

# Evasion Restriction of Customs Payments in the Field of Customs Affairs

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**Abstract:** The main aim of the study is to analyze the basic problem of evading customs payments, which entails serious financial losses for the state budget. The article seeks to discuss the problematic issues of criminal liability for evading payment of customs duties levied on an organization or an individual, as a type of customs crime. Ways of legislative improvement of criminal law norms and aimed at combating crimes in the field of customs regulation is particular, with evasion of customs duties levied on organizations or individuals at the present stage, are proposed. The article provides an analysis of the criminal law on evasion of customs payments and smuggling, and shows a method for distinguishing related offenses using the example of evasion of customs payments and smuggling. The authors give for us a comparative analysis of the criminal law of the Russian Federation, providing for liability for smuggling and evasion of customs payments, and give the criminal legal qualification of these illegal acts. The characteristics of the elements of smuggling and tax evasion fees charged to the organization or individual are given. Based on the study, the authors draw conclusions about the development and improvement of legislation on tax evasion.

**Keywords:** Criminal law, liability, evasion of customs payments, smuggling, customs payments.

## INTRODUCTION

The customs authorities perform one important state function associated with customs payments in the system of the state budget - the fiscal function of the state. In general, the functioning and existence of the state is unthinkable without customs payments (Karamova & Akhmetshina, 2018).

The urgent problem of the development of the economic activity of the Russian Federation today is that significant amounts of cash go from taxation to the "shadow" sphere. In particular, if we analyze the replenishment of the state budget through the collection by customs authorities of customs payments, the data will be disappointing. About 30-50% of customs payments payable are not credited to the budget. Responsibilities for monitoring the completeness and timeliness of payment of customs duties are assigned to the customs authorities of the Russian Federation, which are required to directly implement measures to prevent foreign economic crimes (Fetkulov, Koilybayeva, & Abeuova, 2018; Díaz Vásquez, & Guerra Aranguren, 2019).

Being in the group of economic crimes, the composition provided for by page 194 of the Criminal Code, is part of the customs crime unit. Smuggling compounds are closest to evading customs payments. Very often, these acts are committed together, which

creates difficulties in distinguishing them (Razumov, P. Smirnov, Cherkesova, & Korochentsev, 2019; Rohatynska, 2019).

In a nutshell, the primary purpose of the study is to investigate the basic issue of evading customs payments. The article considers the problematic issues of criminal liability for evading payment of customs duties levied on an organization or an individual, as a type of customs crime.

## METHODS

Information and analytical materials, based on the relevant studies and information, were utilized to investigate customs evasion and smuggling by the customs authorities. Besides, it is attempted to make some practical and feasible recommendations to fulfill the aim of the study.

## RESULTS AND DISCUSSION

Public relations related to the payment of customs payments coming to the federal budget, charged from legal entities and individuals. In the case of tax evasion, the interests of the state in the financial sphere are violated - in the field of the formation of the federal budget, damage is caused in the form of the impossibility of the state to fulfill financial obligations, the expenditure part of the budget due to the complete or partial lack of funds, damage to the economic security of the state.

Smuggling has a different object. For example, a specific object of contraband provided by Article 200.1,

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200.2 of the Criminal Code, constitute public relations in the field of organizing economic activity, its immediate object is the procedure for moving goods and vehicles across the customs border of the EAEU (Dubailo, 2019). Also, as an object of contraband, provided for in article 226.1, 229.1 of the Criminal Code of the Russian Federation, items that have virtually no effect on the country's economy and collection of customs payments, but with respect to which special rules are established for moving across the customs border of the Russian Federation, for example, drugs, radioactive substances, weapons, strategically important raw materials, cultural values (Маткевич, 2020; Cordova, Kirsten, Scott, Meadows, & Lücke, (2019).

The subject of offenses under art/ 200.1, 200.2, 226.1, 229.1 of the Criminal Code of the Russian Federation and page 194 of the Criminal Code. Therefore, if the subject of art.194 of the Criminal Code are customs payments; the subject of smuggling is an extremely wide range of goods and items. In addition to goods not withdrawn from civilian circulation, this also includes items for which special rules have been established for moving across the customs border of the Russian Federation: toxic substances, weapons, etc., as well as cash (usually currency), items made of precious metals, etc. Unlike smuggled items, customs payments are not levied on such a wide range of items - for example, money and drugs are excluded from it.

In the practical activities of law enforcement agencies at all stages of modernization of the criminal legislation of Russia, difficulties have arisen and still arise with the delimitation of criminal acts provided for in article 200.1, 200.2, 226.1, 229.1 of the Criminal Code of the Russian Federation and art.194 of the Criminal Code. Despite the assertion of a number of Russian scientists that at present there is a certain idea of differentiating the corpus delicti of evading customs duties and smuggling, legal science and the practice of law enforcement agencies do not yet provide an unambiguous solution to the existing problem (Cherevko & Loginov, 2017).

