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CRIMINAL LIABILITY FOR VIOLATION OF THE PROCEDURE FOR CARRYING OUT INTERNATIONAL TRANSFER OF GOODS SUBJECT TO STATE EXPORT CONTROL AS ONE OF THE MEANS OF ENSURING COLLECTIVE INTERNATIONAL SECURITY

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ABSTRACT. The article makes it clear that a breach of a procedure for carrying out the international transfer of goods that are subject to national export control may be harmful to the national security of the state itself. This is why it is necessary to criminalize violations of international transfers of items under state export supervision. Different groups of factors influencing criminalization are revealed. Within the framework of the study, a review of the literature regarding the violation of the basic principles of criminal law and the factors which are the conditions of its introduction was conducted. Court practice materials were studied. It has been established that the criminal offense provided for in Art. 333 of the Criminal Code of Ukraine cannot be understood as a 'pure international convention', since the feature determining the violation of the regime of international transfers of goods subject to state export control is a sign. This is not a factor that arises from Ukraine's international treaties. Except for specific acts defined by the Convention on the Prohibition of the Development, production, stockpiling, and use of chemical weapons and their destruction.

Keywords: criminal liability, criminalization, export control, national security, international transfer.

INTRODUCTION

The establishment of an efficient system of measures for state oversight of operations is linked to the necessity of criminalizing breaches of the protocol for international commodities transfers. The connection of government control of exports is linked to the international transfer of goods. Especially, by establishing in national legislation not only control but also safety standards. This subject is highly pertinent in contemporary circumstances. Consequently, the principles emphasizing Ukraine's national interests in state policy on export control should be created in accordance with political, economic, and militaristic considerations, the protection of which is vital for preserving national security. The defense of the sovereignty and territorial integrity of Ukraine, and ensuring its economic and information security are the most important tasks of the state, and the business of the entire Ukrainian people. Economic security is carried out by implementing effective measures aimed at eliminating or minimizing external and internal threats to Ukraine's economic potential, whose fundamental national interests include the sustainable development of the national economy, civil society, and the state to ensure the growth of the population's level and quality of life. Such measures include, in particular, the mechanism of state coercion, which is realized through the strictest type of legal responsibility - criminal. It is established for committing socially dangerous acts that infringe on the established order of economic activity and inviolability of state borders, including the order in export control. Effective export control over transfers of military and dual-use goods and the provision of relevant services in any state is one of the means of ensuring national security and fulfilling international obligations in the field of collective interstate security, which is due to such factors as international terrorism, the emergence of quasi-state territorial formations under the control of terrorist organizations and the creation and active involvement of private military companies in military conflicts.

MATERIALS AND METHODS

Distinguish issues about criminal liability for breaches of established procedures; concurrently, certain provisions concerning military globalization necessitate novel approaches to comprehending their essence, thereby warranting the identification of several new avenues in the evolution of the problem.

The process of the scientific study used theoretical, general scientific, and specific methods. Particularly, analysis, synthesis, deduction, induction, generalization, formalization, abstraction, and modeling should be included among the theoretical general scientific methods that became the basis for the preparation of all subdivisions of the dissertation research. The methods used in the study of the grounds for criminalization of violation of the procedure for carrying out international transfers of goods subject to state export control and the practice of imposing punishments for these criminal offenses. The first one is historical, followed by statistical. The systematic method was applied when studying the procedure for international transfers of goods subject to state export control as a subject of criminal law protection. The study of foreign experience in the regulation of criminal liability for violation of the procedure for carrying out international transfers of goods subject to state export control was carried out using the comparative legal method.

RESULTS

State export control is a complex of measures to control international transfers of goods, and their use by a legal entity or an individual, carried out by the central body of executive power, which implements state policy in the field of state export control, and by other state bodies to ensure the protection of the interests of national security and by Ukraine's international obligations. In particular, violations of the requirements of legislation in the field of state export control are:

1) international transfers of goods without obtaining permits, conclusions or guarantee documents in the prescribed manner, or carrying out such transfers on the basis of permits, conclusions or guarantee documents obtained by submitting forged documents or documents containing inaccurate information;

2) concluding foreign economic agreements on international transfers of any goods or participating in their execution in a manner not permitted by this Law, if the business entity has knowledge that such goods may be used by a foreign state or foreign economic entity for the purpose of creating weapons of mass destruction or means of their delivery;

3) carrying out the international transfer of goods, even if the company has learnt that the goods will be handled for a different destination or by a different end-user from that specified in the contract, which is the basis for obtaining an international import certificate;

4) deliberate concealment of information that is important for deciding the issue of granting a permit, opinion or international import certificate;

5) carrying out international transfers of goods in violation of the conditions specified in permits, conclusions or international import certificates, including after making changes to a foreign economic agreement (contract) without the consent of the central executive body that implements state policy in the field of state export control , concerning the names and requisites of exporters, importers, intermediaries and end consumers, as well as the names of goods, obligations about their final use and provision of relevant guarantee documents;

