

PRE-EXISTING ELEMENTS OF CUSTOMS OFFENSES IN ACCORDANCE WITH THE LEGISLATION OF THE REPUBLIC OF MOLDOVA AND THESE OF ROMANIA

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Abstract

Our scientific approach will include, to a considerable extent, the analysis of smuggling offenses. We will analyze the pre-existing elements of customs offenses in accordance with the legislation of the Republic of Moldova and that of Romania, our focus being on the investigation of the object of customs offenses. The analysis carried out aims at: highlighting the generic legal object and the special legal object of customs offenses. Different research methods were used to carry out the study, including: analysis, synthesis, deduction, induction. However, the most used method was comparative considering the specifics of the subject under investigation. In the customs sphere, the Romanian legislator has incriminated: simple smuggling, skilled smuggling, the use of unrealistic acts and the use of falsified documents. The analysis of smuggling (simple and qualified) will make an incursion both in the legislation of the Republic of Moldova and in Romania; analysis of using false documents and use of forged documents will refer to the rules of the Customs Code of Romania, while the analysis evade customs payments will make use of the Criminal Code rules.

Keywords: *smuggling, customs offenses, general legal object, generic legal object, special legal object, simple smuggling, qualified smuggling, unrealistic acts, falsified acts.*

JEL Classification: K14, K33.

1. Introductory aspects of object of customs offenses

Smuggling offenses are some of the most serious facts that are likely to be committed in the area of customs legal relations, because by committing them, the national economy and, implicitly, the state budget are threatened or are actually being harmed, a real democracy: public order, legitimate interests of citizens². For this reason, the criminalization of these facts is imperative, since order and discipline in the sphere of customs legal relations can not be ensured without encroaching on smuggling³. Being some of the basic crimes that seriously damage the state's economic potential, smuggling destroys the principles of statehood, fueling sources that threaten national security, fostering unemployment, developing anti-social and anti-human morals, committing other cross-border crimes, generating anxiety and insecurity among the population⁴.

As our focus will be on investigating the subject of customs offenses, it is to be noted that the offense can not be conceived without the existence of a certain reality against which the conduct of conduct is the subject of the act⁵. Taking into account the existence of such a reality, we conclude that the object of the offense is the values and social relations against which the act of criminal conduct is directed and which either jeopardizes the values and social relations protected by the criminal law or injures them.

Taking into account the degree of hierarchy of the social values that form the object of the offense, I highlight the general legal object, the generic legal object and the special legal object. It is precisely in relation to these categories of legal object that the criminal offenses of the criminal law of the Republic of Moldova and of Romania will be investigated.

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² Bujor Valeriu, Pop Octavian, *Criminalitatea în domeniul fiscal*, Timișoara, Mirton, 2002, p.25.

³ Pasat Octavian, *Efectuarea analizei juridico-vamale a infracțiunilor, contravențiilor vamale prevăzute de Codul vamal al României din 1997*, „Revista Națională de Drept”, 2014, no.4, p.65.

⁴ Maimescu Sava *Contrabanda și modalitățile ei în reglementarea legislației penale a Republicii Moldova*: PhD thesis in law, Chișinău, 2000, p.8.

⁵ Bulai Costică, *Manual de drept penal. Partea Generală*, Bucharest, All, 1997, p.195.

Different research methods were used for the study, including: analysis, synthesis, deduction, induction, but the most used method was comparative considering the specifics of the subject under investigation: the criminal legislation of the Republic of Moldova and Romania, in customs offenses.

The scientific material is structured in four sections: I. Introductory aspects of the subject of customs offenses; II. The generic legal object of customs offenses; III. The special legal object of customs offenses; IV. General Conclusions.

In order to properly classify harmful facts in the category of customs offenses it is necessary to determine the legal object. In the Republic of Moldova, the generic legal object was used by the legislator to classify offenses under the Special Part of the Criminal Code, so that the national economy is the fundamental social value defended by criminal-law means against economic crimes. In Romania, by committing simple smuggling, skilled smuggling, the use of unrealistic acts or forged acts is directed at the state economy and the social relations deriving from that fundamental social value in a market-economy state. The special legal object is in strict dependence on the generic legal object of the offense. The special legal object is the concrete individual social value that is harmed or directly jeopardized by committing a concrete criminal offense. According to Moldovan law, customs security as a component part of the state's economic security is the basic social value against which the criminal deeds are directed, as also protected by the Customs Code of Romania (CC of Rom).

