



THE 14TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Criminological Aspects
Regarding the Crime of Smuggling

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Abstract: The object of this scientific study is the analysis of the modalities of fraudulent introduction into the country, by any means, of goods or merchandise, through customs or through places other than those established for customs control, in order to obtain illicit revenues and to prejudice the state budget by evading from the payment of customs duties and other fiscal obligations. The result of the study consists in the scientific proof of the differences between the commission of smuggling by natural persons and legal entities from the point of view of the particularities of modus operandi, respectively the export activity and the fraudulent crossing of goods across the state border. In order to achieve the result, I used the methods of observing the elements that confer a high degree of social danger of smuggling, as well as the analytical-comparative method of the elements of differentiation between the phenomenon of fraudulent import-export and that of smuggling in the proper sense. The conclusion is given by the need to diversify the punishment according to whether the active subject is a natural person or a legal entity.

Keywords: smuggling; Romanians; customs system

Smuggling is a culpable violation of the law in order to evade customs duties imposed on the crossing of goods across the border, prohibitions and import-export trade quotas (Tănase, 2003, p. 11).

For the Romanians, the formation of the medieval states, Wallachia and Moldavia in the 14th century determined not only an intensification of the development of their trading activities, but also the assertion of their own customs system, in which customs duties were the only source of income for royal treasuries. For this reason, they applied to all goods without distinction and regardless of whether they were imported, exported or in transit. In such circumstances aggravated by the “*thirst for profit of the merchants*” who bypassed the customs using “*secret and untrodden roads*” (*per vias occultas et insolitas*) harsh penalties were established for non-payment of customs duties, but also for the abuses of customs officers (Ceterchi, 1980, p 348).

After 1990, *smuggling* had an unprecedented magnitude, with people with high political and social positions being increasingly involved in committing this type of crime. It is almost impossible to assess the damage caused by *smuggling* to national economies. Between 1993 and 1998, the competent public authorities discovered offenses of smuggling that damaged the state budget by over 1,000 billion lei (Tănase, 2004, p. 17).

After the time of 2000, keeping track of the damage caused by such crimes has become virtually impossible. A report by the EU Anti-Fraud Office shows that in 1997 European countries suffered

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damage from smuggling about 1.5 billion dollars. After Romania's integration into the European Union and after the disappearance of customs barriers between EU countries, interest in this tax fraud diminished for a certain period of time, then statistics showed a new increase in the phenomenon in the area of borders with countries outside the European Community.

The current term *smuggling* means clandestine crossing the border with goods prohibited or evaded from the payment of customs duties (Language, 1984). Currently, the crime of smuggling is incriminated in art. 270 - 276 of the Romanian Customs Code adopted by Law no. 86/2006¹. According to the provisions of art. 270 paragraph (1) of the Customs Code, the introduction or removal from the country, by any means of goods or merchandise, through places other than those established for customs control, constitutes the crime of smuggling and shall be punished with imprisonment from 2 to 7 years and prohibition of certain rights.

Although the text does not expressly indicate, there is no doubt that the criminalization of such offenses is intended to protect the economic, financial and fiscal interests of the state. In other words, the persons who commit the offenses described by the incrimination text have in view a material benefit that is achieved by evading customs duties and other fiscal obligations (Tănase, 2014, pp. 42-45).

Considering the state of affairs, in order to correct the inaccuracies of the law, O. U. G no. 33/2009 for the completion of art. 270 of Law no. 86/2006 on the Romanian Customs Code was adopted². The additions brought by this normative act did not have, however, the effect expected by the authorities, so that, in the following year, O. U. G no. 54/2010 on some measures to combat tax evasion was issued³.

Although not a significant quantitative aspect of organized crime, business delinquency is qualitatively a particularly important segment of organized criminality, with jurisprudence dealing with complex cases involving networks of criminals with international ties. In the period 1990-1997, the police operative situation on the smuggling line presented some peculiarities. There was an explosion, a diversification of the forms and modalities of committing the acts of smuggling, committed both in the border areas and at the internal customs units or on the main routes of discharge or inflow of goods from and towards ports, airports, railway stations with connection in international transports. All these findings led to a change in the concept with regards to anti-crime intervention, as well as the establishment of specialized structures, with well-defined responsibilities, to act effectively in order to prevent and combat this phenomenon. The statistical analysis of the smuggling phenomenon revealed the special magnitude of qualified smuggling, manifested by crossing the state border of goods and values through places other than those established for customs control, trafficking in objects and materials that by themselves present an increased degree of social danger.