In this work, Cherevko & Loginov, point out that "... to date, in the legal literature and judicial practice there has been an unambiguous idea of the delimitation of the compositions provided for by art. 200.1, 200.2, 226.1, 229.1 of the Criminal Code of the Russian Federation and art.194 of the Criminal Code of the Russian Federation. It comes down to the fact that under Art. 200.1, 200.2, 226.1, 229.1 of the Criminal

Code of the Russian Federation can only qualify such illegal actions that are committed in case of import when moving goods across the customs border, and when exporting - at the time of filing a customs declaration or other action directly aimed at realizing the intention to export goods.

Therefore, Razumov, Smirnov, Cherkesova, & Korochentsev, (2019), do not see the offense under art. 194 of the Criminal Code, if the perpetrator used at least one of the methods characterizing smuggling in case of non-payment of customs payments. Karamova, & Akhmetshina (2018), believe that "... the composition of smuggling completely absorbs the composition of tax evasion."

It should be noted that at a certain stage (XIX century) of the evolution of state regulation of customs and tax relations in Russia, these compositions were not divided. Moreover, at that time, scientists in taxation works noted the problem of evading customs payments; while on the contrary, they considered it necessary to separate these torts.

Fetkulov *et al.* (2018) and other authors in their works exclude the possibility of "absorption" by smuggling of non-payment of customs payments, as well as the possibility of an ideal combination of these crimes, recognizing the possibility of only their real combination. It should be noted that the problem of the difference between customs evasion and smuggling in Russia has a long history. Therefore, legislative improvement of these criminal law norms, taking into account the basic theoretical provisions on the social validity and social effectiveness of the criminal law, is an essential requirement of objective reality at the present stage of development of Russian society (Afanasieva *et al.*, 2017).

A difficult issue is the assessment of tax evasion as a simple and ongoing crime. In the legal literature can be found on these subject different opinions. Therefore, Razumov *et al.*, (2019), considers this crime lasting. The current criminal law of the Russian Federation does not provide the concept of continued crime. In this regard, it is necessary to pay attention to the opinion of Russian legal scholars who have studied this topic. The unity of action further implies one general decision to expose a given object to a certain effect, although, perhaps, in parts and in several steps. Finally, it assumed that one, although it may be breaking up into several acts that are separated in time, is aimed at this object." N.S. Tagantsev also believed that "the concept

of a separate criminal act has as its assumption the natural concept of human action, a manifestation of the personality outside, but at the same time it's in many ways a difference from it, getting a conditional legal value" (Tagantsev, 1902). He argued, "Unity of guilt is the main symptom of a single criminal act." The "single form" of guilt and the "single damage" from a criminal assault, according to Karamova, & Akhmetshina (2018), are the most important signs of a single crime. "Depending on the amount of damage caused to the object, it is customary to talk about the unity or multiplicity of crimes. A single crime where an act committed by a person contains signs of the same corpus delicti, performed once, that is, where there is a single loss, one object with one form of guilt and a single entity (one person or accomplices) ... Causing harmful changes to one the object of encroachment forms a single damage "

Thus, in order to recognize the crime as unified, it is necessary to establish the presence of mandatory signs: a) the systematic nature of unlawful acts (these acts must be internally link by a unity of intention and purpose); b) single damage; c) a single form of guilt.

We can agree with the opinion of Afanasieva, Ivanov, & Yanushkevych (2017). that "in the qualification of an act as a single crime, one should take into account many types of crime items. For example, the amount of unpaid customs payments includes customs taxes, fees, and duties. " But here with the opinion of these authors that "the characteristic of a single crime is the invariance of the method of its commission"; it is hardly possible to agree.

## SUMMARY

It should be note that the elements of crime provided for by article 200.1, 200.2, 226.1, 229.1 of the Criminal Code of the Russian Federation and art.194 of the Criminal Code of the Russian Federation, of the Criminal Code, have an independent meaning and are at the same time different in terms of subject, objective and subjective side. Nevertheless, the existing differences today are clearly not enough for a single understanding of the essence of the issue of the possibility of qualifying smuggling and evading customs payments for the totality of these crimes. Legal science and the practice of law enforcement agencies at the present stage does not yet provide an unambiguous solution to the existing problem (Lavrinov, 2018). Therefore, the correct distinction between the structures of evading customs payments and

smuggling is also the implementation of the principles of Russian criminal law - legality and justice.

## CONCLUSIONS

Thus, the existing editions of articles criminalizing smuggling and evading customs payments do not allow delimiting this corpus delicti, therefore, to solve the problem of correlation of convolutions, the legislator needs to change the design of criminal law norms. One of the possible solutions to the issue is the new construction of the criminal law norm, which provides for criminal liability for non-payment of customs payments. In the new version of the criminal norm, it is possible to indicate the essential features characteristic of all methods of non-payment of customs payments, in the absence of which the corpus delicti is uncertain.

Moreover, socially dangerous acts of the guilty person are qualified under art. 194 of the Criminal Code in the presence of this crime and the absence of signs of smuggling. The presence of signs of contraband in the actions of the guilty person, even when fulfilling the main goal - non-payment of customs payments, will be qualified under the relevant article of the Criminal Code of the Russian Federation (Gracheva & Chuchayev, 2019). Thus, one of the options for a uniform resolution of the ratio of the composition of evasion of customs payments and smuggling in the practice of applying these criminal prohibitions is possible.

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