

IMPLEMENTATION OF CRIMINAL LIABILITY FOR VIOLATIONS OF THE PROCEDURE FOR CARRYING OUT INTERNATIONAL TRANSFER OF GOODS SUBJECT TO STATE EXPORT CONTROL



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Abstract. The article notes that violation of the order of international transfers of goods subject to state export control carries a danger directly to the national security of the state. Criteria have been defined to measure the social conditions of criminalization of violations of the procedure for international transfers of goods subject to State export control. Groups of factors that influence criminalization have been allocated. A literature review of the grounds of the criminal-legal prohibition which serve as objective prerequisites for its establishment has been carried out. The materials of judicial practice have been analyzed.

Keywords: *criminal liability, criminalization basis, state export control, national security, order of international transfers of goods.*

Introduction

The criminalization of the violation of the procedure for international transfers of goods subject to State export control is conditioned by the construction of a system of effective measures to establish national control over activities. It is related to the implementation of international transfers of goods subject to State export control including through the incorporation in national legislation of not only regulatory but also protective norms. This is extremely topical in modern realities, therefore the state policy in the State export control should be formed in accordance with the principles of priority of Ukraine's national political, economic and military interests the protection of which is necessary for national security.

Literature review. Some issues related to criminal liability for violation of the established procedure for the international transfer of goods subject to State export control have been examined in the works of such scholars as: S. Galaka, S. Grachov, O. Grishutkin, A. Danilevsky, S. Miroshnychenko, R. Orlovskiy, G. Perepelytsia, O. Pluzhnyk, N. Sklyar, I. Kondratov, O. Siver, O. Shamara, S. Yatsenko. At the same time, some provisions in connection with the process of military globalization need new approaches to understanding their essence which gives rise to a number of new directions in the elaboration of the problem.

Research methods. The article uses such methods as analysis and synthesis, comparison, explanation, formulation of logical conclusion, generalization.

Research results. Criminal liability is a type of legal responsibility that reproduces the main features of both social and legal responsibility and has features of legal influence that distinguish it from constitutional, administrative, procedural, civil and other types of legal liability (mandatory method, legal coercion, features of tort capacity, etc.) (Kozachenko, 2017, pp.42-62).

Several scientific concepts of the content of criminal responsibility have emerged in national criminal law doctrine, in particular: 1) criminal responsibility as the implementation of sanctions; 2) criminal responsibility as punishment; 3) criminal responsibility as a duty to suffer certain limitations; 4) criminal responsibility as a special type of legal relationship. Differences in the understanding of criminal responsibility result in different content of its implementation. For example, O. Kozachenko speaks about four stages of criminal responsibility: the occurrence of criminal responsibility which is connected with the moment when a tort capable person commits a criminal offence; prosecution (the beginning of criminal responsibility); it is connected with the moment of notification of a person on suspicion of committing a criminal offence; the direct realization of criminal responsibility which relates to the date of entry into force of the conviction and acquires concrete features; the end of the criminal responsibility is connected with the moment of discharge or removal of the criminal record (Kozachenko, 2017, pp.42-62).

In the opinion of I. Mytrofanov the forms of criminal liability are the procedure for the

application of criminal-legal influence as a reaction of the state to the committed crime into regulated public relations manifested in the State conviction of a specific person found guilty of committing a specific socially dangerous act as well as in the limitations of the Criminal Code of Ukraine of a personal, property or other nature clearly defined by the court's guilty verdict (Mytrofanov, 2015, p. 53).

At the same time, the scientist does not link the form of implementation of criminal liability with the application of specific measures provided for in the Criminal Code of Ukraine. V. Navrotskyi highlights the following forms of criminal responsibility: 1) conviction by the court which is not combined with the imposition of any criminal penalty; 2) conviction by the court which has been sentenced to a specific type and amount (term) of sentence and contains a court decision on (conditional or unconditional) release of a person from serving the sentence imposed on him; 3) sentencing by the court in the conviction sentence with his actual serving, common law and criminal law consequences, i.e. (Navrotskyi, 2013, p. 87).