When committing the crime of smuggling, more and more economic agents and officials of state structures were attracted, with whose help illegal capital transports were carried out abroad, transit of prohibited products on the Romanian territory, or the introduction and sale of objects from crimes committed in the territory of other countries. In the northeastern and southwestern border areas of the country, smuggling of goods and products resulting from the disintegration of industries and the dislocation of military units from the former Soviet countries, as well as of petroleum products (especially fuels and lubricants), has become a trade and the main means of achieving illicit income for entire masses of the population on either side of the border.

¹ Official Gazette of Romania, Partea I, no. 350 din 19 aprilie 2006.

² Official Gazette of Romania, Partea I, no. 226 of April 7th, 2009.

³ Official Gazette of Romania, Partea I, no. 421 of June 23rd, 2010.

There was solidarity between Romanian smugglers and those in neighboring countries, who often reacted violently against customs authorities, border guards and police. The statistics revealed that the smuggling offenses were most often accompanied by acts of corruption of the customs personnel, even of the personnel guarding the state border or of the economic agents from which the goods were procured - material object of smuggling or by which the goods brought into the country by non-compliance with the customs legal regime were capitalized.

The analysis of the distribution of a report made by the customs units within which the smuggling offense were committed, led to the conclusion that from a quantitative point of view, most crimes were committed at the land customs units, then at the port units and finally at the airports. In terms of quality, however, from the point of view of the concrete gravity of the criminal offense of smuggling, the order is reversed. The social danger of smuggling offenses committed in airports and ports (especially Otopeni International Airport and the Port of Constanta) is much higher due to the subsequent consequences that some offenses contain in their structure.

This finding determines an orientation of the programs for preventing and combating the smuggling phenomenon taking into account the specifics of each customs unit. Also, from the point of view of the distribution of smuggling facts, most of them were registered at the border customs units and less at the internal ones, the latter presenting, however, an increased gravity.

Regarding the participants in the smuggling offenses, the vast majority belong to the second age (25-50 years), only about 10% coming from young people aged 18-25 years. By sex, female delinquency represents a minimum percentage (approx. 2%). From the statistical analysis of the participants in the commission of the smuggling offenses, it was possible to draw the conclusion regarding the belonging to a certain social category of those involved in the commission of the smuggling offenses.

The perspective of making significant gains without much physical or intellectual effort, even facing certain risks, has attracted people from all social strata, both economically disadvantaged people and people with a good or even very good financial situation. Given that the average crime rate in Romania had an increasing trend until 1995, showing after this date a trend of stability around 1000 crimes/hundred thousand inhabitants, the average rate of smuggling crime is well below this level somewhere around 21 smuggling crimes/hundred thousand inhabitants. However, reducing the average annual crime rate in customs will need to be a priority of criminal and customs policy, of the strategy to prevent business criminality in general and smuggling in particular. Smuggling has been on the rise since December 1989, reaching its peak in 1994-1996, when most crimes were committed, taking advantage of socio-economic chaos and legislative imperfections.

The entry into force of the new Customs Code (Law no. 141/1997) and the Regulation for the implementation of the Customs Code (H. G. 626/1997) had as an immediate consequence the apparent decrease in the number of smuggling crimes. The quantitative reduction of the smuggling phenomenon is due to the will of the legislator who understood to criminalize as statutory serial crimes (art. 177 the crime of using unreal deeds and art. 178 the crime of using forged documents at the customs authority) two of the important ways in which smuggling takes place, as this crime was regulated by art. 72 of Law no. 30/1978. In fact, however, the new customs legislation that entered into force overnight shook the customs system to the ground, regardless of the concrete reality faced by those involved in the conduct of customs operations.

The implementation of the integrated customs information system ASYCOUDA, designed as a step towards progress, towards a civilized, efficient and less bureaucratic customs, while the infrastructure and the training of the operators is deficient, is constituted in conditions and circumstances meant to

favour, to facilitate the crimes of smuggling. A natural consequence, an immediate consequence of the non-correlation of the entry into force of the new customs legislation with the lack of popularization of the legislation, will be the emergence of new possibilities for committing the crime of smuggling and qualified smuggling.

The analysis of business delinquency in the field of customs relations, in the period 1989-1997 revealed a diversification of illicit operations by which impressive quantities of products, consumer goods, drugs, weapons, precious metals, works of art, nuclear components are introduced or removed from the country, without complying with the relevant rules.

The legal modalities for committing the crime of smuggling provided by art. 72 of the previous Customs Code, covered several factual modalities. The first form of post-revolutionary smuggling detected was committed by passing the goods across the border, through customs points, in some private forms, not observing the customs legal regulations in force.

