



Comparative Perspective on Customs Offences: Romania and the Republic of Moldova in the Legal and Customs Context

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Abstract: This study comparatively analyzes the contraventions and customs offenses in Romania and the Republic of Moldova, in the legal and customs context specific to each country. In this sense, both the legislative differences and the similarities between the two states are highlighted. The research explores the historical developments of customs regulations, the constituent elements of customs contraventions and offences, and applicable sanctions. Finally, the paper aims to contribute to a deeper understanding of the customs criminal phenomenon and to provide a basis for reflection for improving legislation in the field.

Keywords: customs contraventions; customs offences; legislative differences; customs regulations

1. Introduction

Regulation of contraventions and customs offenses is essential for ensuring the economic and legal security of a state. It contributes to protecting state revenues, supporting local producers, preventing cross-border illicit activities and strengthening the rule of law. A well-regulated and efficiently applied customs system is a fundamental pillar for economic stability, national security and the maintenance of a predictable and fair business climate, both domestically and in international trade relations.

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Customs regulations in Romania and the Republic of Moldova are fundamental for economic and security control at the borders of the states. Although Romania applies European customs legislation, the Republic of Moldova continues to develop and improve its own system, influenced by trade relations with the EU. In both countries, current challenges involve harmonizing legislation with international standards and effectively combating customs crimes and contraventions to protect national economic interests.

2. Romania and the Republic of Moldova: Brief History and Evolution of Customs Legislation

Both Romania and the Republic of Moldova have gone through significant changes in terms of customs legislation, in the context of the political, economic and social evolution in the region.

In the interwar period, Romania had a simplified customs system, based on protecting the national economy and supporting trade. “Legislation has criminalized customs crimes, in this case smuggling, starting with the Law issued to amend the General Customs Law of June 15, 1873, the General Customs Law of June 1, 1905, the Law for the General Administration of Customs of April 13, 1933...” (Pasat, 2017, pp. 81-84). However, after the Second World War, with the establishment of the communist regime, Romania adopted a strict customs policy, aimed at controlling the flow of goods both in imports and exports. During the communist regime, Romania’s borders became highly controlled, and the customs code was oriented more towards ensuring the state’s control over resources. Even though the first customs code was adopted at the end of 1978, international trade was managed entirely by the state, and customs policies reflected the economic closures imposed by the socialist regime. “From judicial practice and specialized literature, from the period when the first Romanian Customs Code¹ was in force, it was observed that the law referred exclusively to ‘goods,’ which meant that, in the event of passing through places other than those established for the customs control of persons it was committed, in ideal or formal competition with the crime of smuggling and that of fraudulent border crossing” (Pasat, 2014, pp. 64-69).

After 1989, Romania began an extensive process of economic liberalization and reform of the customs system. The evolution of Romanian customs legislation

¹ Law no. 30 of December 22, 1978 Customs Code of the Socialist Republic of Romania. Issuer: Great National Assembly, Published in: Official Bulletin no. 115 of December 28, 1978.

during this period was based on the opening of the national economy to the international market and on harmonization with European standards. In 2004, Romania signed the Treaty of Accession to the European Union. In the pre-accession period, it adjusted its customs legislation to correspond to European norms, thus “in 2006, the last regulations in the field of customs law stipulated in Law no. 86/2006¹ which adopted the Customs Code, thirteen (I -XIII) titles, structured in 288 articles. By HG no. 707/2006, the Regulation on the application of the Romanian Customs Code was approved, and by GEO no. 10/2004, the customs staff statute was adopted” (Pasat, 2014, pp. 68-73). Romania’s accession to the EU brought the implementation of the Community Customs Code (EU customs rules), which meant the elimination of customs duties between member states and the adoption of common customs tariffs for non-EU countries. Currently, Romania’s customs legislation is fully aligned with European legislation, applying common regulations in all EU member states, including the modernized customs code of the European Union, which allows digitization of procedures and simplification of commercial formalities.