2. The generic legal object of customs offenses

The general legal object of the offense, including customs offenses, according to the criminal law of the Republic of Moldova and of Romania is the ensemble of social relations regarding the rule of law, ie regarding the totality of social values defended by criminal law against crimes⁶. According to the Criminal Law of the Republic of Moldova, the general legal object is identified with the content of the norm in paragraph (1) of Article 2 of the Criminal Code of the Republic of Moldova (CP of RM), according to which: "The criminal law protects against the offenses the person, his rights and freedoms, the environment, the constitutional settlement, the sovereignty, independence and territorial integrity of the Republic of Moldova, the peace and security of mankind, as well as the entire order of law".

As far as the **generic legal object** is concerned, it is stated in the doctrine that it represents the beam determined by social and social values - identical or homogeneous, which, due to this entity or homogeneity, are protected by a group of criminal norms that are in close relations reciprocity and complement each other⁷. Some authors state: "... the generic legal object is the systematization criterion of the Special Part of the Criminal Law. In addition to this technical and legislative significance of the generic legal object, this category also has a substantial contribution to the criminal law enforcement activity, namely: it allows to correctly determine the essence of one or another crime, facilitating the identification of other signs of the composition of the offense, which reduces the scope of search for the rule of criminality, thus facilitating the process of legal framing of the crime; helps select the most effective combat and prophylaxis procedures with the range of offenses that make up; facilitates the perception of the degree of social danger, the nature and particularities of the damage caused by that group of offenses, etc⁸."

The generic or grouped legal object is individualized by subdivisions of offenses, depending on the genuinely prejudiced social importance. The legal object of the group was used by the legislator to classify offenses under the Special Part of the Criminal Code. Professor S.Brânza mentions that the harmful nature of the offenses, which share the same generic legal object,

⁶ Grama Mariana, Botnaru Stela, Șavga Alina, *Drept penal. Partea Generală*, Chișinău, Tipografia Centrală, 2012, p.180.

⁷ Brânza Sergiu, *Obiectul infracțiunilor contra patrimoniului*, Chișinău, Tipografia Centrală, 2005, p.119.

⁸ Cojanu Gianina, *Răspunderea penală pentru actele de diversiune potrivit legislației Republicii Moldova și a României. Studiu de drept comparat*. PhD thesis in law, Chișinău, 2014, p.39.

generally determines the consecutive distribution of the relevant chapters in the Special Part of Criminal Law, depending on the comparative meaning of some or other groups of social values and related social relationships⁹. Indeed, depending on the generic legal object, the Special Part of the Criminal Code of the Republic of Moldova was divided into 18 chapters, including Chapter X - "Economic crimes". According to N.Sîrbu, such an approach allows to notice that the criminal defense of all crimes in Chapter X of the Special Part of the Criminal Code of the Republic of Moldova is the national economy, regarded as a fundamental social value¹⁰. The same opinion is S.Timofei.¹¹

V.Stati mentions that the generic legal object of all economic crimes is the social relations with regard to the national economy (alias social economic relations), based on the following principles of economic activity: the freedom of economic activity; the exercise of economic activity on legal grounds; fair competition of the subjects of economic activity; good faith of the subjects of economic activity; the prohibition of manifestly criminal forms of conduct of economic activity¹². Thus, the national economy is the fundamental social value defended by juridical-criminal means against economic crimes.¹³

Referring to the generic legal object of smuggling, G.S. Ghireaev shows that it represents the social relations, the content of which is formed by the free external economic activity and the economic security of the state, which is the main guarantor in securing the economic sovereignty of the state¹⁴. After A.I. Boico and L.Iu Rodina, the generic legal object of smuggling offenses, is the total economic relations that underlie economic activities¹⁵. According to R.Sobietki, the generic legal object of smuggling is formed by social relations that are based on the principles of economic activity¹⁶. The Russian author G.P. Cacichina reveals that the generic legal object of customs offenses, including smuggling offenses, is the social relations defended by criminal law in the sphere of economic activity¹⁷.

Finally, with reference to the legislation of the Republic of Moldova, we conclude that from the title of Chapter X of the Special Part of the Criminal Code of the Republic of Moldova "Economic crimes", chapter in which the offenses stipulated in art. 248 and 249 CP of the Republic of Moldova, it is clear that the generic legal object of the offenses under the generic name of smuggling and those under the generic evasion of the payment of customs payments is the national economy as the fundamental social value, as well as the social relations related to this value.

Compared to the legislation of the Republic of Moldova, in Romania, customs offenses are incriminated in a special criminal law, which is why we can no longer say that even in the case of the Romanian legislation on customs offenses, the thesis that the generic legal object of the offense can be separated from the title of the chapter and the section where the incriminating rule is placed. However, the Romanian Customs Code only covers incriminations concerning criminal offenses committed in the customs sphere, and not other illegal acts. Even so, customs offenses, according to the Romanian legislation, have a generic legal object. But what is it? According to the Romanian authors C.Voicu, A.Boroi, F.Sandu and I.Molnar, the generic legal object of the offenses related to the customs regime are those social relations related to the customs regime, the birth and normal deployment of which are conditioned by the special protection of the customs clearance of goods, as well as other customs operations which demand legally special requirements for the crossing of

⁹ Brînza Sergiu, *op. cit.*, p.145.

