

UDC 351.746.2:343.9.02:343.97:343.431

DOI <https://doi.org/10.32849/2663-5313/2024.1.03>**Vitalii Vynnychenko,***Postgraduate Student, Scientific Institute of Public Law, 2a, H. Kirpa street, Kyiv, Ukraine, postal code 03055, vynnychenkovitalii.net***ORCID:** orcid.org/0000-0001-5376-3294

Vynnychenko, Vitalii (2024). Counteraction by special law enforcement units to smuggling of cultural values and weapons: European experience. *Entrepreneurship, Economy and Law*, 1, 14–24, doi

COUNTERACTION BY SPECIAL LAW ENFORCEMENT UNITS TO SMUGGLING OF CULTURAL VALUES AND WEAPONS: EUROPEAN EXPERIENCE

Abstract. Purpose. The purpose of the article is a legal analysis of the positive European experience of counteraction by special law enforcement agencies to smuggling of cultural values and weapons.

Results. Smuggling of cultural values and weapons is one of the most dangerous threats to international security. The loss of cultural objects weakens national identity and cultural heritage, while the illegal circulation of weapons contributes to conflicts, terrorism and crime. In this context, the study of legal regulations and the practice of law enforcement agencies of different countries allows us to identify effective mechanisms for combating these crimes and the possibility of their adaptation to national conditions. In European countries and the USA, the functions of counteraction are giving way to prevention, which is primarily aimed at using preventive measures with the subsequent elimination of causes and conditions using confidential assistance from citizens. **Conclusions.** Considering the analysed positive foreign experience of law enforcement agencies combating the smuggling of cultural values and weapons, a number of recommendations are proposed for law enforcement agencies combating the smuggling of cultural values and weapons in Ukraine: high-quality logistical and financial support; expanded cooperation: conclude new international agreements and strengthen information exchange between states; a national registry: develop a database of cultural values and objects at risk; strengthened border control: introduce specialised units at customs to check cultural values and weapons; training of personnel: conduct regular trainings and seminars for customs and law enforcement officers; facilitation of the return of valuables: simplify the procedures for the restitution of cultural objects for the countries from which they were illegally removed; use the latest information and analytical support to combat the smuggling of cultural values and weapons, especially artificial intelligence technologies, as well as creating joint automated information and search systems in the EU: “Weapons and ammunition smuggling” and “Cultural value smuggling”.

Key words: smuggling, cultural values, weapons, ammunition, countermeasures, information and analytical support, foreign experience.

1. Introduction

The problem of smuggling is one of the primary tasks of the state in protecting its economic interests. Throughout the period of Ukraine's independence, a large number of exports and imports of goods have been detected. A particular danger for the state is that smuggling operations are committed with corruption by officials of state and local authorities. This affects domestic producers. Illegal imports of foreign goods reduce demand for Ukrainian products, leading to the liquidation of production facilities, a decrease in the competitiveness of Ukrainian enterprises in the domestic market and their relocation abroad. This may result in

a reduction in the number of employees and a cut in their payroll. In addition, the results of such criminal activities have a negative impact on public relations in the field of protection of life and health of citizens in the case of smuggling of weapons and ammunition, nuclear materials and substances, drugs, alcohol, cigarettes, deprive citizens of the right to use cultural values, historical heritage of Ukraine (Kukshynova, Nosenko, 2021). An additional motivation for studying this problem is the fact that in the course of Ukraine's European integration, the system of combating smuggling should shift the focus of its work to interoperability with the security forces of the EU and NATO

countries, which, together with the above, makes the study of the regulatory framework for the interaction of security forces, judicial and law enforcement agencies of Ukraine in the performance of combat missions to combat smuggling quite relevant and worthy of attention of scholars and practitioners (Krylovet-skyi, 2020).

Smuggling-related crimes cause significant damage to a country's economic system and seriously threaten the fundamental principles that guide any society. Smuggling undermines government revenues, increases the tax burden on official business entities, kills the need for investment and innovation, reduces the foreign currency that a country can earn from legal exports, and increases unfair competition in the market (Karafo, 2018).

