



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 400-2 esq a Lerdo de Tejada, Toluca, Estado de México. 7223898475*

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TÍTULO: Sobre la cuestión de determinar el tema del contrabando de bienes y recursos estratégicamente importantes.

AUTOR:

1. Vladislava K. Zaigraeva.

RESUMEN: El artículo está dedicado al estudio del contrabando de bienes y recursos estratégicamente importantes. Sobre la base del análisis de los actos jurídicos reglamentarios, las características cualitativas de los bienes y recursos estratégicamente importantes se revelan en el contexto de la responsabilidad penal por su contrabando. Se ha formulado una propuesta sobre la exclusión de la Lista de bienes y recursos estratégicamente importantes de especies de flora y fauna silvestre.

PALABRAS CLAVES: contrabando, crimen, bienes y recursos estratégicamente importantes, reglas especiales para cruzar la frontera.

TITLE: On the issue of determining the subject of smuggling of strategically important goods and resources

AUTOR:

1. Vladislava K. Zaigraeva

ABSTRACT: The article is devoted to the study of the smuggling of strategically important goods and resources. Based on the analysis of regulatory legal acts, qualitative features of strategically important goods and resources are revealed in the context of criminal liability for their smuggling. A proposal has been formulated regarding the exclusion from the List of strategically important goods and resources of species of wild flora and fauna.

KEY WORDS: smuggling, crime, strategically important goods and resources, special rules for moving across the border.

INTRODUCTION.

Significant changes in the legislation of the Russian Federation that are taking place related to the formation of the Eurasian Economic Union and the resulting amendments to the smuggling norms in the Criminal Code of the Russian Federation (hereinafter - the Criminal Code of the Russian Federation) create certain difficulties for the law enforcer in qualifying smuggling of strategically important goods and resources, including those caused by the lack of the concept of “strategic important goods and resources” in the legislation.

According to Note 1 to Article 226.1 of the Criminal Code, the subject of smuggling of strategically important goods and resources for the purposes of Article 226.1 of the Criminal Code are goods and resources included in the list of strategically important goods and resources, which is approved by the Government of the Russian Federation (hereinafter - the List) [10].

DEVELOPMENT.

Research methodology.

The methodological basis of the study was the general scientific theory of knowledge, including the position of dialectical materialism, and systematic approach. In preparation, the method of comparative analysis, historical, logical and legal methods of cognition were also used. The logical-

logical method of cognition is used to more accurately understand the norms of Russian criminal legislation, their analysis, as well as the interpretation of the main provisions reflected in the legal literature.

Study results.

Strategically important goods and resources appeared in the Russian criminal law as a subject of smuggling in 1994 (article 78 of the Criminal Code of the RSFSR) after amendments to the 1960 Criminal Code of the RSFSR were introduced by Federal Law No. 10-FZ of July 1, 1994 [16].

After the entry into force on 1 January 1997 of the Criminal Code of the Russian Federation of 1996, strategically important commodities were included in part 2 of article 188 among the goods and items whose illegal movement across the customs border was estimated as smuggling and in respect of which special rules were established for their movement through the customs border of the Russian Federation [15].

Since the concept of “strategically important commodities” was absent in Russian legislation, as well as the regulation of the powers of federal executive bodies to determine the criteria that form this concept, the smuggling of goods possessing the attributes of strategically important goods was qualified by December 8, 2011 in accordance with paragraph 1 of Article 188 of the Criminal Code RF, as the smuggling of ordinary goods.

In connection with the decriminalization of commodity smuggling from December 8, 2011, and also due to the lack of a list of strategically important goods and resources approved by the Government of the Russian Federation until September 29, 2012, their illegal export from Russia does not entail criminal liability.

In the absence of a corresponding concept of such goods and resources in the legal literature, there was also no uniform approach to the content of strategically important goods and resources.

Among the approaches to assigning goods and resources to strategically important goods and resources, the following can be conditionally distinguished:

- Goods approved by resolutions of the Government of the Russian Federation and decrees of the President of the Russian Federation (A.N. Kozyrin, S. Nikulin, A.V. Naumov) [2, 9, 8].
- Goods for which the Government of the Russian Federation has established special export rules (L.F. Rogatykh) [14].
- Goods that can be used to create weapons of mass destruction, weapons and military equipment (V. I. Mikhailov, A. V. Fedorov) [6].

Note that the above approaches were given by the authors when there was no current list of strategically important goods and resources, the provisions of the article of the Criminal Code of the Russian Federation on the smuggling of strategically important raw materials were not applied and, accordingly, there were no cases of criminal prosecution, and indeed, in principle, the legal construction of building a norm on smuggling, including strategically important goods, was different.

