



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 12

Moscow

27 April 2017

On Judicial Practice in Cases on Smuggling

In order to ensure uniform court application of norms of criminal law regarding the liability for smuggling (Articles 200¹, 200², 226¹ and 229¹ of the Criminal Code of the Russian Federation (hereinafter referred to as the CrC RF), as well as in regard to the questions raised by the courts, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

1. When considering criminal cases on smuggling, courts should take into account that legal regulation of customs relations in the Russian Federation is performed in accordance with the international treaties and the legislation of the Russian Federation on customs affairs.

Such international treaties include, in particular, the Eurasian Economic Union Treaty of 29 May 2014 (hereinafter – the Union and the Treaty, correspondingly), as well as other international treaties concluded between the Russian Federation and the member states of the Union, as well as other states (e.g. the Agreement on Uniform Principles and Rules of Turnover of Medicinal Products within the Eurasian Economic Union of 23 December 2014).

The attention of the courts is pointed to the fact that in accordance with Item 1 of Article 101 of the Treaty, until the entry into force of the Customs Code of the Eurasian Economic Union, customs regulation in the Union is performed in accordance with the Treaty on the Customs Code of the Customs Union of 27 November 2009 (hereinafter – the CC CU) and other international treaties of the member states, regulating customs legal relations and concluded within the framework of forming the contractual and legal basis of the Customs Union (e.g. the Agreement on Movement of Narcotic Drugs, Psychotropic Substances and Their Precursors in the Customs Territory of the Customs Union of 24 October 2013).

Taking into account the provisions of Item 2 of Article 101 of the Treaty, the notions “customs border of the Customs Union within the EurAsEC (“customs border of the Customs Union”), “State Border of the Russian Federation with member states of the Customs Union within the EurAsEC”, used in Articles 200¹, 200², 226¹ and 229¹ of the CrC RF, should be understood as, correspondingly, the “customs border of the Eurasian Economic Union” (hereinafter – the customs border), “the State Border of the Russian Federation with member states of the Eurasian Economic Union” (hereinafter – the state border).

2. Courts should take into account that the manner of movement of goods and other items across the customs border or the state border, as well as bans and (or) limitations pertaining to such movement are stipulated, apart from the legislation of the Russian Federation (on customs affairs, on the State Border of the Russian Federation, on currency regulations and currency control, on exports control and others) by the law of the Union (Articles 6 and 32 of the Treaty).

The law of the Union also includes the decisions and dispositions of the permanent regulatory body of the Union – the Eurasian Economic Commission, adopted within the framework of its powers (e.g. Decision of the Board of the Eurasian Economic Commission No. 30 of 21 April 2015 “On Measures of Non-Tariff Regulation”).

When considering cases on smuggling, courts should take into account that the list of items of cultural value that require authorization for export outside of the customs territory of the Union, the rules of their export from the Russian Federation to other states that are not members of the Union are established by decisions of the Board of the Eurasian Economic Commission.

3. When resolving whether the actions of a person contain elements of crimes stipulated in Articles 200¹, 200², 226¹ and 229¹ of the CrC RF, the courts need to establish whether the illegally moved goods or other items pertain to contraband, listed in these Articles.

If special knowledge is required to establish whether the illegally moved goods or other items pertain to contraband, courts must obtain the corresponding conclusions of experts or specialists.

4. When establishing the value of contraband articles, illegally moved across the customs border or the state border, the courts should proceed from the state regulated prices, if such prices are stipulated; in other situations the aforementioned value is established on the basis of the market value of the goods, except for those moved by a natural person across the customs border for personal use; in regard of the latter goods, the customs value is applied, which is determined in accordance with Chapter 49 of the CC CU. Herewith, those legal norms should be taken into account, that allow to disregard a part of value of illegally moved goods, which it is allowed to move without declaration and (or) which was declared (e.g. Note 3 to Article 200¹, Note 2 to Article 200² of the CrC RF).

Where there is no information about the price of an item of goods, its value is established on the basis of a conclusion of an expert or specialist.

5. Movement of goods and other items across the customs border or the state border consists in import of goods or other items into, correspondingly, the customs territory of the Union or the territory of the Russian Federation or import from those territories, performed by any means.

Illegal movement of goods or other items across the customs border should be understood as movement of goods or other items outside of stipulated places, or outside the stipulated working hours of customs bodies in those places, or with concealment from customs control, or with false declaration or without declaration of goods, or with the use of documents containing false information about the goods or other items, and (or) with the use of identification means that are counterfeit or pertain to different goods or other items.

When establishing the fact of illegal movement of goods or other items across the state border, the courts need to take into account that legal regulation of export or

import of goods and other items from the territory of one member state of the Union to the territory of another member state of the Union has its own features.