It should be noted that the number of countries to which smugglers are trying to illegally move cultural values is constantly increasing. Recently, the export of antiques to Asian countries, in particular Japan, and to the Middle East has become a trend (Tuliantseva 2007). In connection with the above, it should be noted that in some countries national and international systems of accounting, coding and monitoring and disposal of cultural property have been successfully operating (including: Artefacts Canada, Cultural Heritage Inventory Management System (CHIMS), Sistema Informativo Generale del Catalogo (SIGEC), Archidoc, Mérimée, Palissy, Gioconda, Art Loss Register (ALR), Object ID, Checklist, VRA Core, Cataloging Cultural Objects - CCO, MIDAS, and others). Connecting to such systems enables to track the main changes that have occurred with cultural objects (displacement, theft, return) in an operational mode. In those countries where electronic systems for the registration of cultural property have already been implemented (in particular, Canada, the United States, Malta, Denmark, Italy, France, and the United Kingdom), no uniform approaches to their formation have been defined. Therefore, it is acceptable to adopt international best practices for Ukraine (Kniaziev, 2020).

Moreover, it should be noted that the five largest arms exporters in the world have remained constant. These are, of course, the United States, Russia, China, France and Germany, which account for 74% of international arms supplies, and the United States and Russia together account for 58%. As for imports, the largest arms buyers in 2011-2015 were India, Saudi Arabia, China, the UAE and Australia. Together, they received 34% of all arms imports. It should be noted that in 2011-2015, weapons were mainly imported to Asia and Oceania (46% of global imports), the Middle East (25%), Europe (11%),

the Americas (9.6%) and Africa (8%). Between 2006-2010 and 2011-2015, arms imports in Africa increased by 19%, in Asia and Oceania by 26%, and in the Middle East by 61%. However, in the Americas, imports fell by 6%, and in Europe by 41%. The volume of the arms market in 2012-2016 increased by 8.4% compared to the previous five-year period. There was also an upward trend in the global arms market, after many years of decline in this sector (Zharovska, 2018).

When studying crime in its various manifestations, it should be noted that Ukraine is linked to global criminal markets through the following activities: 1) smuggling routes connecting Russia and Ukraine and passing through the occupied territories; 2) global smuggling hubs in Odesa and other ports on the Black Sea (currently, this area is 'frozen' due to Russia's large-scale invasion of Ukraine); 3) factories in Ukraine that produce prohibited export goods; 4) crimes related to human rights violations, namely, human trafficking, white slavery, migrant smuggling, etc. These areas of illegal activity are being handled by various criminal elements, including thieves in law, who are trying to retain criminal influence on the security situation in the southern region of Ukraine (Lutsenko, 2024).

For example, products of the excisable group, light industry, perfumes and cosmetics purchased abroad are smuggled into Ukraine and sold through commercial kiosks, markets, fictitious intermediary firms (used to reduce the profit of a legal company). The majority of the proceeds from such activities are converted into foreign currency through a network of currency exchange offices or money changers. If significant amounts of money are exchanged, they are deposited in cash into the accounts of fictitious business entities, which transfer them to the Ukrainian Interbank Exchange, where they buy foreign currency, allegedly to pay for imported goods. To facilitate smugglers, a network of fictitious commercial structures has already been formed in Ukraine that convert non-cash funds into cash, which scholars constantly draw the attention of law enforcement to (Predborskyi, 2005).

Therefore, in order to achieve and implement such changes to improve the situation, the state of countering smuggling abuses in foreign countries should be reviewed, their methods of combating smuggling should be familiarised, and some of them should be actively cooperated with: 'the problem that has not bypassed any country in the world has recently become a problem without borders due to global integration processes' (Bondarenko, Kuzmenko, 2021).

Furthermore, it should be noted that a survey of SSU employees found that 89% of respondents supported the position that Ukraine should adopt positive foreign experience in combating smuggling of cultural values and weapons. In addition, the survey revealed that practice of foreign law enforcement agencies (special services) and criminal legislation on counteraction to smuggling of cultural values and weapons in European countries should be studied in the following countries: the USA, Canada, Brazil, the UK, France, the Netherlands, Israel, Italy, Spain, Austria, Romania, Bulgaria, Latvia, Lithuania, Estonia, the Czech Republic, Germany, Georgia, Hungary, Poland, Finland, China, Turkey and India. A number of domestic scholars hold the same position.

Thus, the analysis of foreign experience today is a mandatory area of research in any field of science (Lozynska, 2016). It should also be noted that law enforcement bodies of Ukraine lack experience in combating smuggling of cultural values and weapons, and such activities require coordinated action of the latter at both the domestic and international levels. Therefore, international cooperation in combating cultural values and weapons is primarily driven by the need for law enforcement cooperation, as smuggling is committed by transnational organised criminal groups and such cooperation requires a systematic solution to urgent legal, organisational and tactical issues that provide favourable conditions for identifying and documenting all members of organised groups and other participants involved in this crime and other related ones.