In fact such an understanding of the implementation of criminal responsibility is corresponding to the third stage of «direct» implementation of criminal responsibility which is connected with the moment of entry into force of the guilty verdict. In our opinion understanding of criminal liability by V. Navrotskyi is more reasonable as its separation at stages covers various aspects of criminal responsibility not the exercise of criminal responsibility. Therefore, we include to the forms of implementation of criminal liability for violation of the procedure for international transfers of goods subject to state export control such actions: 1) exemption from criminal liability that is without sentencing; 2) imposition of a sentence with the application of a release from serving sentence; 3) the imposition of a sentence with its subsequent serving.

Only a small part of the case-law (9 of the 100 judgments examined in the 2019-2022 period) of exemptions from criminal responsibility without punishment for violations of the procedure for international transfers of goods subject to State export controls. In 7 cases (7 determinations) the exemption from criminal responsibility was granted on the basis of Art. 47 of the Criminal

Code of Ukraine in connection with the transfer of a person on bail (reyestr.court.gov.ua/Review/104783229). In all cases the accused was in an employment relationship with the staff who applied for bail and the prosecutor did not object to the application being granted. For example, the Liuboml District Court of the Volyn region considering the application of the general meeting of the collective of "VB UKRAINA" company about the exemption from criminal liability of PERSON_4 an engineer on service and service of products of the said company based on the premise that the exemption from criminal liability in connection with the transfer of a person on bail of the labour collective is a right of the court. Therefore the court should be convinced of the possibility through active public participation to achieve positive changes in the social behaviour of the person. The Court referred to the fact that a systematic analysis of the said rule of law leads to the conclusion that the release from criminal responsibility in connection with the surrender of a person on bail may take place under the combination of the following conditions: 1) a person has committed a crime for the first time; 2) actions refer to a criminal offence which is an offence or a minor offence; 3) acts do not relate to corruption offences or traffic offences; 4) the person has made a sincere confession; 5) the staff of the enterprise, institution or organization wishes to take a person on bail and has applied to the court for bail; 6) the person does not object to the closure of the criminal proceedings on this non-rehabilitating ground and agrees to abide by the conditions of bail; 7) the conditions for granting bail are that the company, institution or organization that accepts bail must comply with the measures of an educational nature and respect for public order. The court also found that the criminal offence provided for in Art. 12 of the Criminal Code of Ukraine is a minor offence which does not refer to corruption (note to Art. 45 of the Criminal Code of Ukraine) or to violations of traffic safety, and the fact that the accused sincerely repented, confessed the guilt, criticised the act, no harm done. On the basis of the above the court decided to exempt PERSON_4 from criminal liability for the commission of the criminal offence under Section 1, Art. 333 of the Criminal Code of Ukraine based on Art. 47 of the Criminal Code of Ukraine in connection with the transfer of it to the labor collective of

"VB UKRAINA" company if justifies the trust of the collective and will not evade educational measures and not disturb the social order it within a year from the date of its release on bail (reyestr.court.gov.ua/Review/96054894).

The exemption from criminal liability was applied in connection with a change of circumstances in two cases. In particular the decision of the Ripkyn District Court of Chernihiv Region in case No.743/1392/21 exempted the defendant from criminal liability on the basis of Art. 48 of the Criminal Code of Ukraine was motivated by the fact of the russian aggression against Ukraine above all. In the decision of June 6, 2022 on 24 February 2022 the Court stated the following: "Russian Federation launched military aggression against Ukraine and the martial law was introduced by the Presidential Decree No. 64/2022. The organized group in which PERSON_4 was a part purchased military goods for which the defense enterprises of Ukraine have demand in the territory of the russian federation and in the future such goods were under the guise of other goods. In particular spare parts and components for various types of equipment moved to the territory of Ukraine across the border with the Republic of Belarus where they were carried out by entities controlled by the organized group to the defence enterprises of Ukraine. It should be taken into account that in implementing the scheme for the importation of klystrons into the territory of Ukraine from the territory of the russian federation through the Republic of Belarus. The accused persons thus committed acts aimed at reducing the defense capability of the aggressor country and increasing the defense capability of the Armed Forces of Ukraine since klystrons were to receive enterprises that manufacture and repair air defense equipment. Pursuant to Art. 11 of the Criminal Code of Ukraine the public danger inherent in a criminal offence, occurs where the act has caused substantial harm or could cause such harm to a natural or legal person, society or the State. Thus as a result of the war between the russian federation and Ukraine the actions of PERSON_4 expressed in the actual provision of military goods, the defense enterprises of Ukraine are not actions which have caused or could cause such damage to a natural or legal person, society or the State. So it can be argued that the situation has changed and that the act committed by PERSON_4 has lost the public

danger. In addition, the offence under the Section 2, Art. 2 of the Criminal Code of Ukraine is not difficult according to Art. 12 of the Criminal Code of Ukraine. In the established circumstances the Court considers that the grounds defined in Art. 48 of the Criminal Code of Ukraine for the release of the accused PERSON_4 from criminal liability in connection with the change of the situation".

