

## CRIMINAL LEGAL CHARACTERISTICS OF VIOLATION OF THE PROCEDURE FOR INTERNATIONAL TRANSFERS OF GOODS SUBJECT TO STATE EXPERT CONTROL

### КРИМІНАЛЬНО-ПРАВОВА ХАРАКТЕРИСТИКА ПОРУШЕННЯ ПОРЯДКУ ЗДІЙСНЕННЯ МІЖНАРОДНИХ ПЕРЕДАЧ ТОВАРІВ, ЩО ПІДЛЯГАЮТЬ ДЕРЖАВНОМУ ЕКСПЕРТНОМУ КОНТРОЛЮ

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In article characteristic about temporary export of goods – export of goods from Ukraine to the foreign state with the subsequent their return to Ukraine is given. Temporary import of goods – import of goods to Ukraine from the foreign state with the subsequent their export out of borders of Ukraine. It is noted that social communication in these legal relationship is expressed in activity of their participants which is aimed at providing normal functioning of activity on the international transfer of the goods which are subject to the state export control and in crime prevention by the state export control. It is defined that goods of double use it is the separate types of products, the equipment, materials, the software and technologies which are specially not intended for military use and also work and the related service which, except civil assignment, can be used in the military or terrorist purposes or for development, production, use of military goods, weapons of mass destruction, delivery systems of the specified weapon or nuclear explosive devices, including separate types nuclear material in, chemicals, bacteriological, biological and toxic medicines which list is defined by the Cabinet of Ukraine. It is noted that the material maintenance of the public relations in the field of the international transfers of goods is the behavior of these subjects, and legal – the subjective legal rights and duties set in the legislation. At violation of a procedure of such activity it is a pity for an object it is caused by non-performance or not appropriate execution of these relations of duties assigned to subjects, thus the rupture of social communication by an illegal exception of of these legal relationship is carried out, leads to creation of conditions for uncontrolled distribution of different types of weapon in the world, for arms of the extremist, terrorist groups and so forth. Besides, it is necessary to pay attention that harm is not always done to the public relations in the field of ensuring inviolability of frontiers or the threat of infliction of harm is created.

**Key words:** crime prevention, state export control, crime, international transfers of military goods.

У статті надається характеристика тимчасовому вивезенню товарів – вивезенню товарів з України до іноземної держави з наступним їх поверненням в Україну. Тимчасове ввезення товарів – ввезення товарів в Україну з іноземної держави з наступним їх вивезенням за межі України. Зазначається, що соціальний зв'язок у цих правовідносинах виражається у діяльності їх учасників, яка спрямована на забезпечення нормального функціонування діяльності щодо міжнародної передачі товарів, які підлягають державному експортному контролю, а також у запобіганні злочинності державним експортним контролем. Визначено, що товари подвійного використання – це окремі види виробів, обладнання, матеріалів, програмного забезпечення і технологій, які спеціально не призначені для військового використання, а також роботи і послуги, пов'язані з ними, які, крім цивільного призначення, можуть бути використані у військових або терористичних цілях чи для розроблення, виробництва, використання товарів військового призначення, зброї масового знищення, засобів доставки зазначеної зброї чи ядерних вибухових пристроїв, у тому числі окремих видів ядерних матеріалів, хімічних речовин, бактеріологічних, біологічних та токсичних препаратів, перелік яких визначається Кабінетом Міністрів України. Зазначено, що матеріальним змістом суспільних відносин у сфері міжнародних передач товарів є поведінка цих суб'єктів, а юридичним – суб'єктивні юридичні права та обов'язки, встановлені у законодавстві. При порушенні порядку здійснення такої діяльності шкода об'єкту заподіюється шляхом невиконання або неналежного виконання покладених на суб'єктів цих відносин обов'язків. У такий спосіб здійснюється розрив соціального зв'язку шляхом протиправного виключення себе з цих правовідносин, що призводить до створення умов для безконтрольного розповсюдження різних видів зброї у світі, для озброєння екстремістських, терористичних угруповань тощо. Крім того, необхідно звернути увагу на те, що суспільним відносинам у сфері забезпечення недоторканості державних кордонів не завжди заподіюється шкода чи створюється загроза заподіяння шкоди.

**Ключові слова:** запобігання злочинності, державний експортний контроль, злочин, міжнародні передачі товарів військового призначення.