In this regard, it seems that these approaches are general, and at present it is not possible to use them to classify certain goods and resources as strategically important in the framework of the implementation of Article 226.1 of the Criminal Code of the Russian Federation. A dictionary-semantic interpretation of the concept of “strategically important goods and resources” is also not possible due to its generality and isolation from the sphere of its application that we are considering. Later, by Federal Law of December 7, 2011 No. 420-Φ3, article 188 “Smuggling” was deleted from the Criminal Code of the Russian Federation, and the acts provided for in paragraph 2 of this article were included in the disposition of the norm of Article 226.1 of the Criminal Code of the Russian Federation [4]. And only for the purpose of implementing this article, the crime of which is, including strategically important goods and resources, the Government of the Russian Federation of

13.09.2012 No. 923 was adopted (as amended on June 7, 2019) “On approving the list of strategically important goods and resources for the purposes of Article 226.1 of the Criminal Code of the Russian Federation, as well as on determining the types of strategically important goods and resources for which a value exceeding 100 thousand rubles is recognized as a large amount”.

So, at present, the List of strategically important goods and resources is the only normative legal act determining their status.

It should be noted that his appearance is a great achievement of the legislator. Since the appearance of these goods and resources as a subject of smuggling in the Criminal Code of the Russian Federation, it has become possible to prosecute perpetrators for the illegal movement of strategically important goods and resources, more than 15 years have passed. In addition, the approval of the List, consisting of three sections and 15 positions, lifted a lot of discussions among lawyers regarding the meaningful content of the term “strategically important goods and resources”. Based on the existing List, we will determine the characteristics by which these or those goods and resources are today assigned by the legislator to strategically important goods and resources.

The first section lists the names of strategically important goods with their codes in accordance with the unified Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union, for example: indentured ethyl alcohol with an alcohol concentration of 80% or more; ethyl alcohol and other denatured alcohol tinctures; precious metals, natural pearls and articles thereof, watches and watch cases (wrist watches, pocket watches, etc.) designed to be worn on or with oneself, including stop watches, with a case made of precious metal or metal plated with precious metal; watch straps, ribbons and bracelets designed to be worn on or with oneself, and parts thereof of precious metal or precious metal clad metal.

The category of strategically important goods included ferrous and non-ferrous metals, as well as waste and scrap of ferrous and non-ferrous metals, cermets, parts of railway locomotives or motor cars of a tram or rolling stock, substances that deplete the ozone layer, and products containing them.

In the second section, the names of strategically important resources were listed with their codes, namely: meat of cattle, poultry, pork; fish, crustaceans, mollusks and other aquatic invertebrates; brine shrimp, eggs (cysts) of brine shrimp; finished products of fish or crustaceans, mollusks or other aquatic invertebrates.

Amber, agglomerated amber, jet (black amber) were also classified as strategically important resources; processed amber, agglomerated amber, agate (black amber); coal, including anthracite, coke and semi-coke; crude oil and petroleum products containing 70% or more of petroleum or petroleum products, these petroleum products being the main components of the products; waste oil products.

In addition: natural gas, oil and hydrocarbon gases, in a liquefied and gaseous state; fur; timber; precious and semiprecious stones, ores and concentrates of precious metals.

The third section (paragraph 15) deals with strategically important flora and fauna that are subject to the Convention on International Trade in Endangered Species of Wild Fauna and Flora of March 3, 1973 or listed in the Red Book of the Russian Federation.

The list of strategically important goods and resources is blanket in nature.

To clarify the qualitative features of strategically important goods and resources, as well as the rationale for their inclusion by the legislator in the list, it is necessary to turn to other regulatory legal acts and, first of all, taking into account the footnotes to the List, to the Unified list of goods to which import bans or restrictions apply or export by member states of the Customs Union within the framework of the Eurasian Economic Community in trade with third countries, approved by

Decision of the Board of the Eurasian Economic Commission of August 16, 2012 No. 134 " On normative legal acts in the field of non-tariff regulation "(hereinafter referred to as the Unified List of Goods) [12], as well as Decision of the Council of the Eurasian Economic Commission dated July 16, 2012 No. 54 [11], which approved the unified Commodity Nomenclature for Foreign Economic Activity of the Eurasian Economic Union.

In addition, one should be guided by the lists of goods with respect to which a permit procedure has been established for importing into the customs territory of the Eurasian Economic Union and (or) exporting from the customs territory of the Eurasian Economic Union, and goods with respect to which a ban on importing into the customs territory of the Eurasian Economic Union and (or) export from the customs territory of the Eurasian Economic Union (annexes No. 1 and No. 2 to the Decision of the Board of the Eurasian Economic Commission of April 21, 2015 No. 30) [13] (hereinafter - the Lists of goods prohibited and restricted for movement).