In particular, although freedom of movement of goods, services, capital and workforce is guaranteed in the Union, Item 3 of Article 29 of the Treaty provides for the possibility to limit the turnover of certain categories of goods for reasons stipulated in Item 1 of that Article. Herewith, the manner of movement or turnover of such goods on the customs territory of the Union is established in accordance with the Treaty, as well as in accordance with the international treaties within the framework of the Union.

Moreover, proceeding from the provisions of Item 2 of Article 129 of the Civil Code of the Russian Federation, measures of legal regulation, limiting the free turnover of certain substances or items, in particular of those that present a threat to public safety, may be introduced by law or in the manner stipulated in law on the territory of the Russian Federation.

6. During smuggling, the illegal movement of goods or other items across the customs border may be performed through the concealment of goods or other items from customs control, i.e. through performance of any actions aimed at hindering the discovery of such goods (items) or concealment of their true properties or quantity. In particular, this includes making certain goods (items) look like different ones, use of hiding places, specially made or fitted in luggage or clothes for smuggling or installed on transport vehicles used for the movement of goods or other items across the customs border.

7. Non-declaration as a possible mean of smuggling is failure by a person to fulfil the requirements of the law of the Union and of the legislation of the Russian Federation on customs affairs regarding the declaration of goods, i.e. the goods or part of the goods are not declared to the customs body (a part of homogenous goods is not declared; or, when a shipment consisting of several goods is declared, information about only one type of goods is provided in the customs declaration, or the customs body is presented with goods different from the ones, information about which is stated in the customs declaration).

If the customs declarant or a customs representative provides incorrect (false) information regarding the quality characteristics of goods, necessary for customs purposes in the customs declaration (e.g. information about the name, description, classification code in the Common Commodity Nomenclature of Foreign

Economic Activity of the Union, about the country of origin, customs value), such actions should be regarded as false declaration of goods.

Herewith, it should be taken into account that information necessary for customs purposes is information presented to customs bodies for adoption of a decision regarding the release of goods, their placement under the selected customs procedure, calculation and charge of customs payments or information based on which bans or limitations are applied to the goods.

8. The courts should take into account that when smuggling is committed through the use of documents containing false information about the goods or other items, documents containing false information may be submitted to the customs body as substantiation of grounds or conditions of movement (placement under customs procedure) of goods or other items referred to in Articles 200¹, 200², 226¹ and 229¹ of the CrC RF. Such documents may contain false information about the name, description, classification code in the Common Commodity Nomenclature of Foreign Economic Activity of the Union, country of origin, country of departure, customs value, package description (number, appearance, marking and reference numbers).

The use of identification means that are counterfeit or pertain to different goods during smuggling is the use of counterfeit customs seals, stamps, other identification means or of original identification means pertaining to different goods.

Illegal movement of goods or other items, performed with the use of a counterfeit document, seal made by a different person is completely comprised by the elements of crime of smuggling and does not require additional qualification in accordance with Article 327 of the CrC RF.

If a person is using an official document or seal, which that person itself counterfeited, such actions are qualified as an aggregate of crimes stipulated in Article 327 of the CrC RF and in Articles 200¹, 200², 226¹ and 229¹ of the CrC RF.

9. The crime of smuggling, committed by import into the customs territory of the Union or export from this territory of goods or other items outside of the stipulated places (customs border points) or outside the stipulated working hours of customs bodies in those places, is regarded as committed from the moment when the goods or other items actually cross the customs border.

Where other means of illegal movement of goods or other items are used during smuggling, e.g. false declaration or use of documents containing false information about the goods or other items, smuggling is regarded as committed from the moment when a customs declaration or another document allowing import into the customs territory of the Union or export from this territory of goods or other items is presented to a customs body for the purpose of their illegal movement across the customs border.

10. In criminal cases on crimes stipulated in Articles 226¹ and 229¹ of the CrC RF, where a contraband article is illegally moved not only across the customs border, but also across the state border, this should be regarded as a single crime, if the person had a single intent to perform the aforementioned actions. If the person that smuggled the items referred to in Articles 226¹ and 229¹ of the CrC RF over the customs border afterwards gained intent to move the same items across the state border, this forms an aggregate of crimes.

11. The attention of the courts is pointed to the fact that in accordance with Note 4 to Article 200¹ of the CrC RF a person is exempt from criminal liability if it voluntarily surrendered the monetary funds and (or) the monetary instruments, and if its actions do not contain elements of another crime. By implication of law, voluntary surrender means handing of cash monetary funds and (or) monetary instruments to the representatives of law enforcement bodies at own will, despite the real possibility to dispose them.

If a person is accused of committing other crimes apart from smuggling of cash monetary funds and (or) monetary instruments, it is exempt from liability stipulated in Article 200¹ of the CrC RF, independent of whether it is held liable for committing other crimes.