The Republic of Moldova, as part of the Soviet Union until 1991, had a centralized customs system regulated by Moscow. All foreign trade was managed by the state, and customs policy reflected the Soviet planned economy. During this period, borders were closed to free trade and extremely stringent tariffs and customs restrictions were imposed to control imports and exports. “The history of customs activity in the Republic of Moldova begins after the proclamation of independence, on August 27, 1991, with the entry into force of Presidential Decree no. 189 of September 3, 1991, regarding the subordination of customs institutions located on the territory of the country, being the first state structures created declaration of independence” (Maimescu & Pasat, 2015, pp. 156-159). In 1993, the Republic of Moldova adopted its first Customs Code. It was intended to regulate trade with other states and establish a modern legislative framework for customs relations.

After 2000, the Republic of Moldova introduced legislative changes to combat corruption and simplify customs procedures. As the Republic of Moldova began to bring its legislation and economy closer to European standards, significant progress

¹ The Customs Code of the Republic of Moldova, Published: 17-09-2021 in the Official Monitor No. 219-225 Art. 238, In Accordance with the Latest Amendments and Additions from the Official Monitor of the Republic of Moldova: In Force on 01.01.2023.

was made in the reform of the Customs Code, with an emphasis on modernization and integration into the global market.

Moldova started the process of harmonizing its customs legislation with that of the EU after signing the Association Agreement with the European Union in 2014. This agreement included a Free Trade Agreement (DCFTA - Deep and Comprehensive Free Trade Area), to facilitate trade and ensure compliance with international standards.

In 2016, Moldova adopted a new customs code, aimed at facilitating European integration and implementing measures to simplify and digitize customs procedures.

The evolution of customs legislation in Romania and the Republic of Moldova reflects the processes of political and economic transformation in the two countries. While Romania has adapted its legislation to fully integrate into the European Union, the Republic of Moldova is still in a process of legislative harmonization, with the aim of facilitating commercial relations and economic integration in the European market.

Both countries have made significant progress in modernizing and digitizing customs procedures, thus contributing to a better connection with the global economy.

3. Customs Contraventions: Definitions, Examples and the Sanctioning Regime in Romania and the Republic of Moldova

Customs contraventions represent less serious deviations than customs crimes, but which affect the legal regime of goods under customs control. In Romania contraventions are regulated separately in GD 707/2006¹, and in the Republic of Moldova, they are provided by the legislator in the Customs Code (Code no. 95 of 24.08.2021, amended by LP 214 of 31.07.2024) and are sanctioned by fines and other administrative measures.

¹ GD 707/2006, for the approval of the Regulation on the application of the Romanian Customs Code, with subsequent amendments and additions.

3.1. Customs Contraventions in Romania

In Romania, customs contraventions are defined as those actions or omissions that violate legal provisions or customs regulations and that do not constitute crimes.

From the legislation in force in Romania, we understand that customs contraventions: is a less serious deed than a crime, being considered a deviation from customs regulations that does not present a high social danger. Customs offenses are mainly sanctioned with administrative fines and, in some cases, with confiscation of goods and/or confiscation of means of transport. The amount of fines varies depending on the seriousness of the offense and the value of the goods involved. The amount of the fines is established by GD 707/2006, for the approval of the Regulation on the application of the Romanian Customs Code, with subsequent amendments and additions and related regulations. Fines can vary from a few thousand lei for minor violations to considerable amounts in the case of serious violations. Customs authorities have the right to confiscate the offending goods if they do not comply with customs regulations. In the event of repeated contraventions, economic agents may have their authorizations necessary to carry out import/export activities withdrawn.

3.2. Customs Contraventions in the Republic of Moldova

“Customs contravention means the violation of customs regulations, committed through actions or inaction, which attract responsibilities established in the Customs Code and the Code of Contraventions of the Republic of Moldova. The contraventional act is a phenomenon of the surrounding reality, and its content is the logical construction and the legal notion of this act, which expresses the attributes and essential characteristics of this real phenomenon and which can be regarded as an antisocial relationship” (Pusat, 2014, pp. 66-71).

Customs contraventions in the Republic of Moldova are sanctioned with fines and, in certain cases, with the confiscation of the goods and/or the means of transport used. Sanctions are applied by the Customs Service of the Republic of Moldova and are based on the gravity of the act and the value of the goods involved. Fines can vary from a few hundred Moldovan lei for minor offenses to higher amounts for more serious offences, depending on the type and severity of the offence.