¹⁰ Sîrbu Nina, *Răspunderea penală pentru pseudoactivitatea de întreprinzător*. Chişinău, CEP USM, 2013, p.68.

¹¹ Timofei Sorin, *Răspunderea penală pentru infracţiunile în domeniul concurenţei*. Chişinău, CEP USM, 2011, p.142.

¹² Stati Vitalie, *Infracţiuni economice: Note de curs*, Chişinău, CEP USM, 2014, p.13.

¹³ Prodan Svetlana, *Răspunderea penală pentru infracţiunile legate de creditare*, Chişinău, CEP USM, 2011, p.120.

¹⁴ Ghireaev Ghenadii Sergeevici, *Caracteristica criminologică şi măsurile penale împotriva contrabandei*: Self-referenced doctoral dissertation in legal sciences, Sankt-Petersburg, 2005, p.8.

¹⁵ Boiko Alexandr Ivanovici, Rodina Liubovi Iurievna, *Contrabanda. Istorie, conţinutul şi răspunderea social-economică*. Sankt-Petersburg, Presa Centrului juridic, 2002. p.121.

¹⁶ Sobietki Rostislav, *Contrabanda: aspecte juridico-penale: studiu monografic*, Chişinău, Totex-Lux, 2013, p.77.

¹⁷ Kacikina Galina Pavlovna, *Contrabanda ca infracţiune vamală*, Summary of the author of the doctoral thesis regarding the contest of a scientific diploma of the candidate of legal sciences. Vladivostok, 2003, p.19.

goods¹⁸. Other authors are of the opinion that the generic legal object of customs offenses is the social relations that take into account the normal conduct of business activity by observing the customs regime¹⁹. According to O. Predescu, the common legal object of customs offenses is the social relations related to the crossing of the state border only through the customs control points of the goods and other objects of the physical or juridical persons and only on the basis of authentic documents and according to reality.²⁰

As far as we are concerned, we consider that, along with other similar criminal acts, by committing simple smuggling, skilled smuggling, the use of unrealistic acts or forged acts is directed at the state economy and the social relations deriving from that fundamental social value in a market economy country. In this context, I subscribe to the position of the author N.Giurgiu, who claims that extrapenal laws containing criminal provisions refer to special relations groups, which are organized into special criminal subsystems, taking into account the same ordinating distinction²¹. By the same orderly distinction, the author considers the grouping of the legal object by category, similar to the group existing in the Criminal Code. That is why we can not disagree with the position in the doctrine, according to which the generic legal object of these crimes is the social relations that ensure the observance of the regime established for certain economic activities²². In a similar position is V.Bujor and O.Pop, which states that the generic legal object is the entirety of socially protected relations, concerning economic, commercial and financial activities, and whose existence can not be conceived without the criminalization of facts the national economy, hinders the activity of economic agents and damages the economic interests of the population.²³

Finally, we conclude that *the generic legal object* of customs offenses, 248 and 249 of the Criminal Code, based on the technical-legislative placement of the norms of incrimination, as well as of the customs crimes in the criminal legislation of Romania, form *the national economy, as well as the social relations afferent to the so-called social values*.

At the same time, as a result of the doctrinal classification of economic crimes in several subgroups, including the group of offenses in the sphere of foreign economic activity (as part of which are customs offenses), we consider that the offenses under the name of smuggling and escape from the marginal the payment of customs payments, forming the group of customs offenses, challenges a common group of social relations inherent in the activity in the customs sphere. Consequently, we conclude that the offenses provided in art. 248 and 249 CC of the Republic of Moldova have the same *legal sub-group object*. It is true that S.Prodan argues that although Chapter X of the Special Part of the Criminal Code of the Republic of Moldova is not structured on divisional divisions corresponding to legal objects of a subgroup of economic crimes, it is still possible to identify such objects for the subgroups classification of economic offenses²⁴. S. Prodan also argues that the identification of the legal object of a subgroup of economic crimes according to the domains of the national economy allows for the breakdown of subgroups of offenses that affect the social relations that are developing and developing, for example, in the customs, tax, in other areas of the national economy²⁵. So, the content of the legal subgroup is strictly dependent on the classification of economic offenses in certain categories. Tax offenses have the same legal subgroup object. The same can be said about the crimes related to the entrepreneurial activity. Similarly, the customs offenses challenge the same legal object of the subgroup - *the social relations inherent in the activity in the customs sphere*. The existence of such an object is recognized in the doctrine of the Republic of Moldova. For example, R. Sobiețki argues that the typical or subgroup of

¹⁸ Voicu Costică, Boroi Alexandru, Sandu Florin, *Drept penal al afacerilor*, Bucharest, Rosetti, 2002, p.261.