As a result, the study of foreign experience in combating smuggling of cultural property and weapons is necessary in the analysis of international regulatory frameworks in general and the effective legal frameworks of individual States in this area under martial law, which has contributed to the relevance of the topic.

The issues of law enforcement agencies' counteraction to smuggling of cultural values and weapons have been studied by: O.S. Anhelovska, D.V. Babikov, I.M. Baziaruk, I.H. Berezniuk, O.S. Bondarenko, V.V. Varava, V.I. Havryliuk, M.P. Danyliuk, V.I. Dykyi, V.I. Dubyna, H.P. Zharovska, V.P. Zhdanova, V.S. Kniaziev, I.V. Krasnytskyi, A.L. Krylovetskyi, V.V. Kuzmenko, O.O. Kukshynova, I.O. Lozynska, Yu.V. Lutsenko, S.O. Maksymenko, E.S. Moldovan, D.S. Nosenko, S.O. Pavlenko, M.L. Pohrebytskyi, O.I. Popivniak, V.A. Predborskyi, V.H. Sevruk, N.I. Smahlii, V.A. Suvorkin, S.O. Filippov, O.I. Kharaberiush, S.A. Shepetko, I.V. Shymonia, O.Yu. Shostko, O.V. Yurynets.

The purpose of the article is a legal analysis of the positive European experience of counter-

action by special law enforcement agencies to smuggling of cultural values and weapons.

2. An analysis of the European experience in establishing criminal liability for smuggling shows

The European experience of establishing criminal liability for smuggling shows that in a number of developed countries with stable and powerful economies, emphasis is placed on the use of economic incentives to counter smuggling, given the high level of law-abidingness of business entities and citizens. Moreover, criminal liability for smuggling of goods, including excisable goods, is also among the levers of influence, in particular, in some EU countries, the criminal liability for smuggling is quite strict (Draft Law of Ukraine On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine regarding the criminalization of smuggling of goods and excisable goods, as well as false declaration of goods, 2021). In this regard, S.O. Maksymenko argues that the European experience of criminalising smuggling reveals that in a number of developed countries with stable, strong economies, the emphasis is on using economic incentives to combat smuggling, given the high level of law-abidingness of businesses and citizens. In addition, criminal liability for smuggling of goods, including excisable goods, remains among the levers of influence, in particular, some EU countries (the Republic of Italy, the Republic of Lithuania, the Republic of Poland, Romania, the Slovak Republic, the Kingdom of Sweden, the Federal Republic of Germany, Hungary, etc.) provide for strict criminal liability for smuggling (Maksymenko, 2014).

According to the European Union police service Europol, OCGs operating in the EU include representatives of Turkey (drug and arms trafficking, money laundering, racketeering), Nigeria (human trafficking, drug trafficking, fraud), Morocco (cannabis trafficking, smuggling, fraud), Moroccans (cannabis trafficking, smuggling), Colombians (cocaine trafficking), Chinese (illegal migration), Vietnamese (illegal migration, smuggling of goods, general criminal services) (Shostko, 2007). Experts of the project 'Smuggling: To Criminalise or Not to Criminalise? A View from Border Volyn' project, based on the analysis of the experience of European countries, identify different types of liability in the EU: in the UK, smuggling is punishable by up to 7 years in prison; in Hungary, criminal liability arises after smuggling 15 cartons of cigarettes; in Romania, you can go to prison for transporting even one pack of smuggled cigarettes through the green corridor; In Slovenia, a smuggler can be imprisoned for 8

cartons of tobacco products; in Poland, the only penalty for cigarette smuggling is a fine, which ranges from 168 to 3360 Polish zlotys (45 to 900 USD) (Zakirova, 2021). In different EU countries, the threshold for the value of goods that triggers criminal liability varies significantly. For example, in Slovakia, this figure does not reach 300 euros, while in Portugal it is more than 50 thousand. Overall, border controls prevent less than half of all illegal movements (Maksymenko, 2014).

In the UK, a specialised prosecutorial body, the Serious Fraud Office (SFO), has such powers, dealing with the most serious and complex cases of fraud, bribery and corruption at the highest level (Batyrehareieva, Holovkin, Novikov, 2020). Several bodies are involved in ensuring customs security in the UK, the main ones being Her Majesty's Revenue & Customs, the National Crime Agency, the UK Border Force, and the UK Visas and Immigration Agency (Popivniak, 2018).