12. If, in addition to illegal movement of items listed in Articles 226¹ and 229¹ of the CrC RF across the customs border or the state border, the person commits an intended unlawful action pertaining to the illegal turnover of these items, in particular their transportation, such actions are subject to qualification as an aggregate of crimes stipulated in Articles 226¹ and (or) 229¹ of the CrC RF and the corresponding Articles of the Criminal Code of the Russian Federation (in particular, Articles 218, 220, 222, 222¹, 228, 228¹, 228², 228³, 228⁴, 234, 355 of the CrC RF).

13. If smuggling is recognized as committed by an organized group, the actions of all the members of the group that participated in preparing or committing this crime, independent of their actual roles, should be qualified in accordance with Part 3 of Article 200², Part 3 of Article 226¹, Item “a” of Part 4 of Article 229¹ of the CrC RF without reference to Article 33 of the CrC RF (e.g. where certain members of the organized group acquired the goods or other items, other members moved them illegally across the customs border, and other ones coordinated the aforementioned actions).

14. If a person that owns goods or other items illegally moves them across the customs border or the state border, using another person for these purposes, who does not realize the illegal nature of such movement, the former is subject to liability in accordance with Articles 200¹, 200², 226¹ and (or) 229¹ of the CrC RF as the perpetrator of these crimes. In such circumstances, the actions of the person, who did not realize it was committing smuggling, do not entail criminal liability.

15. The recipient of an international postal item containing contraband articles is subject to liability as the perpetrator of smuggling, in particular if it found, ordered, paid for, provided its personal data, address, foresaw the means of receiving and (or) concealing the ordered goods.

16. When resolving, what court has the territorial jurisdiction to consider a criminal case on crimes stipulated in Articles 200¹, 200², 226¹ and (or) 229¹ of the CrC RF, the courts should proceed from the provisions of Article 32 of the Criminal Procedure Code of the Russian Federation (hereinafter – CrPC RF), in concurrence with Item 1 of Article 5 of the Treaty on Features of Criminal and Administrative Liability for Violations of Customs Legislation of the Customs Union and of Member States of the Customs Union, in accordance with which a criminal case is initiated and investigated at the place of commission of the crime, and where it is impossible to determine the place of commission of the crime – at the place of discovery of the crime.

In particular, if a contraband article is transported to the customs territory under the disguise of goods by means of a registered international postal item (registered mail, parcel, small packet), the place of commission of such a crime is the place, at which the goods are subject to operations regarding their release (the place of international postal exchange).

If the aforementioned contraband article is transported to the customs territory as a simple (non-registered) international mail item, and it is impossible to determine the exact place where this postal item crossed the customs border or the state border, the place of commission of crime should be regarded as: the postal address of the recipient – if the postal item is received by the addressee; the address of the postal organization – if the postal item is handed to the recipient in the postal organization or is seized there by law enforcement agents.

17. The attention of the courts is pointed to the need to apply the provisions of Chapter 15¹ of the CrC RF on confiscation of items illegally moved across the customs border or the state border (liability for which is stipulated in Articles 200¹, 200², 226¹ and (or) 229¹ of the CrC RF) and on confiscation of any income from such property, except for the property and income subject to return to the lawful owner.

If the person recognised as guilty of illegal movement of contraband articles is the owner of such articles, they are subject to confiscation.

18. In accordance with Part 3 of Article 81 of the CrPC RF, when pronouncing the sentence, as well as when issuing a decree or ruling on termination of a criminal case, the court must resolve the issue of contraband articles regarded as material evidence and of transport vehicles used for illegal transportation of goods or other items across the customs border or the state border.

If the transport vehicle belonging to the guilty person was equipped with special storage for concealment of goods or other items during their movement across the customs border or the state border (hiding places made for concealment of goods, as well as compartments and previously dismantled and installed items, equipped and fitted on transport vehicles for the same purposes), such a vehicle is regarded as an instrument of crime and is subject to confiscation in accordance with Item 1 of Part 3 of Article 81 of the CrPC RF.

When a criminal case is terminated on non-rehabilitating grounds, the legal consequences of such termination must be clarified to the person, in particular pertaining to the possible confiscation of its property regarded as material evidence.

If the lawful owner of a contraband article is not established, the article must be appropriated by the state in the manner stipulated in law, by virtue of a court decision.

Disputes about the ownership of contraband articles regarded as material evidence are resolved in civil proceedings.

In accordance with Item 2 of Part 3 of Article 81 of the CrPC RF, contraband articles, the turnover of which is prohibited (narcotic drugs, psychotropic substances, their analogues, weapons, etc.) are subject to transfer to the corresponding institutions or are destroyed.

19. Ruling of the Plenary Session of the Supreme Court of the USSR No. 2 of 3 February 1978 “On Judicial Practice in Cases on Smuggling” is not subject to application on the territory of the Russian Federation.

Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 23 of 28 September 2010 “On Amendments to Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 6 of 27 May 2008 “On Judicial Practice in Cases on Smuggling” is abrogated.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
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V.V. Momotov