

# Criminal liability for violating the customs legislation of the Eurasian Economic Union: a comparative legal research

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**Abstract.** The article conducted a comparative legal study of criminal law on the subject of liability for violation of customs legislation in countries belonging to the Eurasian Economic Union. The need for such a study is connected, among other things, with the adoption of new criminal laws in Kyrgyzstan, Kazakhstan, which is a border region with the Altai Krai. The study of this issue is also associated with the need to fulfill the commitments made by the Russian Federation to amend the national legislation, including (inter alia) criminal liability for violation of the customs legislation of the Customs Union and leading to the identical definition of wrongfulness of acts.

**Keywords:** criminal liability, violation, customs legislation, criminal law

## 1. Introduction

The priority of regional economic development of cross-border regions is the development of the project of the Eurasian Economic Union, the Customs Union. The legal basis for the unification of legislation in the framework of the Eurasian Economic Union is the “Agreement on the Specifics of Criminal and Administrative Responsibility for Violations of the Customs Legislation of the Customs Union and the Member States of the Customs Union,” signed in Astana on July 5, 2010 and the “Agreement on Legal Assistance and Cooperation of the Customs Authorities of the Member States of the Customs Union in Cases on Criminal and Administrative Offenses,” signed in Astana on July 5, 2010. The contract and the Agreement have a framework character, defining the main directions of the integration association of the Customs Union member countries, taking measures to amend their legislation, criminalizing violations of the customs legislation of the Customs Union and the legislation of the Parties, and leading to a uniform definition of the wrongfulness of such acts (Part 2 of Art. 3 Contracts).

## 2. Materials and Methods

The main method used in the framework of this work was the method of comparative legal research of criminal law norms on responsibility for customs crimes of the countries participating in the Eurasian Economic Union. In particular, we conducted a comparative analysis of the norms that establish responsibility for evading customs payments and contraband: Criminal Code of the Republic of Kazakhstan (July, 3 2014 No. 226-V) [1], Criminal Code of the Republic of Belarus (July 9, 1999 No. 275-Z) [2]; Criminal Code of the Kyrgyz Republic (February 2, 2017 No. 19) [3]; Criminal Code of the Republic of Armenia (April 29, 2003 No. 3P-528) [4]; Criminal Code of the Russian Federation (June 13, 1996 No. 63-FZ).

### 3. Research Results

First of all, criminal liability for evading customs payments is established by the criminal codes of all countries belonging to the Eurasian Union. The criminal laws of the Republic of Kazakhstan (Art. 236), the Republic of Belarus (Art. 231), the Kyrgyz Republic (Art. 230), the Russian Federation (Art. 194 of the Criminal Code of the Russian Federation) provide for special rules, referred to as evasion of customs payments. The criminal legislation of Armenia does not have a separate rule on liability for evading customs duties, but contains a general Article 205 on “evasion of taxes, duties and other obligatory payments.” Despite the general similarity in the content of the norm, there are significant differences that make it difficult to bring to criminal responsibility: as the main crime sign in the composition of the crimes indicated a major damage. The procedure for calculating the cost characteristics of major damage in different countries. In Belarus, Kazakhstan, and the Kyrgyz Republic, the basis for determining the magnitude of major damage is a conditional calculated figure, in Armenia the size of major damage is tied to the minimum wage, in the Russian Federation the amount of damage is set in a solid monetary amount over 2 mln. rub. In fact, when converting the value (size) into a single currency, it becomes obvious that the actual amount of damage for declaring a crime criminal differs significantly. Further, for convenience of perception, we present a summary table with a recalculation of the minimum amount of damage in the currency of the Russian Federation (Table 1).

**Table 1.** The minimum amount of repayment.

<b>EAEC State</b>	<b>Size of major damage (specified in the article of the general or special part of the criminal law)</b>	<b>Value equivalent in the currency of the participating country</b>	<b>Cost equivalent in the currency of the Russian Federation (exchange rate on April 4, 2019)</b>
Kazakhstan	The cost of unpaid customs duties, customs duties, taxes, special, anti-dumping, countervailing duties, exceeding 500 monthly calculated indicators	The size of the monthly calculation indicator as of January 1, 2019 is 2 525 tenge. The total amount of damage is 12,625,000 tenge.	2,172,611 rub. (exchange rate: 1/0,17).
Belarus	The amount of unpaid customs payments exceeds 2000 times the size of the base value set on the day of crime	The size of the base value as of January 1, 2019 is 25.50 rubles. The total amount of damage constitute is 51,000 Belarusian rub.	1,557,167 rub. (exchange rate: 1/30,53)
Kyrgyzstan	A large amount is the non-payment of payments, which is 1000 times higher than the calculated figure established by the legislation at the time of crime	The size of the calculated indicator as of January 1, 2019, constitute is 5 500 soms. The total amount of damage is 5,500,000 soms.	5,152,015 rub. (exchange rate: 1/0,94).
Armenia	Amount (cost) exceeding 1,000 minimum wage established at the time of crime	The size of the minimum wage on January 1, 2019, constitute is 55,000 drams. The total amount of damage is 55,000,000 drams.	7,380,780 rub. (exchange rate: 1/0,13)
Russia	The amount of unpaid customs payments exceeds 2,000,000 rub.	—————	2,000,001 rub.