In addition to fines, confiscation of goods and the means of transport used, other sanctions may be imposed, such as the temporary suspension of business activities for operators who repeatedly commit contraventions.

The characteristics of the contravention in the legislation of the Republic of Moldova highlight the fact that the basis of the contravention liability is the antisocial nature of the deed, consisting in the violation of a legal norm that produces a social danger. "The degree of social danger is essential to differentiate between misdemeanors, administrative or disciplinary violations and crimes, according to the theory of Professor M. Preda" (Preda, 2000, p. 85).

Illegal contravention describes acts that bring damage to society and are prohibited by law, the social danger being higher than that of disciplinary violations, but lower than that of crimes. Guilt is another central feature, divided into premeditated and reckless culpability. A premeditated wrongdoing is characterized by awareness and willingness to produce harmful consequences, while recklessness involves either underestimating the risks or ignoring them.

Customs contraventions, both in Romania and in the Republic of Moldova, are violations that affect the legal regime of international trade and the control of goods. They are sanctioned mainly by fines and, in certain cases, by confiscation of goods and/or means of transport, or other administrative measures. The sanctioning regime is aimed at ensuring compliance with customs legislation and protecting the economic and fiscal interests of the state.

4. Customs Offenses: Definitions, Examples and the Sanctioning Regime in Romania and the Republic of Moldova

Customs offence: it is a serious act, considered dangerous for public order, state security and the economic interests of the country. The applicable sanctions are criminal, involving punishments such as imprisonment, large criminal fines and confiscation of assets. Crimes are regulated by the Criminal Code and the Customs Code. "... the Romanian legislator differs from the Moldovan one, taking into account the former's technique of inserting customs criminal acts into the normative act dedicated to the regulation of relations in the customs sphere (Customs Code), compared to the Moldova, which resorted to placing all criminal acts, including those in the customs sphere, in a single criminal law - the Criminal Code" (Cernomoreț & Pasat, 2016, pp. 156-169).

“Criminalizing the crime of smuggling is an ‘absolute imperative’ for ensuring order in the field of customs legal relations, therefore, for protecting the customs legal regime” (Pasat, 2014, pp. 68-73).

The crime of smuggling is closely related to the legal customs regime. “The crime of smuggling, being an illegal act that endangers and seriously damages the legal customs regime, cannot appear and exist without it. It is more than obvious that only the pre-existence of some regulations, some rules, prohibitions or formalities can imply a violation of them. The absence of a normative framework, such as the customs regime, equates to the impossibility of committing such a crime” (Pasat, 2014, pp. 61-66).

As expressed by A.O. Pasat, “the customs legal regime is a given for the intervention of criminal law in the field of customs legal relations” (Pasat, 2014, pp. 61-66). “In short, an act is dangerous in relation to an object. Moreover, any crime constitutes in one form or another a danger, a threat or a violation of a social relationship that concerns a social value protected by legal norms. In the case of the crime of smuggling, the social value defended by the criminalization rules is represented by the legal customs regime” (Pasat, 2014, pp. 61-66).

4.1. Customs Offenses in Romania

Examples of criminal actions that constitute the crime of smuggling: Transporting excisable products (e.g. tobacco, alcohol) across the border without declaring them and without paying customs duties, concealing the true value, quantity or nature of the goods to avoid paying customs duties, alienating under any circumstances form of goods in customs transit. Qualified smuggling: represents the introduction into the country of illegal goods, such as drugs, weapons or prohibited materials, waste, etc.

The use of falsified documents at the customs authority constitutes the crime of using unreal documents, and the use of documents that refer to other goods or goods, or other quantities of goods or goods, to facilitate the introduction or removal of goods from the country, constitutes the crime of using unreal acts.

If smuggling is carried out by one or more armed persons or by two or more persons together, it was considered by the legislator as an aggravated crime. The attempt is punished.

Customs offenses in Romania are severely punished, with penalties that can include imprisonment, criminal fines, confiscation of the goods involved and the prohibition of certain rights.