Pointing out the necessity and significance of adopting a list of strategically important goods and resources, it should be noted that the list of items of particular importance for the state as a whole, and for which special rules for moving across the customs border are established, is fixed in the Unified list of goods and in the Lists of goods, prohibited and restricted to movement.

A.V. Fedorov believes that at present, the subjects of crimes provided for in Article 226.1 of the Criminal Code of the Russian Federation are only those items whose circulation is prohibited or in respect of which special rules of circulation are established (circulation is limited) [18]. It seems to us possible to disagree with this point of view, since the subject of a crime in accordance with article 226.1 of the Criminal Code of the Russian Federation is also strategically important goods and resources, the list of which mainly includes goods whose foreign trade is not prohibited and unlimited.

The List of strategically important goods and resources considered by us was adopted precisely for the purposes of Article 226.1 of the Criminal Code of the Russian Federation and mainly includes goods whose foreign trade is not limited, but only with respect to which liability is provided for their illegal movement through the customs border of the Eurasian Economic Union and the State border of the Russian Federation Federations worth over one million rubles.

So, especially in the context of the abolition of criminal liability for commodity smuggling, the legislator points to a higher degree of public danger of smuggling of these goods compared to the smuggling of ordinary goods (commodity smuggling), for which only administrative responsibility is currently provided.

So, as we have indicated above, strategically important goods and resources are a special category of goods, most of which are the country's national wealth (oil, gas, timber, precious metals). In the List, the legislator emphasizes that it is defined specifically for the purposes of Article 226.1 of the Criminal Code of the Russian Federation. So, we can single out a common feature for all these goods - goods that, in the course of analysis of the revealed crimes and offenses, are smuggling (illegally transported goods).

A comparative analysis of the List with the Unified List of Prohibitions and Restrictions allows us to conclude that it includes goods and resources that are subject to the prohibitions and restrictions on the import of goods into the customs territory of the Eurasian Economic Union established by the customs legislation of the Eurasian Economic Union and the regulatory legal acts of the Russian Federation or to the Russian Federation and (or) the export of goods from the customs territory of the Eurasian Economic Union or from the Russian Federation (ozone destroying substance, species of wildlife, precious metals, amber) and against which these prohibitions or restrictions are set (oil, petroleum products, wood, coal, natural gas).

An analysis of each category of goods and resources named in the List allows us to say that these are goods with the following characteristics:

- Goods and resources, which make up a significant amount of Russian exports and, due to this, form the bulk of the revenue to the budget in the form of customs duties, are products of the fuel and energy complex (oil, natural gas, oil products, coal); ferrous and non-ferrous metallurgy products, raw materials for these types of industries, alcohol products).
- Resources in steady demand abroad (forest and forest products, furs, aquatic biological resources (fish, crustaceans, mollusks and other invertebrates, products from them), meat and sturgeon meat products, sturgeon caviar).
- Goods of world exchange trade (oil and goods derived from oil; ferrous metals; non-ferrous metals; mineral fertilizers; precious metals and precious stones) (Article 105.14 of the Tax Code of the Russian Federation) [7].
- Goods and resources, the illegal export of which from the Russian Federation (forest and forest products, furs, aquatic biological resources (fish, crustaceans, mollusks and other invertebrates, products from them), meat and sturgeon meat products, sturgeon caviar) and import which poses a threat to environmental safety (ozone-depleting substances).
- Goods and resources whose illegal import into the Russian Federation poses a threat to food security (meat and meat products).
- Goods and resources, the illegal export of which from the Russian Federation creates a threat of depletion of the national reserves of the Russian Federation (precious metals and stones, amber).
- Goods subject to export (export) duty (export customs duties are established, including to protect the domestic market of the Russian Federation and stimulate progressive structural changes in the economy) (Article 19 of the Federal Law of December 8, 2003 No. 164-ФЗ “On the Basics of State foreign trade regulation”) [17].

- Goods that do not meet quality requirements, the illegal import of which into the Russian Federation creates a danger to public health (ethyl alcohol, alcoholic and alcohol-containing products);
- Resources subject to prohibitions and restrictions (species of wild flora and fauna subject to the Convention on International Trade in Endangered Species of Wild Fauna and Flora of March 3, 1973 or listed in the Red Book of the Russian Federation, amber).

Prohibitions and restrictions applicable to goods are introduced, inter alia, based on the national interests of the Russian Federation.

The disclosure of the subject of smuggling of strategically important goods and resources allows us to state the following:

Firstly, the statement regarding strategically important goods and resources has established special rules for moving across the border (as it was before), is incorrect.

Secondly, the list of items of particular importance for the state as a whole, and for which special rules are established for moving across the customs border, is fixed in the Unified List of Goods and the Lists of Goods Prohibited and Restricted to Movement.