**Statement of a problem.** Procedure for state control over international transfers of military goods dated 20.11.2003, № 1807 Instruction on the procedure for filling in applications for authorization documents, Guarantee documents and other documents provided by the State Export Control dated 09.01.2004, № 4 inspection powers under the laws to determine the conformity of specific goods, Being objects between folk transfers, names and descriptions of goods included in the lists of goods, Subject to state export Controls Receive information free of charge from the subjects of international transfers of goods, Necessary for the exercise of powers in the field of state export control To receive from the subjects of international transfers of goods original documents on guarantees, Confirming the use of the goods solely for the purposes claimed by them or by other end-users; Carry out scheduled random checks of the actual use of goods for their intended purpose by end-users. To make the investigations connected with violations of the law in the field of the state export control, including check of delivery to end users of

goods, compliance of their actual use to stated purposes and compliance to the legislation of documentation on the basis of which it is carried out the international transfer of goods (Article 5, 7, 19, 23 Laws of Ukraine “On the State Control of the International Transfers of Military Goods and Double Use”) [1].

**Analysis of the last researches and publications.** Export-related issues control and international transfers of goods, was researched by such Ukrainian and Russian experts as V.I. Antipov, V.M. Begma, S.V. Proskurkin, V.P. Sladkevich, S.I. Kharchenko, O.M. Grishutkin, P.V. Komarov, O.P. Dzhabiev, M.V. Terekhin and others.

**Purpose of scientific research.** There is research peculiarities of the activity of subjects of transfer of goods under expert conditions control.

**Statement of the main material.** About relevance of the matter it should be noted that, for example, in January–July, 2018 by the DFS Vinnytsia customs it is made 1078 protocols on violation of customs rules. The total cost of objects, tried

to move with violations of the customs legislation, makes 3 300 000 UAH. The overwhelming number of protocols, namely 479, made according to Article 481 of the Customs code of Ukraine "Exceeding of term of temporary import or temporary export of goods". 449 more protocols were made according to Article 470 of the Customs code of Ukraine "Nondelivery of goods, vehicles of commercial assignment and documents in body of income and collecting assignment, their delivery without the permission of body of income and collecting or loss". In 121 business withdrawal of objects of violations of customs rules took place. The sum of withdrawn was 736 thousand UAH. In case of identification at the implementation of customs control and other actions which are carried out by customs of signs of offenses which investigation belongs to its powers customs officers report about it the relevant law-enforcement structures. So, since the beginning of year 31 messages about criminal offenses on signs of the crimes provided by Article 305 (Smuggling of drugs, psychotropic substances, their analogs or precursors), Article 333 (Violation of a procedure of the international transfers of the goods which are subject to the state export control) and also Articles 358 and 366 of the Criminal code of Ukraine upon forgery were sent to territorial divisions of National police of Ukraine and the Security Service of Ukraine. In 2018 the Vinnytsia customs considered 572 cases. It is imposed penalties on the sum of 5.1 million UAH, collected penalties for the sum of 1600000. UAH. The court considered 140 cases, are listed in the state budget of penalties for the sum of 232 thousand Software to materials: Department of communications of SFS in Vinnytsia region [2].

Goods controlled by international transfers of which are carried out in accordance with this Procedure, specified in the List of Military Goods, international transfers of which are subject to state export control, shown in the annex to this Procedure. This list corresponds to a similar list of military goods adopted under the international export control regime "Wassenaar Arrangement" and is updated periodically according to the relevant decisions taken under this regime. Military goods together or separately are military products – weapons, ammunition, military and special equipment, special components for their production, explosives, as well as materials and equipment specially intended for the development, production or use of said products; Military services, military technology; Technical data; Technical assistance; Basic technologies. Similarly, the Procedure for State Control of International Transfers of Dual-Use Goods has been approved [3].

Goods controlled by international transfers in accordance with this Procedure, specified in the lists:

- Goods that can be used in the manufacture of conventional weapons, military or special equipment, which corresponds to a similar list of goods adopted within the framework of the international export control regime "Wassenaar Arrangement";

- Goods that can be used in the development of missile weapons, which correspond to a similar list of goods adopted within the framework of the international "Missile Technology Control Regime";

- Goods that can be used in the manufacture of nuclear weapons, which corresponds to a similar list of goods adopted under the international export control regime "Nuclear Suppliers Group";

- Products that can be used in the manufacture of chemical weapons, which corresponds to a similar list of products adopted under the international export control regime "Australia Group", and also contains relevant lists of chemicals as defined in the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons;

- Products that can be used in the development of bacteriological (biological) and toxic weapons, corresponding to a similar list of products adopted under the international export control regime "Australia Group". All the above

lists are updated periodically, depending on the relevant decisions taken within the framework of specific multilateral international export control regimes.