¹⁹ Voicu Costică, Boroi Alexandru, Molnar Ioan, *Dreptul penal al afacerilor*, 4th edition, revised, Bucharest, C.H. Beck, 2008, p. 303.

²⁰ Predescu Ovidiu, *Drept penal al afacerilor*, Bucharest, Continent XXI, 2000, p. 259.

²¹ Giurgiu Narcis, *Legea penală și infracțiunea (doctrină, legislație, practică judiciară)*, Iași, Gama, 1996, p.164.

²² Ungureanu Augustin, Ciopraga Aurel, *Dispoziții penale din legi speciale române*, Bucharest, Lumina Lex, 1996, p.187.

²³ Bujor Valeriu, Pop Octavian, *op. cit.*, p.31.

²⁴ Prodan Svetlana, *op. cit.*, p.121.

²⁵ Ibidem.

smuggling offenses consists of the totality of social relations, the content of which is constituted by the free external economic activity, the foreign economic policy and the economic security of the state²⁶. In the same context, Iu.I. Sucicov points out that the legal subject of all customs offenses is the social relations related to external economic activity²⁷. Here too, Iu.I. Sucicov argues, rightly, that the legal subject of the subgroup is the criterion for the delimitation of customs offenses from other economic crimes, such as: offenses in the sphere of entrepreneurship, tax offenses, crimes in the financial and credit sphere, etc²⁸. At the same time, we specify that customs offenses differ from each other in terms of the distinct legal object.

3. The special legal object of customs offenses

After shaping the generic legal object, we will subject the investigation to the **special legal object** of customs offenses.

Ab initio, we assert that the particular legal object is the concrete individual social value that is harmed or threatened directly by committing a concrete criminal offense. At the same time, the special legal object is in strict dependence on the generic legal object of the offense. Therefore, in order to identify the specific legal object of customs offenses, the generic legal object of these crimes must be considered.

As regards smuggling offenses in the Moldovan criminal law, doctrinal opinions are different from the content of the special legal object. In R.Sobiețki's view, smuggling offenses particularly militate against the principle of banning criminal behavior in economic activity²⁹. I.Macari is of the opinion that the object of smuggling offenses is the social relations that regulate the movement of goods across the customs border of the Republic of Moldova and ensures the payment of customs payments in the budget³⁰. According to other authors, the special legal object of smuggling offenses is the total social relations that ensure the order of legal crossing of goods across the customs border of the Republic of Moldova³¹. Other theorists are of the opinion that the special legal object of smuggling is formed by the social relations related to the customs regime, relations whose normal development and development is conditioned by compliance with the rules imposed by the law on the customs control of goods or other goods³². In the sense of Iu.I. Sucicov, the special legal object of the smuggling offenses is the order of transit of the goods as well as of the means of transport across the customs border, established for ensuring a normal external economic activity, ie the social relations that occur between the organs of the state power and the leadership bodies, on the one hand, and entrepreneurs, organizations, cooperatives, and individuals, on the other hand, in the process of passing goods across the customs border³³. According to other authors, the special legal object of smuggling offenses is the social relations regarding the establishment through the customs regulation of the order of passing of different goods or objects across the customs border³⁴. Other authors, however, argue that as a special legal object of smuggling, the order of crossing the goods and means of transport across the customs border arises because the export and import is regulated, including through the establishment of prohibitions and limitations according to legislation.³⁵

²⁶ Sobiețki Rostislav, *op. cit.*, p.77.

²⁷ Suchkov Iurii Ivanovici, *Criminalitatea vamală: manual*, Kaliningrad State University Publishing House, 2000, p.12.

²⁸ Ibidem.

²⁹ Sobiețki Rostislav, *op. cit.*, p.78.

³⁰ Macari Ivan, *Dreptul penal al Republicii Moldova. Partea Specială*, Chișinău, CE USM, 2003, p.258.

³¹ Barbăneagră Alexei, Alecu Gheorghe, Berliba Viorel, *Codul penal al Republicii Moldova. Comentariu. (Adnotat cu jurisprudența CEDO și a instanțelor naționale)*, Chișinău, Sarmis, 2009, p.537.

³² Barbăneagră Alexei, Berliba Viorel, Gurschi Constantin, *Codul penal comentat și adnotat*, Chișinău: Cartier, 2005, p.395.

³³ Suchkov Iurii Ivanovici, *op. cit.*, p.14-15.