6) conducting negotiations related to the conclusion of foreign economic agreements regarding the export of goods, the delivery of which is subject to a partial embargo to the relevant foreign state, based on the international obligations of Ukraine, without receiving the appropriate positive conclusion of the central executive body, which implements state policy in the field of state export control;

7) not submitting or not timely providing to the government authority carrying out the state policy in the area of national export control of statements and appropriate papers containing reports and relevant documents on the results of investigations referred to in paragraph 8 of this Article (Art.), as well as on the effective display of exports and imports of items on the basis of permits, reports or international import certificates obtained, of received permits, conclusions or international import certificates, and on the use of these goods for the stated purposes;

8) obstructing the performance of official duties by officials of the government export control and others, in the course of their professional responsibilities, or failing to fulfil legal obligations imposed on such persons;

9) groundless refusal to provide information and documents required by the central executive body that implements state policy in the field of state export control, or by another state body that carries out state export control within the limits of its powers, their deliberate distortion or concealment;

10) deliberate destruction of documents related to the conclusion and execution of foreign economic agreements (contracts) regarding the implementation of international transfers

of goods, on the basis of which permits, conclusions or international import certificates were obtained, before the end of their storage period.

International security is the state of protection of international relations from external and in certain cases internal threats, which is characterized by such features as 1) recognition of sovereignty and equality between states; 2) availability of international cooperation; 3) resolving the contradictions between states through peaceful settlement; 4) adherence to the basic principles and generally recognized norms of international law in its context. (O.D. Zverev, M.I. Prykhnenko 2022, p. 27-32).

Several scientific ideas on the nature of criminal responsibility were developed in the national criminal law doctrine, specifically:

1) as the application of a sanction;

2) penalty;

3) an obligation to endure certain restrictions;

4) a special type of legal relationship. In addition, scientists formulate more general, that is, those not due to the generic object, the determination of the direct object of violation of the procedure for the implementation of international transfers of goods subject to state export control.

In particular, according to Popovich, the direct object of the violation of the procedure for the implementation of cross-border transfers of the items subject to state control over exports is the established procedure for the implementation of cross-border transfers of the items subject to state control over exports. (V.M. Popovich 2022, p. 319 c.).

At the present stage, export control is an integral part of trade and entrepreneurship, which, as Gura and Novitsky, rightly note poly". (V.L. Gura, V.A. Novitsky 2021, p. C. 16-19).

This view on implementing criminal responsibility aligns with the third phase of „direct" criminal accountability, marking when the guilty verdict is officially upheld and enforceable.

Understanding the implementation of criminal responsibility is more valid because the division of it into steps encompasses different aspects. Consequently, if someone transgresses the procedure for transferring commodities abroad that are governed by state export control this person may 1) be released from criminal prosecution; 2) be punished with the possibility of release from serving, and 3) be punished with no possibility of release from serving.

From the materials of court practice, only a small part (9 judgments out of 100 researched court decisions for 2019-2022) can be considered as an exemption from prosecution with no penalty for violation of the procedure for export transfers under export control. Moreover, in 7 cases (7 decisions) exemption from criminal liability was carried out based on Art. 47 of the CCU concerning a person being placed on bail (reyestr.court.gov.ua/Review/104783229). In all of the above cases, the defendant has been in labor relations with the collective, which submitted a request for the transfer of the person to bail, the prosecutor did not object to the satisfaction of such a request. Regarding the right of a court to exempt a violator from criminal liability on the bail of the labor team, the case held by a court in the Volyn region of the Luboml district should be mentioned. The court examined a collective application for the exoneration of PERSON_4, the service and maintenance engineer of COMPANY_1. Thus, the court held that a violator can exercise this right provided he or she assures the court of changing his or her social conduct by interacting with the public actively. The court referred to the fact and it can contain the next items: 1) a first-time offender; 2) the acts belong to a pennal offense, which is a misdemeanor or a low-level felony; 3) the actions do not relate to bribery offences or violations of road safety rules; 4) someone who committed the crime sincerely repented; 5) the collective of an enterprise is willing to accept someone as a surety and has applied to the court with a corresponding request; 6) someone who has no objection to the closing of the penal action; 7) conditions of bail are compliance with educational measures and compliance with public order determined by the team of the enterprise, institution or organization taking the person as bail. Additionally, the court determined that the criminal offense specified in Art. 12 of the Criminal Code of Ukraine (CCU) is not a serious crime and does not involve corruption (see Art. 45 of the CCU) or violations of traffic safety regulations. Additionally, the accused sincerely apologized for his actions, acknowledged his guilt, and expressed disapproval of the harm he had caused. In light of the aforementioned, the court determined that, following Art. 47 of the CCU, PERSON_4 was released from criminal liability for committing a crime as defined in section 1 of Art. 333 of the CCU, based on Art. 47 of the CCU in connection with his bail to the labor team of LLC „VB UKRAINE", if he, within a year from the day of it, fulfills the trust of the team, does not avoid and violate educative programs in public order (register. court. gov.ua/ Review/96054894).