From the definition of art. 270(1), of the Romanian Customs Code¹, we understand that the crime of smuggling consists in the introduction or removal of goods or merchandise from the country through places other than those established for customs control, using “any means”. “The essence of this article leads us to the hypothesis that it does not matter the value or the type of goods that are tried to be crossed over the border, but the way in which it is realized ‘by any means’ and through places where the control of the customs bodies is not carried out, thus the non-compliance with the law being more than a certainty” (Pasat, 2017, pp. 81-84).

Art. 273 regulates the use of forged documents, which refers to the presentation of forged documents to the customs authority, whether they are transport or commercial documents. In the specialized literature, there are divergent opinions regarding the relationship between the use of forgery and the use of forged documents: Some authors believe that there is a “teleological connection” (Antoniou, 2009, p. 82) between these crimes and that the rules of the contest of crimes should be applied. “Others argue that the use of forgery is absorbed by the customs crime, so it would not be two distinct crimes. There is also the opinion that the action of using unreal or falsified documents may be the result of an error on the part of the perpetrator or the bad intention of the representatives of a company, and should not be classified as a customs crime, but rather as negligence in service or fraudulent management” (Pasat, 2017, pp. 81-84). “The Romanian legislation lacks an article criminalizing the evasion of customs payments” (Pasat, 2016, p. 68), as provided for in the legislation of the Republic of Moldova.

4.2. Customs Offenses in the Republic of Moldova

Customs offenses in the Republic of Moldova are serious acts that violate the customs legislation and affect the economic interests of the state. They are regulated by the Criminal Code of the Republic of Moldova and involve severe sanctions.

¹ Law no. 86 of April 10, 2006, regarding the Romanian Customs Code Published in the Official Monitor no. 350 of April 19, 2006, with subsequent amendments and additions.

From art. 248 of the Criminal Code, we understand that smuggling consists of: The introduction or removal of goods across the territory of the Republic of Moldova, by hiding in specially arranged places or by concealment, or by using fraudulent documents, without declaring them or by making an authentic declaration, or by passing them through unauthorized places.

The act of alienating or putting into circulation the goods that are under customs supervision, without paying the import duties or falsely declaring the origin of the goods as having been obtained entirely in the Republic of Moldova, is also considered a customs crime. All these actions are qualified as crimes, if the value of the goods is greater than 8,000 conventional units, or 4,000, if the goods are entered/exited through places other than those established for customs control. The introduction or removal from the territory of the Republic of Moldova, through places established for customs control, or through other places, by concealment, by the use of false documents, by non-declaration or non-authentic declaration, of drugs, precursors, ethnobotanicals of toxic substances, weapons and ammunition prohibited in the civilian circuit or subject to authorization, military devices, explosive, nuclear or radioactive materials, etc.

In addition, compared to Romanian legislation, the Republic of Moldova qualifies the action of introducing or removing from the territory of the Republic of Moldova cultural values, both through places established for customs control, and through places other than those established for customs control, by hiding in places specially prepared or adapted for this purpose, or with the fraudulent use of documents or customs identification means, or by non-declaration or inauthentic declaration in the customs documents, as well as the non-return to the territory of the Republic of Moldova of cultural values if their return is mandatory (art. 248 paragraph 5 of the Criminal Code).

It is also necessary to specify that the aggravating form of smuggling is carried out by the actions listed previously, carried out by two or more people; with the use of the service situation and if the value of the goods is greater than 16,000 conventional units. Smuggling with excise goods is regulated in art. 248, consisting in “the introduction into or removal from the territory of the Republic of Moldova of goods subject to excise duties, through places established for customs control, by hiding from customs control, by hiding in places specially prepared or adapted for this purpose, or with the fraudulent use of documents or customs identification means, or by non-declaration or inauthentic declaration in customs documents or in other border crossing documents”, the offenders being penalized differently