Another ground for the determination of exemption from criminal liability under the Art. 48 of the Criminal Code of Ukraine has become a loss of public danger. An example of this is the ruling of the Putyvl District Court of Sumy Region dated July, 17 2020 in case No. 584/868/20. The court established that the defendant "PERSON_4" first committed the crime which according to Art. 12 of the Criminal Code of Ukraine is a moderate crime and he was not prosecuted previously. He is no longer the director of the "SEYM" company. The act committed by him has lost public danger, accused of a 2 disabled group person and now his health has deteriorated due to burns of limbs as confirmed by medical certificates. There is reason to believe that due to the change of circumstances he is not a socially dangerous person".

The imposition of a sentence applying the exemption from serving the sentence included release from serving the sentence with trial (Art. 75 of the Criminal Code of Ukraine) (8 sentences) and exemption from serving a sentence due to expiry of the statute of limitations (Articles 74, 49 of the Criminal Code of Ukraine) (1 resolution). Relatively small percentage of releases from serving a sentence with a test (Art. 75 of the Criminal Code of Ukraine) is explained by the fact that the courts have applied release from serving a sentence with a trial period in the imposition of custodial sentences is only a fraction of the fines imposed most frequently by the courts as shown by the following branch. Making the decision on release from probation (Art. 75 of the Criminal Code of Ukraine) the courts took into account the following: 1) the seriousness of the criminal offence committed – violation of the procedure for the international transfer of goods subject to State export control is a minor offence; 2) data on the identity of the accused – no criminal record, positive

description of the place of residence; absence from the records of the doctors of the narcologist and psychiatrist, employment; 3) existence of extenuating circumstances: sincere repentance, active assistance in solving the crime, no harm; 4) absence of circumstances aggravating the punishment of the accused. Of the 5 sentences out of 8 it is considered that release from the sentence with trial was provided for by a plea agreement concluded between the accused and the prosecutor and approved by the court (reyestr.court.gov.ua/Review/90128597).

With regard to the exemption from serving a sentence due to the expiry of the statute of limitations the example of such dismissal is reflected in the determination of the panel of judges of the Criminal Chamber of the Zaliznychnyi District Court of Lviv dated September, 15 2022 in case No. 1-681/11. According to this decision during the appeal review of the verdict of the Zaliznychnyi District Court of Lviv dated November, 17 2015 which convicted PERSON_6 for a criminal offence under Section 1, Art. 333 of the Criminal Code of Ukraine the penalty of which in the version in force at the time of its commission was a tax of 100 to 200 of a tax-free minimum income of citizens or a restriction of liberty for up to three years or imprisonment for the same term with or without the right to hold certain positions or engage in certain activities for a period of up to three years. That means that the alleged criminal offence is a minor offence and established that more than four years have elapsed since its commission. According to paragraph 3, Section 1, Art. 49 of the Criminal Code of Ukraine exempts a person from criminal liability if five years have elapsed between the date of the commission of the criminal offence and the date of the entry into force of the sentence in the case of a misdemeanour except in the case referred to in paragraph 2 of that Section. On the basis of the above the Lviv Court of Appeal decided to exempt PERSON_6 from serving the sentence on the basis of Section 5, Art. 74 of the Criminal Code of Ukraine on the expiry of the statute of limitations (reyestr.court.gov.ua/Review/106302163).

Conclusions

From the context of the research we see that forms of criminal responsibility, such as release from criminal responsibility without sentencing and the imposition of a sentence with parole form almost equal parts of the mechanism for the implementation of criminal responsibility for violation of the procedure for international transfers of goods subject to State export control – each of them accounts for 9% of the sample of judgments rendered under Art. 333 of the Criminal Code of Ukraine during 2019-2022 period. In turn the largest proportion of the forms of criminal liability for violation of the procedure for the international transfer of goods subject to State export control is the imposition of a sentence followed by its execution (serving).

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