³⁴ A.Ă. Jalinskovo (ed.), *Comentariu practic a Codului penal al Federației Ruse*, Moscow, ĀKSMO, 2005, p.565.

³⁵ Rogatykh Liubovi Fiodorovna, *Contrabandă penală contravențională*, Sankt Petersburg, The St. Petersburg Law Institute of the General Prosecutor's Office of the Russian Federation, 2005, p.25.

In the view of L.Girla and Iu.Tabarcea, the special legal object of smuggling offenses is the social relations that ensure the customs security of the Republic of Moldova and the establishment of the order of transit of goods and means of transport across the customs border of the Republic of Moldova³⁶. According to S.Brza, V.Stati and Gh. Nicolaev, the special legal object of the crimes stipulated in art. 248 of the Criminal Code is to form the social relations regarding the customs security of the Republic of Moldova³⁷. We subscribe to the latter positions; precisely customs security as a component part of the economic security of the state is the basic social value against which the criminal offenses recorded in art. In this respect, the Customs Code of the Republic of Moldova establishes the legal, economic and organizational principles of customs activity and is oriented towards defending the sovereignty and economic security of the Republic of Moldova. As tasks of the customs body, the CC of the Republic of Moldova provides, inter alia, for ensuring the economic security of the state (letter c) art.11). We can not agree with the theoretical stance that smuggling offenses resemble the illegal crossing of the state border by protecting one and the same object - the inviolability of the state border³⁸. By criminalizing smuggling, the legislator wants to protect customs security, not the inviolability of the state border. The last social value is protected by the norms of art.362 CP RM (the illegal crossing of the state border).

In another register, it is considered in the literature that smuggling is included in the category of multi-object crimes, since it simultaneously attacks several objects of criminal protection: the main special legal object is the order of passage of goods and other objects over the customs border, while the secondary legal object, depending on the type of goods or the illegal object past the customs border, is the health of the population, the public security, the financial interests of the state, the interests of the consumer, etc³⁹. I.Macari reveals that smuggling offenses have an additional object - public order (in the case of smuggling with arms) or the health of the population (in case of smuggling with narcotic, radioactive, toxic substances, etc.)⁴⁰. In the context of smuggling with cultural values, the authors V. Berliba and R. Sobiețki note peremptorically the necessity of legal protection of social relations regarding the historical and cultural values and goods, or, in other words, of the entire national cultural patrimony.⁴¹

Indeed, in the case of the offenses referred to in paragraphs (2), (3), (4), art. 248 of the Criminal Code, the secondary level affects additional values and social relations. On this occasion we support the view expressed by S.Brza and V.Stati that in the case of the respective offenses, the special legal object becomes a multiple one⁴². This is because, through one action / inaction, several values and social relationships are affected. Here we talk about the existence of a special *primary* legal object and a special *secondary* legal object. According to the opinion of the same authors, which we embrace, we realize that as a special secondary legal object appear: a) social relations regarding the legal circulation of narcotic, psychotropic substances, with strong, toxic, poisonous, radioactive and explosive effects, as well as of harmful waste and of products with dual destination (in the case of the deed referred to in paragraph (2) art.248 CP RM); b) the social relations related to the legal circulation of weapons, explosive devices, ammunition (in the case of the deed referred to in paragraph (3) art.248 CP RM); c) the social relations regarding the legal circulation of cultural values (in the case of the deed referred to in paragraph (4) art.248 CP RM)).⁴³

In other respects, with regard to material entities possessing special qualities (narcotic substances, weapons, etc., except for cultural values), the theory of criminal law is emphasized:

³⁶ Girla Lilia, Tabarcea Iurie, *Drept penal al Republicii Moldova. Partea specială*. Vol. I., Chișinău, Cartdidact, 2010, p. 670.

³⁷ Brînza Sergiu, Stati Vitalie, *Tratat de drept penal. Partea Specială. Vol.II.*, Chișinău: Tipografia Centrală, 2015, p.281.

³⁸ Sobiețki Rostislav, *op. cit.*, p.178.

³⁹ Rozuman Irina Vasilievna, *Răspunderea penală pentru contrabandă: pe baza materialelor din Districtul federal siberian*, Self-summary of the thesis for the candidate of legal sciences, Omsk, 2005, p.11-12.

⁴⁰ Macari Ivan, *op. cit.*, p.258.

⁴¹ Berliba Viorel, Sobiețki Rostislav, *Aspecte de drept penal privind contra-banda cu valori istorico-culturale*. in: International Scientific and Practical Conference "Legal Protection of Cultural Values in the Republic of Moldova", Chișinău, 2008, p.82.

⁴² Brînza Sergiu, Stati Vitalie, *op. cit.*, p.281; Stati Vitalie, *op. cit.*, p. 429.