In two instances, a change in circumstances was linked to an exemption from criminal culpability. Specifically, Russia's aggression against Ukraine was the primary driving force behind the Ripkinsky district court of the Chernihiv region's judgment in case No. 743/1392/21 to exonerate the defendant from criminal accountability following Art. 48 of the CCU. February 24, 2022, in the resolution dated June 6, 2022. The court declared: „Presidential Decree No. 64/2022 imposed martial law after the Russian Federation initiated a military attack against Ukraine". The established group, including PERSON_4, bought military-use items that were in demand at Ukrainian defense companies on Russian Federation territory.

These items were then concealed as other items, specifically parts and components for different kinds of equipment, and transported to Ukraine across the Republic of Belarus border, where they were purchased by economic entities controlled by a special group. It has to be noted that by executing the plan to import klystrons from the area of the Russian Federation via the Republic of Belarus to the territory of Ukraine, the chargers who had taken actions to reduce the defence potential of the hostage country and to improve the defence potential of the Armed Forces of Ukraine because companies who manufactured and repaired air defense systems were to buy the klystrons. According to Art. 11 of the CCU, a criminal offense poses a risk to the public when it causes or has the potential to inflict serious harm to a person, organization or the government. PERSON_4's actions during the war between the Russian Federation and Ukraine, which included the provision of military supplies to Ukrainian defense companies, did not and could not cause damage to any person or to the public and the country.

Therefore, it can be said things have changed and that PERSON_4's action is no longer a public danger. In addition, PERSON_4 is charged with the crime provided for in Part 2 of Art. 333 of the CCU, by Art. 12 of the CCU is not difficult. Taking into account the stated circumstances, the court holds that there are bases, specified in Art. 48 of the CCU, to release the accused PERSON_4 criminal liability related to the changed situation".

Another basis for issuing a decision on exemption from prosecution under Art. 48 of the CCU is the loss of a person who is a danger to the public. The judgment rendered in case No. 584/868/20 by the Putivl District Court of the Sumy Region on July 17, 2020, serves as an illustration of this. It found that the accused „PERSON_4 committed a felony for the first time, which, based on art. 12 of the CCU, is a crime of medium gravity, he has not been held criminally liable before, he no longer serves as the head of the SEIM PVP, what he did was no longer a threat to anyone, but now he is a disabled person of the second group and his health has deteriorated due to burns on his limbs, which is confirmed by medicine documents, i.e. there are reasons to believe that due to the change in situation, he is no longer a person at risk of social disadvantage. Conviction that exempts from serving the sentence was due to the expiry of the statute of limitations (Art. 74, 49 of the CCU) and exemption from serving a sentence with probation (Art. 75 of the CCU) (8 sentences) (1 judgment). The fairly small share of exemptions from serving a sentence with probation (Art. 75 of the CCU) is explained by the fact that the courts applied exemption from serving a sentence with probation in the case of imposing punishments in the form of restriction of liberty and deprivation of liberty, which, as can be seen from the next subsection, is only an insignificant share compared to the application of punishment in the form of a fine, which is most often imposed by the courts.

When deciding on the exemption from serving a sentence with probation (Art. 75 of the CCU), the following factors were considered by the courts: 1) seriousness of the offense - violation of the law regulating international transfers of items controlled under state export control is a petty offense; 2) information about the accused's identity, such as the lack of a criminal record, favorable characteristics by place of residence, and employment; 3) the existence of mitigating circumstances, such as genuine regret, active assistance in solving the crime, and refraining from causing harm; and 4) the absence of circumstances that would have increased the accused's punishment. It is evident from five of the eight sentences that a plea deal reached between the defendant and the attorney and accepted by the court allowed for an exemption from serving a term with probation (reyestr.court.gov.ua/Review/90128597).

The September 15, 2022, decision in case No. 1-681/11 by the panel of judges of the Lviv Court of Appeal's criminal trial chamber, provides an example of an exemption from serving a sentence because the statute of limitations has passed. Thus, the decision of the Railway District Court of Lviv of 27 November 2015, by which PERSON_6 was found guilty of the criminal offense referred to in Part 1 of Art. 333 of the CCU, the sanction of which, in the wording valid at the time of its commission, provided for punishment in the form of a fine from one hundred to two hundred NMDH or restriction of freedom for a term of up to three years, or deprivation of liberty for the same term, with deprivation of the right to hold certain positions or engage in a certain activity for a period of up to three years or without such, from which it follows that the indicted criminal offense is a juvenile crime, concluded that more than four years had gone by since the day it was commissioned. Due to Clause 3, Part 1, Art. 49 of the CCU, a person is released from criminal liability if five years have passed from the day he committed the criminal offense to the day the sentence becomes final - in the case of a minor crime, except for the case provided for in clause 2 of this part. The Lviv Court of Appeal determined to exempt PERSON_6 from serving the sentence following Part 5 of Art. 74 of the CCU in light of the aforementioned circumstances and the statute of limitations' expiration. (reyestr.court.gov.ua/Review/106302163).