For the payment of customs duties and tax on the movement of goods, as well as for the practice of higher than legal trade surcharges, some private companies and individuals have forged the legal deeds of entry of imported goods by entering prices lower than the real ones, at Romanian customs points, the importers presented documents other than those issued by exporters, with purchase prices 4-5 times lower. Thus, between June and August 1994, the administrator of the company A. B. W. SRL Bucharest, brought to Romania 50 agricultural equipment of foreign origin, of which, during August, the defendant sold three combines to agricultural companies: U., with its headquarters in Ulmeni commune, L., with its headquarters in Slobozia Mândra commune, and P., with its headquarters in Comoara commune, all located in Teleorman county. The court of first instance also held on the basis of the evidence submitted that, prior to August 11, 1994, when the company A. B. W. SRL was registered, the defendant introduced in Romania a number of 50 agricultural machines, for sale.

Knowing that the legislation in force exempts from the payment of customs duties the agricultural equipment purchased by agricultural producers, the defendant prepared invoices in the name of individuals from Sibiu, Alba and Cluj counties, mentioning in these invoices that the agricultural producers bought the equipment from the IGM company, and the indicated prices were lower than the real ones, noting at the same time that the respective equipment is a donation for the Romanian farmers, the price being symbolic. The invoices thus drawn up were presented to the Sibiu customs, which, in relation to the recorded prices, collected the customs duties in the amount of 13,266,144 lei, the payment being made by the defendant. For the respective equipment, the defendant had to pay the amount of 905,698,208 lei, representing customs duties. Proceeding in the manner shown, the defendant evaded the payment of customs duties in the amount of 892,432,064 lei (905,698,208 lei-13,266,144 lei) (Tudor, 2011, pp. 1-11).

Known as the *double invoicing method* or the *sub-invoicing method*, this way of crossing the goods over the state border of Romania was committed especially for violating the provisions contained in Order no. 176/1996 of the General Directorate of Customs.

Another way very common in practice is to present forged customs declarations. This method involves two procedures:

Transit procedure - smugglers declare the goods in the means of transport as being in customs transit, but in reality, the goods are no longer taken out of the country, being capitalized without the payment of customs duties. This is what the smugglers who have committed the largest smuggling to date have done. Impressive quantities of illegally capitalized cigarettes were thus introduced in Romania without

the payment of customs duties and related excise duties; to cover these fraudulent operations, forged stamps are used which formally confirm the customs clearance operation.

The process of using shell companies or which is liquidated immediately after carrying out massive imports of goods, in order to evade the payment of customs duties, excises and profit tax. The smugglers enter the country by various means of transport, declaring at the entrance to the country that the goods are destined for these non-existent companies, and the customs clearance is to be done at the internal customs from the headquarters of the respective companies. Those who carry out transport in such conditions rent warehouses where the goods are unloaded and resold quickly, without paying the related customs duties and excises. When the control bodies verify the destination of the goods, they find the non-existence of these shell companies, of the documents and implicitly of the quickly capitalized goods.

In order to illegally benefit from certain customs facilities (established on the basis of bilateral or multilateral agreements or on the basis of reciprocity), some impostors submit export licenses obtained on the basis of forged documents. For example, for the contract concluded between Romania and Iraq, having as object the commercial invoice no. 3214486 of November 17, 1998, the defendant directed the goods to Nigeria, which was purchased by L. R. A. T Israel, represented by the defendant H. S.

The export license was obtained on the basis of the end-user certificate, counterfeited by the defendant, regarding the destination (Iraq) through SC A. A SRL with planes rented by the defendant M. I. The defendant mentioned Iraq in the flight documents and the same false destination in the customs declaration.

Moreover, defendant H. S. counterfeited a deed of receipt of goods by Iraq to R. SA. This acknowledgment of receipt from the Iraqi Ministry of Defense proved to be forged, in relation to the answer sent to the Romanian authorities by the Ministry of Foreign Affairs, which refuted this transaction and power of attorney given to the defendant (letter no. 51379 of April 20, 2000). In the same way, the defendant H. S., on March 16, 1999, exported 5000 submachine guns to Nigeria, exporter - SN R. S. A according to invoice C No. 43051 of March 4, 1999, and the purchaser was the defendant's company H. S., O. E. Similarly, the defendant forged the user certificate, showing that it was issued by the Ugandan authorities, being used to obtain the license and the A. W. B. documents. In the same way, the weapons also arrived in Lagos - Nigeria, although Uganda was listed in the documents.