depending on the value of the goods and the amount of cigarettes with or without a filter. The aggravating variant is carried out in the situation where the previously listed actions are carried out by two or more people; with the use of the service situation; if the value of the excised goods is greater than 8000 conventional units, and in the case of cigarettes with or without a filter – a quantity greater than 120,000 pieces. As in Romanian legislation, in art. 248 Criminal Code, the actions of collecting, holding, producing, transporting, taking over, storing, handing over, selling and selling goods that must be placed under a customs destination, knowing that they have been smuggled in, if their value is greater than 2,000 conventional units in the case of excise goods, in the case of cigarettes with or without a filter – a quantity greater than 60,000 pieces, and in the case of other goods – greater than 4,000 conventional units, qualifies as a smuggling offence. By art. 249 of the Criminal Code, the legislator chose to criminalize “evading the payment of import duties”, which is carried out by including in the customs, commercial, transport, accounting, financial documents, including in electronic format, some inauthentic data regarding the value of the goods, classification of goods, customs regime or destination, favorable or preferential tariff treatment, if the amount of unpaid import duties is greater than 8,000 conventional units. The aggravating variant of this crime is carried out by actions carried out by two or more people; with the use of the service situation; if the amount of unpaid import duties is greater than 16,000 conventional units.

In the case of smuggling or other serious crimes, prison terms can vary from 3 to 10 years, depending on the seriousness of the offense. The goods that are the object of the crime are confiscated, regardless of their value. Customs offenses are also punishable by heavy fines in addition to prison terms.

Customs offenses in Romania and the Republic of Moldova represent particularly serious acts, which are severely punished in order to protect the economy and the security of the state. Smuggling, customs fraud and document falsification are common crimes in both countries and are punishable by imprisonment, fines and confiscation of assets. These measures are intended to deter illegal activities that seriously affect national and international trade and economic flows.

5. Constituent Elements of Contraventions and Customs Offences

The subject of the crime or contraventions is the person who can be legally responsible for committing an act sanctioned by criminal law (crime) or administrative regulations (misdemeanor). In the case of contraventions and customs offences, there are certain similarities and differences between Romania and the Republic of Moldova, determined by the legislative particularities of each state.

5.1. The Subject of Contraventions and Customs Offences in Romania

The subject of the customs offense is a natural or legal person who commits less serious acts than crimes, but who violates customs regulations. “We emphasize that in order to highlight the person who commits the crime, the criminal legislation of the Republic of Moldova, including specialized literature, operates with the notion of “subject of the crime”, while in Romania the phrase “active subject” is used. At the same time, to designate the victim of the crime (notion characteristic of the Moldovan doctrine and legislation), in Romania the expression “passive subject” is used. We consider that for the Republic of Moldova the classification of the subjects of the crime into active and passive does not correspond to the legislation, but this classification is in accordance with the Romanian legislation” (Pasat, 2017, pp. 205-209).

“The special subject of the crime is obvious when the person has, in addition to the general signs of the subject, certain additional signs, required by law for the composition of the respective crime” (Botnaru, Savga, Grosu et al., 2005, p. 196) also “the active subject, for which it is necessary to fulfill a special condition, is called a qualified or circumstantial active subject” (Mitrache, 2005, p. 89); “crimes for the existence of which the author is required to have a certain quality are called proper crimes, and the active subject of these crimes is called a qualified or proper active subject” (Bulai, 1997, p. 211).

In Romania, Law no. 86/2006 regulates customs offences. The subject of the crime can be a “natural person” or “legal person”, having the following characteristics:

- in the case of natural persons, the crime can be committed by a person who has reached the age of 16. In exceptional cases, persons between the ages of 14 and 16 may be held criminally liable if it is proven that they had discernment at the time of the act.

- customs offenses can be committed by any person, regardless of citizenship, if the act takes place on Romanian territory or affects the Romanian customs regime, so “the direct active subject of smuggling is uncircumstantial. Any person can be an active subject of the crime of smuggling as an author, accomplice or instigator” (Pasat, 2016, pp. 111-119).

- legal entities, including transport companies or economic agents involved in international trade, may be subject to customs offences.

Participation is possible even in the improper form provided by art. 52 Criminal Code paragraph 1, moreover, it should be noted that the Customs Code provides for the cause of aggravation of smuggling offenses in the situation where the criminal action is committed by one or more armed persons or by two or more persons together. “Regarding the phrase “two or more people together”, the criminal doctrine noted that it was introduced by the new Customs Code. Until then, the notion of “band” was used, which, not being defined by the legal texts in force, had to be scientifically explained starting from older texts. Thus, art. 183 point 8 of the Criminal Code from 1936 defined the term “gang” as “the gathering or gathering of at least three people”. It should be noted that the old customs laws (from 1874, 1905 and 1933) used the term “troop” or “gang” without providing further clarifications. The current customs code refers to “two or more persons together”. It is imperative that these people act together to achieve a common goal” (Pasat, 2016, pp. 111-119).