⁴³ Brînza Sergiu, Stati Vitalie, *op. cit.*, p.281; Stati Vitalie, *op. cit.*, p. 429; Stati Vitalie, *Infraacțiuni săvârșite în sfera activității economice externe (art.248 și 249 CP RM): studiu de drept penal*, „Studia Universitatis Moldaviae”, 2014, no. 8(78), p.126.

"The social role of such entities lies in the fact that they are sources of social danger increased. The use of their useful qualities in the interest of society is only under the thorough supervision of the state. This makes it possible to say that committing the offense with the use of such objects, including their illegal crossing over the customs border, constitutes an attempt at public security, public order, public health, but not external economic activity".⁴⁴ I.V. Rozumani believes that the smuggling of weapons, ammunition and explosive substances is the Chapter of the Special Part of the Criminal Code which contains the crimes against public security and smuggling of narcotic drugs, psychotropic substances and their analogues - Chapter XXV "Offenses against public health and social cohabitation"⁴⁵. We do not support such a position. We believe that the act of illegal crossing over the customs frontier of the previously mentioned entities is at the core of the social relations regarding the customs security of the Republic of Moldova and only in the secondary level - the social relations regarding the public health or, as the case may be, to public security. This is because the entities mentioned are illegally crossed over the customs border. Customs security, as a social value, is harmed in all cases of illegal crossing of goods across the customs border, irrespective of their quality. At the same time, the customs sphere is one of the main components of the economic sphere. It is precisely for these reasons that smuggling offenses (irrespective of the type of material / immaterial entities crossed over the customs border) are correctly placed within the group of offenses designed to protect the national economy as a fundamental social value. The same opinion is shared by other authors⁴⁶.

In the case of smuggling in the aggravated version provided by letter c) paragraph (5) art. 248 CP RM (smuggling committed by a person with responsibility, using the service situation), the special legal object of smuggling is a complex one, because through multiple actions / inactions, several social values and related social relationships are harmed. And in this hypothesis, we have two categories of special legal objects: one main and one secondary. R.Sobiețki denotes the object to which he is charged by committing smuggling by a person in charge of using the job situation as a special voluntary legal object, this being formed by the social relations that ensure the normal activity of the customs control bodies⁴⁷. In our opinion, in the case of the offense referred to in letter c) paragraph (5) art. 248 CP of the RM, the main legal object remains the same (considering the social relations regarding the customs security), while the secondary legal object it forms the social relations regarding the normal fulfillment of the duties in the public sphere.

In another context, the doctrine states that, in the secondary context, smuggling violates the legal regime of the state border⁴⁸. We can not support such a point of view because the nominated social value is not harmed by committing smuggling offenses, but by committing the offense provided under art. 362 of the Criminal Code (illegal crossing of the state border).

As regards the special legal object of the offenses stipulated in art. 249 of the CP of the Republic of Moldova, it is stated in the doctrine that it represents: "the social relations regarding payment of customs payments, the social relations in the sphere of external economic activity that determine the order of the state built - the financial means resulting from the customs payments collected when the goods cross the customs frontier"⁴⁹; "the customs clearance of goods and the order for payment of the customs payments"⁵⁰. V.P. Verin mentions that the evasion of payment of customs payments is a matter of the financial system of the country, because in the budget there are no financial means expressed in the due customs payments⁵¹. Z.M. Abdurahmanov argues that the

⁴⁴Rogatykh Liubovi Fiodorovna, *Contrabandă penală contravențională*, Sankt Petersburg, The St. Petersburg Law Institute of the General Prosecutor's Office of the Russian Federation, 2005, p.27.

⁴⁵ Rozuman Irina Vasilievna, *op. cit.*, p. 5.

⁴⁶ Sobiețki Rostislav, *op. cit.*, p.181-182.

⁴⁷ *Idem*, p.82.

⁴⁸Voicu Costică, Sandu Florin, Dascălu Ioan, *Frauda în domeniul financiar bancar și al pieței de capital*. Bucharest, Trei, 1998, p.261.

⁴⁹ Suchkov Iurii Ivanovici, *op. cit.*, p.71.

⁵⁰ Sobiețki Rostislav, *op. cit.*, p.179.