Moreover, the application of the Ugandan authorities' stamp was made with the authorization of Uganda, which was refuted by the the letter C/295 as of May 9th, 2001 stating that the Ministry of Defense of the Republic of Uganda has denied the power of attorney alleged by defendant H. S. and denied that the end-user certificate came from the Ugandan Ministry of Defense. Between March 30th, 1999 - April 5th, 1999, 100,000 explosive bombs (5000 tons) were exported from Romania to Eritrea, under the contract AC 1/069/15/BD of March 26th, 1999: exporter - R, buyer - CDGI, a company represented by the defendant H. S. The defendant submitted for the license the end-user certificate B/9. 1999 of March 8th, 1999, which showed that the beneficiary is the Ministry of Defense of the Republic of Burundi, an unreal situation, according to letter E 5/1415 of July 27th, 2000, in which he stated that he did not empowered defendant H. S. to make weapons transactions on behalf of the Burundian authorities. The end-user certificate issued by R. A. R. was achieved by operations of scanning and drafting the text from the content of a document issued in favor of SC. C. I (Tudor, 2011, pp. 30-37).

Aiming to evade the payment of customs duties, natural and legal entities have introduced cars in Romania by presenting registration certificates belonging to another car. The legal aspects that are discussed are the passing of the goods by the border through the use of forged customs documents, or customs documents regarding other goods. Considering the provisions of art. 14 of the Customs

Regulation, approved by Decree no. 337/1981, the customs control of the means of transport at the border crossing is carried out at the border customs units, consisting in the identification of the means of transport based on accompanying documents. Among these accompanying documents is also the registration certificate (art. 5 of the same Regulation), the conclusion that is required is that this certificate is a customs document. In this regard, by presenting the registration certificate of another car, apparently the motor vehicle is registered in Romania, and the purpose pursued by the natural or legal person is to be exempted from customs duties (Tudor, 2011, pp. 12-13).

Smuggling by crossing the border with forged customs declarations and corrupting the customs officers so that they no longer carry out customs control. In this regard, we mention the case regarding the defendants of the R. M. and C. V., who between July 13th, 2001 and January 17th, 2002, carried out nine shipments through which they illegally introduced in the country 552,992 packs of cigarettes, presenting to the customs authority customs transport documents with unreal content. The illegal introduction of the goods in the country was facilitated by the defendants R. M. and C. V., customs controllers, who thus violated their duties, receiving therefor various amounts of money (Tudor, 2011, pp. 133-134). The customs officers were detained for committing the crimes of bribery and complicity in the crime of *smuggling*.

Another criminological aspect consists in the crossing of the border with customs documents of some goods, mentioning in the customs documents other goods by the “*cover procedure*”. This procedure consists in recording in the customs documents that goods for which the customs duties are low are transported, in fact the means of transport being loaded with goods for which the customs duties are high. As an example, we note that on March 14th, 1998, the defendant G. A., as a representative of SC B. T. SRL Bucharest, presented customs transport and trade documents regarding L. chocolates, instead of A. cigarettes, to the defendant P. M. M. who, as a customs controller, carried out a formal physical control of the goods, after which, by exceeding his duties, granted customs clearance, causing, by evading the payment of customs duties, a total prejudice of 12,092,880,135 lei (Tudor, 2011, pp. 135-137). The customs officers were detained for committing the crimes of complicity in committing the crime of *smuggling*.

In order to ensure the expansion and diversification of the ways of conducting foreign trade, duty free zones for the international exchange of goods in the ports of Sulina, Giurgiu, Constanța, Drobeta Turnu-Severin and the border areas of Arad and Timișoara are operating or are being arranged. In order to evade the customs duties, the smugglers conclude contracts for the import of goods with different foreign economic agents that carry out their activity in those duty-free zones on the basis of which the indigenization of the respective goods is requested and obtained. In this way the customs duties are reduced from 10 to 15 times. So did A. R. and L. S. partners within the company SC BG S. R. L., who, following the import of 4,000 boxes of cigarettes, reduced the customs duties by 4.0 billion lei. Within this method, as a form of circumvention of the customs legal regime, the “*appeal*” is used, in which the acceptance of the value from the presented document is requested.