“The passive subject is always the state as the holder of the right to impose conditions or prohibitions on the passage of goods across the border” (Pasat, 2013, pp. 80-84).

6. The Subject of Contraventions and Customs Offenses in the Republic of Moldova

The subject of contraventions committed in the Republic of Moldova can be a natural or legal person who violates customs administrative rules. The general characteristics are similar to those in Romania: natural persons of legal age or legal persons. Customs offenses include less serious violations such as mistakes in completing customs declarations, lack of proper documentation or other administrative irregularities.

In the Republic of Moldova, the Criminal Code regulates customs offences. The characteristics of the subject of the crime are similar to those in Romania:

- natural persons can be criminally liable for customs offenses if they have reached the age of 16. Also, in special cases, minors between 14 and 16 years old can be held responsible, if they had discernment.
- customs offenses can be committed by any person, a citizen of the Republic of Moldova or a foreign citizen, if the criminal act affects the customs territory of Moldova.
- just like in Romania, legal entities can be held liable for customs offences.

In the Republic of Moldova “since the crimes committed in the sphere of external economic activity are located within Chapter X of the Special Part of the Criminal Code of the Republic of Moldova entitled “Economic crimes”, the state suffers from the commission of those crimes” (Pasat, 2017, pp. 205-209).

The subject of customs offenses and contraventions in Romania and the Republic of Moldova presents many similarities in terms of the qualities and responsibilities of the persons involved, whether physical or legal. However, the specifics of the regulations in each state may cause differences in the approach and classification of facts.

7. The Legal Object and the Material Object within the Customs Offenses and Contraventions

Customs crimes and misdemeanors have two essential elements: the legal object and the material object. They define the nature and importance of the illegal act, as well as the interests protected by the law.

7.1. The Legal Object of Customs Offences and Contraventions

The legal object of customs crimes and misdemeanors refers to the social and economic interests protected by legal norms, which are affected or endangered by the commission of an illegal act. In the case of customs offenses and contraventions, this legal object consists in the protection of the customs regime and, implicitly, of national economic interests.

“Knowing the legal object of smuggling helps in a correct and thorough characterization of the deed, in the rigorous establishment of the norm of criminalization, as well as in determining the concrete degree of social danger of the deed and in individualizing the punishment. However, in the doctrine, there is no unanimously accepted position regarding this element of the crime” (Pasat, 2013, pp. 80-84).

The immediate object of smuggling is considered to be the relations that ensure the inviolability of the state border. Some specialists argue that the social danger of smuggling consists in affecting the political and military order of border protection. There are positions that claim that smuggling does not essentially affect the economic interests of the state, having small dimensions compared to legal foreign trade. This opinion, however, is countered by the argument that borders are often not actually violated, and contraband is often intercepted. Sandu “considers that the legal object of the crime of smuggling is those social relations related to the customs regime, the birth and normal development of which is conditioned by the special protection of customs control operations, customs clearance of goods, application of the customs tariff, as well as the other customs operations, which legally claim special requirements when the goods cross the border” (Sandu, 1997, p. 45).

“Compared to the legislation of the Republic of Moldova, in that of Romania, customs offenses are criminalized in a special criminal law, which is why we can no longer affirm that in the case of Romanian legislation in the matter of customs offenses, the thesis is valid, according to which the generic legal object of the offense can be separated from the title of the chapter and the section where the incriminating norm is located. However, the Customs Code of Romania includes only criminal offenses related to criminal acts committed in the customs sphere, not other illegal acts” (Pasat, 2016, pp. 70-71).

In the Republic of Moldova, the legal object of crimes and customs contraventions is similar and is regulated by the Criminal Code, the Customs Code and the Contraventional Code, protecting: the economic interests of the state, public order and economic safety - by monitoring and controlling imported and exported goods, avoiding the entry on the market for counterfeit or unsafe goods and national security.