There are also a number of methods describing the features of the objective side of the crime, they also differ:

- a. An abstract method: analyzing work of the Commission of the offence through the tax evasion in large sizes: Criminal Code of Belarus, Kazakhstan, Russia;
- b. A list of possible methods for committing crimes. For instance, there are such provisions in the Criminal Code of the Kyrgyz Republic: by not submitting documents for calculating payments or destroying documents or including deliberately distorted data in documents for calculating payments, as well as hiding other objects of taxation (Art. 230); the Criminal Code of Armenia: including in the accounting books or other documents, which are considered to be the basis for taxation based on the deliberately distorted data.

It is believed that indicating the ways of committing a crime in the disposition of the article significantly reduces the possibility of criminal prosecution for evasion of customs payments made in the territory of various member states of the Eurasian Economic Union.

The subject of a crime can be also different: (a) in the criminal laws of Kyrgyzstan, Belarus, Russia, the subject of a crime is only non-payment of customs duties; (b) in the criminal law of Armenia, Art. 205 establishes liability for evading taxes, duties, and other obligatory payments.

Thus, in addition to the subject of the crime, there are differences in the immediate object of the crime. In the criminal law of Kazakhstan, the subject of criminal evasion is also expanded, by indicating evasion from payment of customs duties, customs fee, taxes, special, anti-dumping, countervailing duties. It seems that to determine the list of customs duties, it is necessary to refer to the norms of the unified customs legislation, namely the Customs code. It contains a list of fees charged when crossing the customs border of the Union. It is also necessary to refer to the national tax legislation. For this reason, a listing in the dispositions of the criminal law, a blanket in its content, and all possible payments are, in our opinion, unnecessary, as well as the assignment of a crime to the category of tax. The assignment of a crime, manifested in evasion from the payment of customs duties, to the category of tax in the national criminal law will make it impossible to fulfill obligations under the Contact and Agreement, on the unification of the criminal legislation of the member countries of the Customs Union.

It also includes the possibility of exemption from criminal liability, which is provided for in the notes to the article in the Special Part of the Criminal Code of Kyrgyzstan: at voluntary repayment of all amount of customs debt, and also the added penalty fee, penalties, criminal prosecution is subject to termination at any stage of criminal process. The Criminal Code of Kazakhstan also provides for the possibility to exempt a person from criminal liability with full payment of the arrears on the payments transferred, as well as fee, penalties and interest.

The possibility of release is provided only for the Commission under Part 1 of Art. 236 of the Criminal Code of the Republic of Kazakhstan: (a) exemption from crime, responsibility for which is provided for in Part 2 of Art. of the Criminal Code (qualified personnel), is not possible; (b) exemption from criminal liability is not provided in the note to the article of the Special Part. In case of compensation for damage caused to the state, a person may be exempted from criminal liability on the grounds provided for in the General Part of the Criminal Law: in the Criminal Code of the Russian Federation (Part 2 of Art. 76.1) in committing crimes under Part 1 and Part 2 of Art. 194 of the Criminal Code of the Russian Federation. Art. 88/1 of the Criminal Code of the Republic of Belarus provides for the possibility of exemption from criminal liability in the event that the person who committed the crime, which caused damage to state property or property of a legal entity, the share in the authorized capital of which belongs to the state, or significant harm to state or public interests and not associated with violation of a person's life or health, may be exempted from criminal liability in accordance with the procedure established by a legislative act, if it is voluntarily; c) the Criminal Code of the Republic of Armenia does not provide for the possibility of exemption from criminal liability for evading customs payments.

Thus, in this case, we have significant differences in the national legislation establishing the responsibility for actually equal violations.