A segment with a higher degree of social danger is the evasion of customs operations committed by one or more armed or ganged persons. It has been ascertained a systematic attempt to organize groups of people crossing the border through places other than those established for customs control. This way of committing *smuggling* has known a special magnitude in the border areas on the border with Ukraine, the Republic of Moldova, Yugoslavia, but also with Bulgaria. The Romanian smugglers and those from the neighboring countries have grouped in various criminal groups and proceed to cross the border with goods that form the object of smuggling using the natural conditions offered by the border area. In order to commit the crime of *smuggling*, the criminal groups were equipped with adequate means of transport

- off-road vehicles, rowing or motorboats, proceeding to a direct exchange of goods by avoiding customs points. Many times, these criminal groups acted by force, retaliating with knives or even firearms when they were caught by border patrols. A special place in the case of the *smuggling* phenomenon is occupied by the way of committing the crime by corrupting the customs officers.

As an example, during August 2013, in order to obtain illicit income, the defendant J. S., with Romanian and Moldovan citizenship, together with the defendants L. A., U. A. D., U. G. C. and A. I. formed a transnationally organized criminal group for the purpose of committing the crime of smuggling with cigarettes of Moldovan origin, which were to be introduced into Romania across the water of the Prut River by Moldovan citizens. Within the group, the role of defendant L. A. was to organize together with defendant J. S. the fraudulent introduction into the country, across the Prut River of significant quantities of cigarettes of Moldovan origin, with the help of an inflatable boat by Moldovan citizens, to ensure the takeover and the transport of cigarettes, together with the defendants U. A. D., U. G. C. and A. I., to supervise the border area before and during the smuggling act, as well as to ensure the capitalization of the cigarettes from smuggling activity to various persons in Botosani County. The defendants U. A. D., U. G. C. and A. I. had the role of taking over from the bank of the Prut river the cigarette packages from the defendant J. S. who had the role of organizing the fraudulent passage of the cigarettes over the Prut river, by the instrumentality of some Moldovan citizens, determined to fraudulently cross the border of the Republic of Moldova in Romania and to introduce in the country significant quantities of cigarettes and to ensure their capitalization on the black market in Romania to various beneficiaries through the defendant L. A., in order to obtain important illicit material benefits¹.

In all these years, the business delinquency in the customs field was maintained by the complicity of some customs workers. Corruption among customs workers is not, however, a problem specific to the 1990s, but during this period it has become particularly widespread, which has led to special measures. There are many aspects regarding this modality.

Here are just two examples, namely:

On January 25th, 2001, defendant I. S. A., a customs worker at Borş Customs, was instigated by co-defendant D. M., an administrator at SC P. C. SRL Bucharest, by breaching his duties, granted the “customs clearance”, by applying the stamp, thus facilitating the entry into the country of two trucks transporting 40 tons of chicken meat from Belgium, without carrying out the control and in this way, the payment of customs duties of 1,681,714,446 lei was evaded. Also, defendant D. M. used several fictitious fiscal documents, respectively, fiscal invoices and phytosanitary certificates for the sale of the goods. It was further noted that defendant D. M. forged official deeds, and the crossing of the state border of the goods was done through the places established for the customs control, and the transported goods were the declared ones (Tudor, 2011, p. 139).

The second example is that in July 2000, defendant D. S. asked the citizens of the Republic of Moldova: D. O., D. A., D. N., D. R., R. A., R. V., B. A., B. V., that, in exchange for the amount of 300 U. S. dollars and travel expenses, to come to Bucharest, in order to prepare the repatriation forms. After submitting the application for obtaining Romanian citizenship from the Bucharest Passport Directorate and obtaining the necessary address, the Moldovan citizens were taken by the defendant to the 23rd Police Station, where they were issued documents on establishing residence in Bucharest, the identity card and the certificate required for the exemption of customs duties. It should be noted that previously, the defendant D. S. brokered rental agreements with various homeowners in the August 23 neighborhood

¹ www.portal.just.ro.

area of Bucharest, in exchange for 100 U. S. dollars, so that repatriated citizens can prove the existence of a living space.

