivičnih dela u Republici Srbiji – 2019* [Bulletin - Adult perpetrators of crimes in the Republic of Serbia - 2019]. Beograd: Republički zavod za statistiku.

The data presented in the table leads to the conclusion that the share of individual criminal acts of Illegal Trade and Smuggling with respect to the criminal information filed, indictments brought and condemnatory judgements reached is extremely modest compared to the total number of the criminal information filed, indictments brought and condemnatory judgements reached for the group of criminal acts against economy, and to the overall values presented for the aforesaid categories at the level of Serbia. If we analyze more closely the percentages of shares of the aforesaid criminal acts, e.g. in the category of reported adults, we can conclude that (in relation to the presented numerical data) the share of criminal acts of Illegal Trade in the criminal acts against economy is 10.6% while the share of the criminal acts of Smuggling is 0.6%, and that the share of the criminal acts of Illegal Trade in overall criminality in Serbia amounts to 0.3%, while the share of the criminal acts of Smuggling is 0.01%. This in no way means that the criminal acts of Illegal Trade and Smuggling, as very significant acts in the scope of

Organized crime, are not carried out on a larger scale in the Serbia territory. From the point of view of criminological analysis of the incidence of specific offences in a particular area, this points to the conclusion that one part (most often the prevailing part) of the criminal acts remains undetected, or unregistered, i.e. in the sphere of dark numbers, which in turn implies the need for a society facing these problems to better focus on both the phenomenology, and the etiology of particular criminal acts.

6. Conclusion

Economic crime is a very complex criminological and legal category. Modern economic crime is characterized by a variety of manifestations which tend to become increasingly better organized, which, among other things, makes their detection, the collection of evidence material and the criminal prosecution of the perpetrators of the relevant criminal acts in this field much more difficult.

In view of the importance, as well as the complexity of the Economic crime subject-matter, this paper has discussed Smuggling and Illegal Trade as highly widespread forms of this kind of crime. The research included a criminological review and analysis of the aforementioned issues, a normative analysis of the eponymous criminal acts, as well as an analysis of the presence of the adult persons reported, charged with and convicted of the abovementioned criminal acts in the total values for the group of criminal acts against economy, and in the total numbers in the aforesaid categories at the level of Serbia, for 2019.

The conclusion is that the share of individual criminal acts of Illegal Trade and Smuggling with respect to the criminal information filed, indictments brought and condemnatory judgements reached is extremely modest compared to the total number of the criminal information filed, indictments brought and condemnatory judgements reached for the group of criminal acts against economy, and to the overall values presented for the aforesaid categories at the level of Serbia, which from the point of view of criminological analysis of the incidence of specific offences in this particular area points to the conclusion that a prevailing part of the criminal acts, which seem at first glance to be present on a modest scale, remain undetected, or unregistered, i.e. in the sphere of dark numbers.

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KRIJUMČARENJE I NEDOZVOLJENA TRGOVINA KAO OBLICI PRIVREDNOG KRIMINALITETA

REZIME: Privredni kriminalitet je veoma složena kriminološka i pravna kategorija. Savremeni privredni kriminalitet karakteriše mnoštvo pojava oblika koji teže ka sve većoj organizovanosti, što, između ostalog, otežava njihovo otkrivanje, prikupljanje dokaznog materijala i krivično gonjenje učinilaca. Imajući u vidu značaj, ali i kompleksnost materije privrednog kriminaliteta, u radu je bilo reči o krijumčarenju i nedozvoljenoj trgovini. Istraživanje je uključilo kriminološku analizu privrednog kriminaliteta, normativnu analizu pomenutih krivičnih dela, kao i analizu zastupljenosti prijavljenih, optuženih i osuđenih punoletnih lica za navedena krivična dela u ukupnim vrednostima za grupu krivičnih dela protiv privrede i na nivou Srbije, a za 2019. godinu.

Ključne reči: *privredni kriminalitet, krijumčarenje, nedozvoljena trgovina, krivično pravo, Republika Srbija.*

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