DISCUSSION

At the same time, it is necessary to pay attention to the limited number of criminal legal studies, and, as a result, the presence of issues that are debatable or insufficiently researched. We believe that such issues can be attributed to the legal nature of the contravention of the order of the procedure for carrying out international transfers at the export control of goods, the social conditionality of the criminalization of this act, and the relationship between actions that result in administrative and criminal liability, foreign experience in regulating criminal liability for violation of the order of international transfers goods, a description of the elements of the criminal offense under consideration in the criminal law. The above substantiates the relevance of the research topic and the importance of a comprehensive study of criminal liability for violation of the order of international transfers of goods subject to state export control.

The concerns surrounding the primary direct object of the infringement of the protocol for executing international transfers of goods subject to export control, as dictated by legislation, remain contentious; the potential for designating an optional supplementary direct object of a criminal offense under Art. 333 of the CCU, which pertains to public relations in the domain of national or public security and international order, arises in instances where procedural violations constitute an encroachment on national or public security and international law.

Divergent opinions regarding the specifics of foreign experience in enforcing accountability for transgressions of the process for carrying out international transfers of products subject to state export control, including: 1) the absence of a general rule that would provide for responsibility for the specified act; 2) criminalization of only individual acts that are violation of the order of international transfers of goods subject to state export control, in particular, smuggling of objects, the movement of which is subject to special rules, including state export control; 3) relatively non-common regulations on liability for the illicit export of technologies, scientific and technical data, and services that can be used to create WMDs, their delivery systems, weapons, and military hardware for which special export controls are in place, as well as on illegal entrepreneurship in terms of breaking license terms when engaging in activities involving products controlled by special (state) export laws; 4) in individual states, the responsibility for violation of the procedure for the implementation of international transfers of controlled goods is determined by separate acts, which combine the provisions on different types of liability, except for criminal-civil law and administrative.

There has been substantial discussion over the position of penalties for breaking the law with regard to the international transfer of products that are subject to state export control. It has been established that the majority of the most severe penalties imposed, including those agreed upon by the parties involved in a plea agreement, are fines; the absence of a general norm; criminalization of only certain acts that constitute a violation of the order of international transfers of goods subject to state export control, in particular, smuggling of objects, the movement of which is subject to special rules, including state export control; the relative infrequency of norms on responsibility for the illegal export of technologies, scientific and technical information and services that can be used in the creation of weapons of mass destruction, means of their delivery, weapons and military equipment and in respect of which special export control has been established, as well as on illegal entrepreneurship in violation of licensing conditions when carrying out activities with goods subject to special (state export) control.

CONCLUSION

It can be seen from the above that such forms of implementation of criminal liability as exemption from criminal liability without imposition of punishment and imposition of punishment with the application of exemption from serving punishment constitute practically equal shares in the method for enforcing criminal penalties for breaking the rules governing international trade in products that are subject to state export control.

Instead, the quantitatively largest share is the imposition of punishment with its subsequent execution (service). The public risk associated with the breach of international goods transfer regulations, subject to state export control, extends beyond the deterioration of a nation's economy, security, or defense capabilities; it may also possess international implications. The prerequisite for consideration of the procedure for international transfers of goods subject to state export control as an object of criminal law protection is the establishment of criminal liability for contravention of the specified procedure, which is a form of classifying a certain set of legal relations as the most important since their protection is carried out precisely using criminal liability. The creation of an efficient system of measures to establish national control over the implementation of international transfers from state export control by enshrining in national legislation both regulatory and protective norms is a prerequisite for the criminalization of violations of the procedure for carrying out international transfers of goods subject to state export control.

The protective function is implemented through the application of protective norms, the implementation of which involves the establishment of obligations, prohibitions, the use of coercive measures, and the establishment of sanctions that are punitive, including the establishment of criminal liability.

In this context, to being governed by administrative or economic law, the process for international transfers of products that are subject to state export control is also protected by criminal law. Enshrining in legislation criminal responsibility for committing a certain act should be based on the fundamental theoretical principles of criminal law science, including the determination of the place of relevant legal norms in the general system of criminal law protection. In this light, it is essential to examine the procedure for international transfers of products subject to state export control as a topic of criminal law protection.

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