Repatriation certificates and identity cards were subsequently handed over by defendant D. S. for the amount of \$1,000 to \$1,100 to the defendant S. A. L., to use them in carrying out customs forms and registration of cars brought from abroad. Thus, after receiving the repatriations from the defendant D. S., the defendant S. A. L. forged the documents of origin, the transit customs declarations and a special power of attorney, whereby the said D. O. empowered the defendant C. I. to bring them to Romania and to carry out the necessary legal forms for two cars. To this end, the defendant C. I., along with the defendant S. A. L. went to the Gara de Nord Customs Office, carrying a set of documents, both in the name of the so-called D. O. Subsequently, the defendant S. A. L. discussed with the defendant B. G. M., a customs commissioner at SC A. M. C. S. SRL, having an office next to B. V. O. Commodities, and asked him to ensure the performance of legal forms, in repatriation regime, with exemption from customs duties, for two G. C. cars, in the name of the repatriated citizen D. S. Defendant B. G. M. drew up the two customs applications on behalf of the repatriated person (thus forging them), after which he went to the B. V. O. Commodities, where he requested the defendant M. D. I. – a customs inspector, to draw up the forms of customs clearance, specifying that the two cars did not show up for verification and the repatriated citizen did not come either. This aspect was repeated, at which point defendant S. A. L. went again to the defendant B. G. M., requesting him to take the necessary steps to draw up the customs forms, on behalf of a repatriated person B. V., for two F. S. and F. D. cars. Defendant B. G. M. agreed and made the customs applications for both cars, on behalf of B. V., after which he went to the defendant M. D. I., a customs inspector, with the documents received from the defendant S. A. L., who, without checking the presence of the repatriated person and the two cars, drew up the necessary forms and issued the customs receipts in B. V.'s name. The customs officers were charged with committing crimes of abuse of office against public interests, intellectual forgery and forgery of an official deed on the occasion of its preparation (Tudor, 2011, pp. 149-159).

One of the most ingenious and at the same time most damaging smuggling activities in Romania is related to the AMWAY products brought to our country on the Hungarian chain. Due to the small border traffic, huge quantities of such products have evaded any kind of customs duties and taxes. From 1995 onwards, an intense traffic with AMWAY products on the Hungary - Romania relationship started to run smoothly. There were two types of smuggling, some Romanian citizens smuggled into Hungary's own warehouses to the AMWAY warehouses where they refueled, returning home and placing their goods at random, charging much higher prices. Another category was that of Romanians registered as official distributors, under the real name but with an address from Hungary. Both have resorted to massive imports of products, benefiting either from the customs facilities of small border traffic or from direct agreements with customs personnel. Even after the registration of AMWAY Romania Marketing S. R. L. with its headquarters in Bucharest, smuggling of AMWAY products on the Hungarian line has not been stopped. AMWAY is not the only company that presents this way of distributing and selling its own products in Romania.

Among the numerous distribution systems illegally rooted in Romania are: NETWORK TWENTYONE USA, SCHWARZ system in Germany and more recently that of CALIFORNIA FITNESS company based in Timisoara.

Reporting this modality of committing the crime of smuggling requires taking effective measures to counteract a possible expansion of smuggling from Romania to Bulgaria, Moldova, Ukraine. Small-scale border trafficking, as a modality of smuggling, is a big deal, both for those who practice it and for customs officers and guides.

In general, the phenomenon of small border traffic is facilitated at the border between two countries between which there are differences in prices and products traded. Another cause of the phenomenon is the shortage of certain types of products in one country or another. The phenomenon of trafficking is also articulated on the differences in taxes levied on tobacco and alcohol in Eastern Europe.

In Romania, the phenomenon appeared in the early 1990s, immediately after the revolution. The goods that did not exist in Romania were brought from Turkey, some being sold on the Romanian market, and others left for Yugoslavia or Moldova. In principle, the unemployed and those who cannot support themselves from the low income they have are found for those who practice small border traffic. Everyone's work style is different.

From this business three categories of people gain: the first category includes those who go as mere travelers and take the products which they then sell in the market; there is a category of guides who are in contact with those who practice small border traffic, ensuring them, through certain commitments with customs officers, the possibility to cross the cargo across the border.

A more elaborate way of organizing is found in the case of companies that, through an agreement with companies in the neighboring country, employ a certain number of people to take over the goods. The employees cross the goods across the border in legal conditions, the customs officers not being able to confiscate their goods. In the west of the country, the embargo imposed on Yugoslavia has encouraged thousands of people to transport Romanian products to the country's market.

A particular case is what is happening on the border with Hungary. Here, food products have the largest share. Another characteristic of this customs is that those who buy from Hungary are Romanian citizens, while from Romania, Hungarian citizens do not buy anything, a detrimental situation for the Romanian state which thus loses currency. The fact that the Hungarian state grants 20% of the value of purchased products when they leave the country, if they exceed the amount of 25,000 forints, is a facility likely to encourage Romanians from the rest of the country to shop in Hungary.

The most used border point between Romania and Bulgaria is Giurgiu Customs. The traffic through Giurgiu Customs presents some particular aspects compared to other areas. Thus, half of the Balkan-European traffic is filtered here. The circuit is generally organized on international trains transiting Bulgaria from Turkey, and others coming from the neighboring country. The ingenuity of felons, manifested in the most diverse fields of crime is also reflected in the sphere of customs relations, objectifying in new methods and procedures for committing smuggling.