Second, it is necessary to review the criminal liability for contraband. The current Criminal Code of the Russian Federation establishes the criminal liability for smuggling (illegal movement of goods

and valuables across the customs border) only in respect of certain groups of goods and valuables: cash and/or cash instruments (Art. 200.1); alcohol and / or tobacco products (Art. 200.2); potent, poisonous, toxic, explosive, radioactive substances, radiation sources, nuclear materials, firearms or their main parts, explosive devices, ammunition, weapons of mass destruction, their means of delivery, other weapons, other military equipment, as well as materials and equipment that can be used to create weapons of mass destruction, means of delivery, other weapons, other military equipment, as well as strategically important goods and resources or cultural property, or especially valuable wild animals and aquatic biological resources (Art. 226.1); narcotic drugs, psychotropic substances, their precursors or analogues, plants containing narcotic drugs, psychotropic substances or their precursors, or parts thereof containing narcotic drugs, psychotropic substances or their precursors, tools or equipment under special control and used to make narcotic drugs or psychotropic substances (Art. 229.1). Responsibility for the so-called “commodity” smuggling, i.e. the illegal movement of goods across the customs border of the Customs Union, as well as for their inaccurate declaration, is provided for by the Code of Administrative Offenses (Art. 16.1 and Art. 16.3).

The criminal laws of other member countries of the Eurasian Economic Union envisage criminal liability for smuggling, meaning in its most general form, the illegal movement of goods and valuables across the customs border: Art. 213 Criminal Code of the Republic of Armenia; Art. 234 and Art. 233 Criminal Code of the Republic of Kyrgyzstan. Art. 228 Criminal Code of the Republic of Belarus criminal liability for smuggling is established only in respect of goods prohibited or restricted for movement. However, in the independent rule of criminal law – Art. 228/1 provides for criminal liability for a repeated violation committed within a year after the imposition of an administrative penalty for the same violation and expressed in the movement of goods across the customs border of the Customs Union outside the places specified by the law, or at an unspecified time of work of the customs authorities in these places, in the absence of signs crime stipulated by Art. 228 Criminal Code of the Republic of Belarus.

In the absence of a special rule on smuggling in the Russian judicial and investigative practice after 2011 (decriminalization of Art. 188 - Contraband), acts on the illegal movement of goods, material values not expressly specified in the dispositions of special criminal law norms, qualify according to the relevant part of Art. 194 of the Criminal Code. As a rule, sentences in specific cases contain the following wording: illegal transfer of resources across the customs border of the Customs Union within the EAEC, this should include, among other things, the movement of such items using documents containing false information about the objects being moved, and (or a) using fake or other means of identification. These actions are aimed at the non-payment (evasion of payment) of customs duties and constitute the elements of a crime under Art. 194 of the Criminal Code of the Russian Federation [5].

#### **4. Discussion**

First, regarding the rules for unifying the amount of damage for crimes committed in the legal literature, various opinions were expressed, including the proposed, given the nature of the evidence under consideration, it is necessary to introduce a supranational currency throughout the territory of the Customs Union, through which it is possible to determine the cost criterion of punishability of an act [6]. In our opinion, this discrepancy can be eliminated. For instance, within the Eurasian Economic Union, for the purpose of unifying criminal legislation, it is possible to determine a conditional value (analogue to Special Drawing Rights - SDR), which will be the weighted average rate of national currencies and be the only criterion for determining a cost damage from crimes related to the violation of customs legislation, including for evading customs payments.

Second, when describing the signs of the objective side in national law, one should refuse to list the methods of committing a crime, the items (specific payments) and the indication of the need to appeal to the general customs legislation.

Third, for all participating countries it is necessary to provide for the possibility of exemption from criminal liability for the crimes in question with full compensation of the amount of damage (payment

of all payments, penalties, fines). Not all scholars agree with this opinion, believing that when establishing rules on exemption from criminal responsibility creates the possibility of unjustified evasion of responsibility in one state, and the need to undergo negative criminal law consequences in another, and propose to exclude from the criminal laws the relevant standard (for example, Art. 236 of the Criminal Code of Kazakhstan) [7].

Fourth, there is a possibility of rejecting an independent composition of contraband, by analogy with the Russian and Belarusian criminal law. A position that the smuggling of goods, works, services is not prohibited to turnover does not have a sufficient degree of public danger for its recognition as a crime seems reasonable, since the purpose of such movement is not the fact of movement of goods, values across the customs border, but “saving” on customs payments, their non-payment.

## 5. Conclusion

According to the results of the study, we came to the conclusion that it is necessary to unify the criminal legislation on liability for violations of the customs legislation of the member countries of the Eurasian Economic Union as soon as possible, since the inconsistencies in practice lead to the priority of the national regime of the state with the most favorable consequences for the violators.

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