The special legal object of customs offenses is represented by the specific social value affected by the commission of a specific crime, while it depends on the generic legal object, which provides a wider framework. In the case of customs

crimes, the special legal object is customs security, an essential component of the economic security of the state, protected by the Criminal Code of the Republic of Moldova. In doctrine, there are indeed different opinions on the content of the special legal object of crimes, including customs crimes. The divergences come from the different legal perspectives on the elements that constitute the special legal object and on how it interacts with other components of the crime structure. Gîrla and Tabarcea believe that the special legal object of smuggling offenses “is formed by the social relations that ensure the customs security of the Republic of Moldova and the establishment of the order of passage of goods and means of transport across the customs border of the Republic of Moldova” (Гырла & Табарча, 2010, p. 670). Brînza and Stati and others believe that the special legal object of customs offenses “is formed by social relations regarding the customs security of the Republic of Moldova” (Brînza & Stati, 2002, p. 281).

8. The Objective Side of Contraventions and Customs Offences

The objective side of a crime or contraventions represents all the actions or inactions that constitute the material element of the act and by which the interests protected by the law are affected. In the case of customs misdemeanors and crimes, the objective side consists of actions or inactions that violate the customs regime and affect the economic interests of the state.

Actions that constitute customs contraventions are: non-compliance with the deadlines for the presentation of goods for customs control, the transport of goods under suspension without complying with the legal conditions, etc.

Inactions that constitute customs contraventions: lack of mandatory documents, non-presentation of goods for customs control - refusal or omission to present goods to customs authorities for inspection can be sanctioned as a contravention, etc.

9. The Material Object of the Customs Offences and Customs Contraventions

“The material object of contraband can consist of any goods or other material values, which are transported across the state border (in some cases - with compliance with other requirements). It should be mentioned that by goods we

mean goods of natural and legal persons passed over the customs border for sale-purchase, exchange, lease or other economic transactions” (Pasat, 2013, pp. 80-84).

In Romania, the material object of customs offenses and contraventions can be constituted by: undeclared goods, goods subject to customs duties, but for which the corresponding duties have not been paid, prohibited goods, false documents.

In the Republic of Moldova, the material object of customs offenses and contraventions consists of: goods illegally crossed the customs border, if their value is greater than 8,000 conventional units; excise goods; cultural values; drugs, weapons, their components, ammunition, etc. It is noted that “the legislator, as a legislative technique, resorted to the method of express indication of the material/immaterial object in the content of the text of the incrimination norm” (Pasat, 2017, pp. 123-127).

In conclusion, the legal object of customs offenses and contraventions aims to protect national economic interests, economic order and public security, while the material object is the goods and merchandise illegally crossed the customs border.

10. The Subjective Side in Customs Offenses and Contraventions: Romania and the Republic of Moldova

The subjective side of customs offenses and contraventions represents the mental element of the deed, referring to the “intention” or “guilt” of the perpetrator in relation to the actions or inactions that affect the customs regime and the economic interests of the state.

10.1. The Subjective Side of Customs Contraventions: Romania Vs. Republic of Moldova

In the Republic of Moldova, as in Romania, contraventions can be committed both out of “intention” and out of “fault”. Intent in customs offenses occurs when the person violates customs rules deliberately, but the seriousness of the facts does not require a criminal sanction. Example: Intentional failure to declare certain goods to avoid minor duties. “Guilt” is also frequently encountered in the Republic of Moldova in the case of customs violations. The perpetrator does not act with the intention to defraud the state, but through negligence or lack of attention violates

the customs rules. Example: Incorrect completion of customs declarations or failure to present the necessary documents for imported goods on time.

10.2. The Subjective Side of Customs Offences: Romania Vs. Republic of Moldova

“The subjective side is part of the constitutive content of the crime, having as component elements: the subjective element (guilt with its modalities), the motive and the purpose, as essential requirements of some crimes. However, the subjective side consists of the mental attitude of the person who committed the crime, an attitude made up of intellectual, affective and volitional elements, on the basis of which guilt is established” (Pasat, 2016, pp. 67-73)

Customs offenses are serious criminal acts, which usually involve the “intention” of the perpetrator to evade customs control or to cause economic damage to the state.

In Romania, the subjective side of customs offenses are committed in the vast majority with intent, either directly or indirectly.