As a comparative law study, in the United States the crime of *smuggling* is governed by the provisions of Chapter 18, Chapter 27, Section 545 of the U. S. Code of Crime and Criminal Procedure, which provides that: "Anyone knowingly and intentionally, with intent to defraud, clandestinely introduces or attempts to smuggle or to clandestinely introduce into the United States any goods that should have been invoiced, or carries or passes or attempts to pass through, deposits any invoice forged, counterfeited or fraudulent, or other document or paper; or anyone who fraudulently or knowingly imports or brings into the United States any unlawful goods or receives, conceals, buys, sells or facilitates in any way the transportation, concealment or sale of such goods after importation, knowing the same thing was imported or brought into the United States against the law, shall be fined under this title or shall be imprisoned for a maximum of 20 years or both¹".

Also in France, smuggling is a criminal offense under the Customs Code, and according to Article 414 of the Customs Code, this offense refers to any smuggling of goods in the category of those "prohibited"

¹ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section545&num=0&edition=prelim>.

or “severely taxed” within the meaning of the Customs Code and which provides that: “imprisonment shall be for a period of ten years and the fine can be up to ten times the value of the object of the fraud, where smuggling, importation or exportation relates to goods dangerous to health (...) or when they are committed in an organized gang¹”.

In this regard, Article 417 sets out three concepts of smuggling:

a) firstly, the smuggling itself (import or export of goods from customs offices, dumping or dispatch of goods to the coast.);

b) secondly, extension smuggling: any breach of legal or regulatory provisions relating to the detention and transport of goods within the customs territory;

c) finally, smuggling by assimilation: import or export without declaration of goods passing through a customs office, but reduced when visiting the customs service. Thus, hiding them in specially designed hiding places or in cavities or empty spaces that are not normally intended for the accommodation of goods are the practices of fraudsters. Articles 418 to 422 also present simple allegations of smuggling².

At the same time, the Italian Criminal Code, by Legislative Decrees no. 7 and 8 of January 15th, 2016, issued based on the delegation contained in Law no. 67/2014, several offenses were decriminalized, starting with February 6th, 2016. Specifically, regarding the customs area, the amendments were brought by the second of the two decrees mentioned and, namely by Legislative Decree no. 8 of 15. 01. 2016, which decriminalized all offenses, except those provided by the Criminal Code and those listed in the annex to the decree in question, for which the penalty was a fine or a fine, with the consequent transformation of the offense into an administrative offense.

In fact, art. 1 (1) of the said decree: “All infringements for which the only penalty is a fine or a fine shall be subject to an administrative penalty for the payment of an amount of money”. In cases where, for aggravated cases, it is provided only custodial sentence as an alternative or common penalty of the fine or fine, these aggravated hypotheses shall be punished, as autonomous crimes, with arrest.

Therefore, the decriminalized offenses also include those provided by art. 282 et seq. of the Testo Unico Leggi Doganali – Sole Text of the Italian Customs Law), or:

- smuggling with movement of goods across land borders and customs spaces (art. 282 TULD);
- smuggling with movement of goods into border lakes (art. 283 TULD);
- smuggling with movement of goods in the maritime movement of goods (art. 284 TULD);
- smuggling with movement of goods through the air (art. 285 TULD);
- smuggling in non-customs areas (art. 286 TULD);
- smuggling for incorrect use of imported goods with customs concessions (art. 287 TULD);
- smuggling in customs warehouses (art. 288 TULD);
- smuggling in cabotage and traffic (art. 289 TULD);
- smuggling with the export of goods admitted to the restitution of rights (art. 290 TULD);

¹<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071570&idArticle=LEGIARTI000006615940>.

² <https://www.codes-et-lois.fr/code-des-douanes/toc-contentieux-recouvrement-dispositions-repressives-classific-b66b235-texte-integral>.

- smuggling in temporary imports or exports (art. 291 TULD);
- diversified smuggling in the residual hypotheses from those described above (art. 292 TULD).

It should be mentioned that, in all the cases listed above, as provided by art. 1, paragraph 6, of the chapter, for which a proportional monetary sanction was provided, the fine provided by the respective criminal regulations was replaced with the administrative sanction from 5,000. 00 Euro to 50,000. 00 Euro. Finally, for the case of smuggling in case of failure or incomplete finding of the object of the crime (art. 294 of the TULD), for which a fine of up to 258 euros was provided (art. 1, paragraph 5, letter a) of Legislative Decree 8/2016), an administrative penalty shall be paid from EUR 5,000. 00 to EUR 10,000. 00¹.