⁵¹ Verin Valerii Petrovici, *Infrațiunile în sfera economică*. Seria „Dreptul rus: teorie și practică”. Ghid practic. Moscow, Delo, 1999, p. 93.

special legal object of these crimes is formed by the social relations that occur in the process of calculating and paying the customs payments, as well as in the process of control over the full payment in due time of the due customs payments.⁵²

According to I. Macari, the special legal object of the crimes examined is the social relations established in the field of customs activity and the norms governing the accumulation of money in the state budget⁵³. We can not hold such a position since the practically unanimous literature is supported by an axiomatic thesis, according to which the rule of law can not in any case evolve as an object of the offense. The thesis was also demonstrated by the Moldavian author S. Brînza, in whose view the offense is a concern not on the law, but on the conditions that generated it, on the social relations protected and fixed by the law.⁵⁴

We are partakers of the doctrinal opinion according to which the special legal object of the offenses provided in art. 249 of the Criminal Code is the social relations regarding the formation of the national public budget on the way of paying the customs payments⁵⁵. Our arguments are as follows: By avoiding payment of customs payments, an onerous rule is violated in the Customs Code which obliges the person passing goods across the customs border to pay the corresponding import / export rights; by refraining from fulfilling this obligation, the perpetrator challenges the social relations regarding the formation of the state budget from the due customs payments. That is why we are in the position that the special legal object of the evasion of payment of the customs payments is the social relations related to the formation of the national public budget by paying the customs payments by the persons who pass over the customs border and which have such an obligation established by law.

In the context of the analysis of the object of criminal protection by criminalizing the facts provided by art. 249 CP RM, attention is paid to the assertion of the Russian author M.A. Cociube who mentions the following: "The mechanism of causing damage to the object of criminal protection by evasion of payment of customs payments is reduced to the fact that one of the subjects of social relations - the person obliged to pay the customs payments through its illegal actions (inactions) is automatically excluded from the financial relations of the customs area protected by criminal law. It does not execute or inappropriately execute its obligation to the state to pay the customs payments: it hides the goods passed over the customs border, reduces its cost, presents incorrect information about the nature or destination of the goods or uses other methods leading to the escape from total or partial payment of customs payments, which ultimately leads to an attenuation of the social relations in the sphere of customs activity."⁵⁶

Regarding the special legal object of the customs offenses according to the legislation of Romania, in the literature it is shown that in the case of smuggling offenses this is made up of the social relations whose normal birth and deployment are conditioned by the protection of the customs control operations, goods, the application of the customs tariff, as well as other customs operations caused by the crossing of the goods⁵⁷. According to other authors, the special legal object of smuggling is the social relations related to the customs regime, relations whose normal development and development is conditioned by compliance with the rules imposed by the law on the customs control of goods or other goods⁵⁸. In the view of F. Sandu, the object of legal protection in the case of smuggling offenses is the customs regime of Romania, as a major social interest or as an essential social value within the legal order of society, as well as the social relations whose birth

⁵²Abdurakhmanov Zacarigadji Magomedovici, *Răspunderea penală pentru neplata taxelor vamale percepute de la o organizație sau de la un individ*, Summary of the PhD thesis for the degree of candidate in legal sciences, Moscow, 2002, p.15.

⁵³ Macari Ivan, *op. cit.*, p.262.

⁵⁴ Brînza Sergiu, *Obiectul infracțiunilor contra patrimoniului*, *op. cit.*, p.40.

⁵⁵ Stati Vitalie, *Infracțiuni economice: Note de curs*, *op. cit.*, p. 462; Brînza Sergiu, Stati Vitalie, *Tratat de drept penal. Partea Specială. Vol.II.*, *op. cit.*, p. 294; Stati Vitalie, *Infracțiuni săvârșite în sfera activității economice externe (art.248 și 249 CP RM): studiu de drept penal*, *op. cit.*, p. 136.

⁵⁶Kochubey Marina Anatolievna, *Răspunderea penală pentru infracțiunile din sfera activității vamale*: the abstract thesis for the degree of candidate in the legal sciences, Rostov-on-Don, 1998, p.14.

⁵⁷ Cudrițescu Pilă Gianina, *Infracțiunea de contrabandă*, „Revista de Drept penal”, 2000, no.3, p.96.

⁵⁸ Tudor Georgiana, *Infracțiunea de contrabandă. Practică judiciară*, Bucharest, Hamangiu, 2011, p.26.

and development normal conditions depend on the protection of the customs regime⁵⁹. According to D.Bujorean, the special legal object of simple smuggling forms the customs regime as a major social value and the social relations that arise and take place in relation to it⁶⁰.

We do not support the view that the special legal object of smuggling provided in art.270 CC Rom forms the social relations related to the customs regime. Not the customs regime but customs security is social value. The customs regime forms the totality of customs regulations that determine the status of goods and means of transport according to the purpose of the operation and the destination of the goods, and as the object of criminal protection, legal regulations, but values and social relations, can not arise.