- Direct intent is manifested when the perpetrator acts deliberately, having a clear desire to commit an illegal act and obtain an advantage. Example: in the case of smuggling (Art. 270 para. (1) of the Romanian Customs Code), the person knows that he is illegally crossing the border and wants to avoid paying customs duties or introducing prohibited goods.

- Indirect intent presupposes that the perpetrator does not directly aim to produce illicit consequences, but is aware that his actions may have such results and accepts them. Example: In the case of non-declaration of goods or falsification of documents, the person may not directly want to evade customs, but accepts the possibility that this may happen.

- Fault (negligence) in customs offenses is rarely found in Romania, but it can appear in cases where the perpetrator did not take all the necessary measures to comply with the law (fault with foresight or without foresight).

In the Republic of Moldova, most customs offenses are committed with “intention”, either directly or indirectly.

Regarding the crime of smuggling in the specialized literature, the opinions are controversial. Thus Pasat claims that: “Regarding the crimes provided for in art.

248 of the Criminal Code of the Republic of Moldova, gathered under the marginal designation of smuggling, we specify that they are committed intentionally” (Pasat, 2016, pp. 67-73). Dicanova, (Диканова & Осипов, 2000, p. 150) states that the passage of goods across the customs border through negligence, without respecting customs control, through non-declaration or inauthentic declaration, cannot constitute the crime of smuggling. Dorojcov (Дорожков, 2003, pp. 6-9) points out that if the goods are passed recklessly, without being declared, criminal liability for smuggling is excluded, which means that smuggling requires intent to be considered a crime. Laricev and Ghilimutdinova (Ларицев & Гилимутдинов, 2001, p. 150), Russian authors, claim that economic crimes can only be committed with intent, which excludes the possibility of their being committed through negligence or imprudence. Smuggling is a crime that cannot be committed with indirect intent, but only with direct intent, which means that the perpetrator must act deliberately, knowingly and with a clear will to evade customs control. Direct intent implies that the perpetrator explicitly wants to commit the crime and foresees its consequences, and indirect intent, where the perpetrator would accept the possibility of the crime without expressly wanting it, is excluded from the definition of this crime.

Motive and purpose are considered optional signs of the subjective side in the case of smuggling crimes, which means that they do not influence the qualification of the crime, but may be important in other aspects. Although the reason and purpose are not of legal-criminal importance in the case of smuggling, the material interest is frequently present. The rules criminalizing smuggling do not refer to the reason or purpose of the actions, which is why they do not influence the classification of the crime, but they are of considerable importance in terms of individualizing the punishment and characterizing the personality of the criminal.

11. Conclusion

Although Romania and the Republic of Moldova share many similarities in terms of general objectives and the structure of customs legislation, there are significant differences due to the different economic and political context. Romania, as a member of the European Union, applies a customs system fully harmonized with EU legislation, eliminating internal customs barriers and applying a common tariff for goods from outside the EU. The Republic of Moldova, on the other hand, although not part of the European Union, has taken important steps towards

European economic integration, adopting customs and trade reforms in accordance with EU standards.

Currently, the proposal to reclassify some contraventional acts as smuggling offenses is a necessary solution for strengthening the customs legal regime and for the effective protection of the market economy. Presenting documents with unreal data regarding the tariff classification, carrying out port operations without authorization or leaving ports and airports without a customs visa do not represent only minor administrative violations, but actions with the potential for serious damage to the economy and national security. In an earlier period, customs regulations, including those up to 1949, recognized these acts as forms of smuggling, treating them as crimes designed to avoid paying taxes or violate legal prohibitions.

Full digitization of customs procedures is also required, in this sense on which investment in technology and full digitization of customs processes would reduce bureaucracy and increase efficiency. Both countries should adopt integrated digital platforms that enable online customs transactions, reducing the risk of tax evasion and simplifying formalities. In Romania, the full adoption of the EU Customs Information System (ICS, ECS, AES) is required for a more efficient border management, and in the Republic of Moldova, the continuation of digitization efforts through national systems and harmonization with EU platforms. At the same time, border control infrastructure needs to be improved, by investing in technology for goods scanners, surveillance systems and risk analysis at border crossing points would help identify undeclared or illegal goods more quickly.

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