That is goods of double use it is the separate types of products, the equipment, materials, the software and technologies which are specially not intended for military use and also work and the related service which, except civil assignment, can be used in the military or terrorist purposes or for development, production, use of military goods, weapons of mass destruction, delivery systems of the specified weapon or nuclear explosive devices, including separate types of nuclear materials, chemicals of substances, bacteriological, biological and toxic medicines which list is defined by the Cabinet of Ukraine. Lists are formed on the corresponding groups of goods specially authorized body of executive power concerning the state export control with involvement of the interested central executive authorities. Representatives of the enterprises, scientific institutions, organizations, their associations can be also involved in drawing up lists. Also a subject, goods can be not entered in lists if: such goods are imported on the territory of Ukraine with providing the international import certificate upon the demand of the export state; export or temporary export of such goods out of borders of Ukraine is carried out to the states concerning which resolutions of the Security council of the United Nations, other international organizations which member is Ukraine or by the national legislation set full or partial embargo on deliveries of such goods. Obligatory structural element of any public relations is social communication as which understand a certain interaction, a certain interrelation of subjects. Externally social communication most often finds the expression in different forms of human activity. In our case social communication finds the manifestation in activity of subjects of the public relations considered above concerning such activity as the international transfer of the goods which are subject to the state export control. The international transfers of goods is export, import, re-export of goods, their temporary export out of borders of Ukraine or temporary import on its territory, transit of goods across the territory of Ukraine and also any other transfers of goods which are carried out outside Ukraine, on condition of participation of subjects of implementation of the international transfers of goods in them [4].

Export – sale or transfer of goods on other legal grounds to foreign entities of economic and other activities with or without export of these goods outside the customs border of Ukraine, including re-export of goods, including sale or transfer of goods in Ukraine to the embassy or representative of any legal entity of a foreign state, alien or stateless person; Sale or transfer in Ukraine or abroad of the right to manage (control) goods in accordance with the legal entity of a foreign State or its representative, alien or stateless person, including by means of communication; Disclosure of technology to an alien or stateless person; Actual shipment of goods for further transfer or movement outside Ukraine. Import – purchase or receipt on other legal grounds from foreign entities of economic and other activities of goods with or without import of these goods into Ukraine, including their purchase for own consumption by branches and representations of institutions and organizations of Ukraine located abroad, as well as diplomatic missions and consular offices of Ukraine abroad.

Re-export – sale or transfer on other legal grounds to foreign entities of economic and other activities with or without export outside Ukraine of goods previously imported into Ukraine.

Transit is the transport of goods from one foreign State to another through the territory of Ukraine between two points or within one crossing point across the State border of Ukraine, except in cases where the right of ownership or right of possession and use of the goods during such transport in the territory of Ukraine is transferred from one person to another in accordance with the established procedure.

Temporary export of goods – export of goods from Ukraine to a foreign state with their subsequent return to Ukraine.

Temporary import of goods – import of goods into Ukraine from a foreign state with their subsequent export outside Ukraine.

**Conclusions.** Thus, social communication in these legal relationship is expressed in activity of their participants which is aimed at providing normal functioning of activity on the international transfer of the goods which are subject to the state export control. The above-mentioned activities of the subjects and their rights and obligations under them are defined by law. The material content of social relations is the conduct of these subjects, and legal – subjective legal rights and obligations established in the legislation. In case of violation of the procedure for carrying out such activities,

the pity of the object is caused by failure to perform or inadequate performance of the obligations assigned to the subjects of these relations, thus breaking the social link by unlawfully excluding themselves from these legal relations, creating conditions for uncontrolled distribution of various types of weapons in the world, for arming extremist, terrorist groups and the like. In addition, it should be noted that public relations in the area of the inviolability of State borders are not always harmed or threatened with harm. For example, in case of violation of the rules of export of goods subject to state export control, the sale or transfer of goods to foreign entities of economic and other activities can be carried out without export of these goods outside the customs border of Ukraine [5]. Thus, it is possible to prevent both this crime and the commission of smuggling.

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