We also can not agree with the point of view of P.G. Cudrițescu, according to whom the smuggling of the goods from the customs control by passing over the state border through places other than those established for customs control, in the secondary plane, affects the social relations regarding the juridical regime of the state border of Romania⁶¹. However, we reach C.Duvac's view that, if the goods or goods are to be transported by a person in places other than those established, the constitutive elements of two offenses committed in a real contest - the smuggling offense and crime of fraudulent crossing of the border⁶².

In our opinion, similar smuggling offenses in the Moldovan criminal law, the special legal object of smuggling provided in art.270 CC Rom is the social relations regarding the Romanian customs security. In the case of the offense provided by art.271 CC Rom (qualified smuggling), the social relations related to the legal circulation of weapons, munitions, explosives, drugs, precursors, nuclear materials or other radioactive substances, toxic substances, wastes, residues or hazardous chemicals.

Regarding the offenses stipulated in art. 272 and 273 CC Rom, in doctrine it is considered that the special legal object consists of the social relations related to the customs regime, relations whose normal development and development is conditioned by observance of the rules imposed by the law for the control goods or other goods, as well as social relations whose normal birth and development are conditioned by the protection of trust in customs documents, whether official or private⁶³. F.Sandu believes that the use of unrealistic acts and the use of falsified acts has a major and a secondary legal object. According to the author, the main legal object is similar to that of smuggling, and the secondary legal entity forms the social relations whose normal birth and development is conditioned by the protection of trust in customs documents, either official or private⁶⁴. In our opinion, the offenses provided in art. 272 and 273 of the CC Rom and smuggling offenses have a special distinct legal object. However, there are not two offenses with a specially identical legal object. We are in the position that in the case of the offense provided by art.272 CC Rom (the use of unrealistic acts) the social relations regarding public confidence in official or private documents, defended by criminalizing the act of using unreal acts, are undermined. In the case of the offense provided by Art. 273 of the CC Rom (the use of falsified documents), the social relations regarding the trust of the public in the official or private documents, protected by the criminalization of the act of using falsified acts, are undermined.

4. General conclusions

The generic legal object of the customs offenses provided in art. 248 and 249 of the Criminal Code of the Republic of Moldova, based on the technical-legislative placement of the norms of incrimination, as well as of the customs crimes in the criminal legislation of Romania, form the national economy, as well as the social relations afferent to the so-called social values.

⁵⁹ Sandu Florin, *Contrabanda – componentă a crimei organizate*, Bucharest, Național Imprim, 1997, p.11.

⁶⁰ Bujorean Dragoș, *Infracțiunea de contrabandă și infracțiunea de evaziune fiscală*, „Revista de Drept penal”, 2011, no. 4, p.87.

⁶¹ Cudrițescu Pilă Gianina, *op. cit.*, p.96.

⁶² Duvac Constantin, *Infracțiunea de contrabandă*. „Revista de Drept penal”, 1998, no. 1, p. 41.

⁶³ Voicu Costică, Boroș Alexandru, Sandu Florin, *Drept penal al afacerilor*, *op. cit.*, p. 271.

⁶⁴ Sandu Florin, *Contrabanda și albirea banilor*, Bucharest: Trei, 1999, p. 27.

Crimes committed under the marginal smuggling and evasion of paying customs duties, forming the group of customs offenses, challenge a common group of social relations inherent in customs activity.

The content of the legal sub-group object is strictly dependent on the classification of economic offenses in certain categories. Customs offenses undermine the same legal subject of the subgroup - *the social relations inherent in the activity in the customs sphere*. The existence of such an object is recognized in the doctrine of the Republic of Moldova. Customs offenses also differ from one another in the light of the distinct legal object.

The special legal object of the offenses provided in art. 249 CP RM consists of the social relations regarding the formation of the national public budget on the way of paying the customs payments, since by forgiveness from payment of customs payments is violated an onerous norm in the Customs Code which obliges the person passing goods across the customs border to pay the import rights / export accordingly; by failing to fulfill this obligation, the perpetrator challenges the social relations regarding the formation of the state budget from the due customs payments.

The special legal object of smuggling provided in Art. 270 CC Rom represents the social relations regarding the Romanian customs security. In the case of the offense provided by art.271 CV Rom (qualified smuggling), the social relations related to the legal circulation of weapons, munitions, explosives, drugs, precursors, nuclear materials or other radioactive substances, toxic substances, wastes, residues or hazardous chemicals.

Regarding the offenses provided by Art. 272 and 273 of the CC Rom and smuggling offenses have a distinct legal object. In the case of the offense provided by art.272 CC Rom (the use of unreal acts), the social relations regarding the trust of the persons in the official or private documents, defended by the criminalization of the act of using unreal acts, are undermined. In the case of the offense provided by art. 273 of the CC Rom (the use of falsified documents), the social relations regarding the trust of the persons in the official or private documents, defended by the criminalization of the act of using falsified acts, are undermined.

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