Also, in Spain, the crime of *smuggling* is not regulated in the Criminal Code, but in a special law, Organic Law 12/1995 on the repression of smuggling, which contains a multiplicity of different behaviours and on various goods such as weapons, drugs, sealed products, pharmaceuticals, all of which are crimes and whose common denominator is a breach of the control exercised by the customs authorities. With its criminal classification, it is about protecting both the collection interests of the Public Treasury and public order, health policy or state monopolies, thus giving rise to a multiplicity of protected legal assets.

According to the provisions of Article 2 of Organic Law 12/1995², different behaviours are foreseen which constitute a smuggling crime. Unintentionally, in these brief notes, if they are exclusive, they consist mainly in the importation or exportation of goods of illicit trade without customs clearance, concealing them from the action of the customs administration or performing acts of trade, possession or movement of non-Community goods in lawful trade without proving their lawful import, as long as the value of the goods exceeds EUR 150,000. It is also smuggle the import or export of goods subject to commercial policy measures, without complying with the applicable legal provisions or when the necessary administrative authorizations for the said import are obtained, through false data or documents concerning the nature or destination of the products. Also, in order to be a crime, the value of the goods must exceed 150,000 euros.

Finally, it should be noted that in the Republic of Moldova, the crime of *smuggling* began after the proclamation of independence, on August 27th, 1991, with the entry into force of Presidential Decree no. 189 of September 3rd, 1991, on the subordination of customs institutions located in the country, being the first state structures created after the declaration of independence. The laws that regulate social relations in the customs field, for the purpose of crossing the country's border by natural or legal persons, the goods transported by economic agents, objects, goods or values is the customs and criminal legislation in force; other collections of laws establishing reports on customs activity and policy; decisions of the government of the Republic of Moldova, documents issued by ministries or departments and other normative acts and adopted in the field.

The current Customs Code, in accordance with the latest amendments and completions, published on 01. 01. 2007 in the Official Gazette of the Republic of Moldova, amended by LP 307 of 26. 12. 2012, Official Gazette 26/04. 02. 2013, regulates each of the offenses in a single article - *smuggling*. When adopting the law on the Customs Code of the Republic of Moldova, the legislator defined the notion of

¹ <https://www.camera.it/temiap/documentazione/temi/pdf/1105596.pdf>.

² <https://www.boe.es/buscar/pdf/1995/BOE-A-1995-26836-consolidado.pdf>.

“smuggling”, which is recognized only as a crime, and it is usually sanctioned criminally, and included it in a separate rule of law in art. 224 of the Customs Code¹.

Thus, *smuggling* is to be considered the crossing of the customs frontier of goods, evading or concealing customs control, committed in large or particularly large proportions, either repeatedly or by a group of persons who are organized for the smuggling activity, either by a person with a position of responsibility who makes use of the service situation, or by fraudulent use of customs documents and other documents, or accompanied by not declaring or inauthentically declaring them in customs documents or other documents, of narcotic drugs, psychotropic substances with strong, toxic, poisonous, radioactive and explosive effects, harmful wastes, weapons, explosives, firearms and ammunition, excluding smoothbore hunting guns and cartridges, of cultural values, as well as the failure to return on the customs territory the cultural values from the country in case their return is mandatory.

The detection of crimes falls under the responsibility of the customs authorities. In this regard, the legislator indicates in art. 11 let. (c) the Customs Code, that the customs body has an important role to play, contributing within the limits of its competence to ensuring the economic security of the State and thus combating smuggling, infringements of customs regulations and tax legislation relating to the crossing of goods across the customs border, and according to the same article, letter (h), stops the illegal crossing of customs borders of narcotic substances, armaments, works of art, objects of historical and archaeological value, objects of intellectual property, endangered animal and plant species, other goods.

In the Criminal Code, the legislator created a broad framework for the crime in chapter II of the general part, art. 14-34, including the general provisions regarding the crime (art. 14-24; 28-31), the stages of criminal activity (art. 25-27), the plurality of crimes (art. 32-34). At the same time, the Criminal Code acknowledges and qualifies the smuggling action according to a separate norm of criminal law - art. 248 and 249 of the Criminal Code, included in the special part, chapter X, “Economic crimes”, in a standard variant, three special variants and an aggravating variant. In conclusion, in the Republic of Moldova, it can be argued that in order to counter criminal actions and attempts by criminal elements, the state needs a coherent legislative basis, requiring its compliance with European standards, because customs legislation is typical of states in transition.

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¹ https://www.legis.md/cautare/getResults?doc_id=85852&lang=ro.