Thirdly, a comparative analysis of the List with the Unified list of prohibitions and restrictions allows us to conclude that the first includes goods and resources that are subject to the prohibitions and restrictions on the import of goods into the customs territory of the Eurasian Union established by the law of the Eurasian Economic Union and regulatory legal acts of the Russian Federation Economic Union or to the Russian Federation and (or) the export of goods from the customs territory of the Eurasian Economic Union or from the Russian Federation (ozone-depleting substances, species of wild flora and fauna, precious metals, amber), as well as for which these prohibitions and restrictions have not been established (oil, oil products, timber, coal, natural gas).

Fourth, the name of the List implies that it was specifically defined for the purposes of Article 226.1 of the Criminal Code of the Russian Federation, and mainly includes goods whose foreign trade is not limited, but only provides for liability for their illegal movement through the customs border of the Eurasian Economic Union and the State border of the Russian Federation Federations worth over one million rubles.

In our opinion, the List in the aspect of application to article 226.1 of the Criminal Code of the Russian Federation should not be considered as a list of strategically important goods in general for the state. At the same time, it is indisputable that the goods and resources separately listed in the List are a special category, most of which is the country's national wealth.

Fifth, we should not normatively determine strategically important goods and resources, in our opinion, since the range of related goods and resources to strategic ones for the purposes of Article 226.1 of the Criminal Code of the Russian Federation will be substantially narrowed. This, in the absence of criminal liability for the smuggling of ordinary goods, will not allow (through) amendments to the List to bring individuals to criminal liability.

Sixth, when classifying certain goods and resources as strategically important, it is necessary to proceed from the national interests of the Russian Federation, the importance of certain categories of goods and resources to protect the domestic market of the Russian Federation, ensure the economic security of the Russian Federation, protect the life and health of the population, and food and environmental safety of the Russian Federation.

Seventh, the List has already been amended, while at the present time, there is also a need to make separate amendments relating to ensuring the national interests and security of the Russian Federation [1].

A retrospective analysis of the legal regulation of the movement of strategically important goods and criminal law on liability for the smuggling of such goods [5] showed that with the formation of new threats to economic, energy, environmental, food and other types of security due to liberalization, open economies and criminalization of society and economic activities, the List will need to be amended to include certain goods and resources, as well as their and turning in the absence of relevant threats.

Eighth, the List should be dynamic, changes should be regularly made, in connection with this, such a design of the norm with reference to the resolution should be recognized as effective, since from the point of view of the legislative process it is always easier to amend the draft act of the Government of the Russian Federation than a federal law, which, in addition to the procedure of interagency coordination by the interested federal executive bodies, must pass three readings in the State Duma and be adopted by the Soviet m. Federation of the Federal Assembly of the Russian Federation.

Ninth, it is doubtful that the List of species of wild flora and fauna covered by the Convention on International Trade in Endangered Species of Wild Fauna and Flora of March 3, 1973 or listed in the Red Book of the Russian Federation (hereinafter - CITES) is doubtful.) The particular importance of such objects from the point of view of the need to protect them with criminal law measures cannot be evaluated in monetary terms.

In addition, in accordance with Part 1 of Article 226.1 of the Criminal Code of the Russian Federation, especially valuable wild animals and aquatic biological resources belonging to species listed in the Red Book of the Russian Federation and (or) protected by international treaties of the Russian Federation, along with strategically important goods and resources, are independent smuggled item for which a large movement size is not required. This situation seems biased, because both of them have the equal status of “rare and endangered”.

In our opinion, CITES should be excluded from the List (paragraph 15), establishing criminal liability for their smuggling, regardless of their value, in an independent article of the Criminal Code of the Russian Federation [3].

CONCLUSIONS.

Summarizing the characteristics of the goods and resources indicated in the List, it can be concluded that strategically important goods and resources are especially important goods from the point of view of ensuring national security, and basically all of them are united by a high degree of public danger in case of their illegal movement.

When classifying certain goods and resources as strategically important, it seems necessary to proceed from the national interests of the Russian Federation, the importance of certain categories of goods and resources to protect the domestic market of the Russian Federation, ensure economic security, protect the life and health of the population, as well as the food and environmental safety of the Russian Federation.

A comprehensive understanding of the content of the subject of smuggling of strategically important goods and resources is one of the main components in the development of proposals to improve the norm on liability for their smuggling.

Conflict of interest.

The authors confirm the absence of a conflict of interest.

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DATA OF THE AUTHOR.

1. Zaigraeva Vladislava Konstantinovna. Applicant for the Department of Criminal Law, Criminal Procedure and Criminalistics, Peoples' Friendship University of Russia. E-mail: customs.v.k@gmail.com

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