Interestingly, unlike the United States, where the main task of the Customs and Border Protection Service is to protect citizens from external and internal threats, and the fiscal function is secondary, in the UK, as in China, the main goal of the Customs Service is to fill the budget, while the National Crime Agency is responsible for protecting people in this country from external threats. In addition to it, the British Border Force performs functions similar to the US Border Patrol, namely immigration and customs control, combating smuggling, and collecting customs duties. However, unlike in the US, this body is not a separate ministry, but a part of the Ministry of the Interior, similar to China. Therefore, the UK sees the main threats to customs security as financial losses to the budget and the security of its subjects from terrorist activities. Therefore, all the bodies that ensure the UK's customs security face the task of fiscal security (Lisnichenko, Plynokos, Halan, 2023).

It should be noted a thorough approach of the Dutch legislator to regulating liability for smuggling offences. The range of crimes envisaged by the Criminal Code of the Kingdom of the Netherlands of 1881 (hereinafter - the Dutch Criminal Code, we are talking about the current version of the Code) is quite wide: from acts that infringe on the foundations of credit and monetary relations to economic offences. For example, a person who imports counterfeit or falsified coins, government securities or banknotes into the European part of the Kingdom (directly to the Netherlands) is subject to criminal liability under Article 209 of the Dutch Criminal Code. The sanction is punishable by imprisonment for a term not exceeding 9 years or a fifth category

fine. A person who imports coins with cut edges into the European part of the Kingdom under the guise of undamaged coins is liable under Article 211 of the Dutch Criminal Code. The punishment for this offence is imprisonment for a term not exceeding 8 years or a fifth category fine (Popivniak, 2018).

In France, customs and regulatory matters have always been one of the most important tools for implementing public policy, so the experience of general customs and regulatory framework and application of customs systems is of great importance in creating the legal basis for the customs union of European countries. France has joined the European Customs Union. Measures to centralise customs procedures have a significant impact on the customs administrative procedures for import operations in France. The Financial and Trade Licensing Service (SOFICO) and the Directorate General of Customs and Indirect Taxes are important (Yurynets, 2021).

In addition, in France, customs control over foreign trade entities is implemented in two areas: formal and fundamental control. At the moment of crossing the customs border, representatives of the French customs authorities fundamentally check about 5% of imports and 1% of exports of goods. The remaining 95% are subject to control within 1-3 years after the customs documents are issued (Kukshynova, Nosenko, 2021). According to the French Criminal Code, the types of criminal punishment are: 1) conviction with the imposition and execution (serving) of a sentence; 2) conviction with conditional non-execution (exemption from serving) of the sentence; 3) conviction with unconditional non-execution (exemption from serving) of the sentence; 4) conviction with conditional release from the sentence; 5) conviction without imposition of a sentence (Krasnytskyi, 2008).

It should be noted that Finland is the first successful example with an effective and clear system of combating smuggling and corruption due to a strong regulatory framework and the absence of serious gaps in the legislation. It is one of the least smuggled countries in the world. As a member of the EU, Finland is a party to all major EU regulations on fighting organised crime, which is a very important factor in its efforts to combat the spread of crime, including smuggling. However, the implementation of European laws in the domestic legal system of Finland is carried out very deliberately and carefully. A key principle of this process is the organic combination of Finnish national legislation with European legislation with minimal changes to the former (Bondarenko, Kuzmenko, 2021).

For example, the unit for combating organised crime in Italy is the Antimafia Investigation Division, in Israel - the Yahbal Unit for Combating Organised Crime and International Organised Crime (national unit for combating organised and international crime), in Romania - the Directorate General for Combating Organised Crime and Drugs of the Ministry of Administration and Interior of Romania. The Department for Combating Organised Crime of the Ministry of Internal Affairs of the Slovak Republic includes the following units: for criminal groups: combating terrorism; combating forgery of documents and securities; combating smuggling and corruption; regional departments. In countries such as Austria, Georgia, Latvia, Lithuania, Moldova, Germany, Poland, Czech Republic, Hungary and others, services and units for combating organised crime are part of the criminal police (Kharaberiush, 2015).

Organisationally, customs administrations are formed as separate agencies, as well as part of a joint customs and tax administration, which is the case in Ukraine. In 13 EU countries (Czech Republic, Republic of Poland, Romania, Bulgaria, Finland, France, Germany, Greece, Italy, Lithuania, Luxembourg, Slovenia, Sweden), customs administrations are separate agencies, usually under the control of the Ministry of Finance. In another 12 countries (Austria, Belgium, Denmark, Estonia, Hungary, Ireland, Latvia, the Netherlands, Portugal, the Slovak Republic, Spain, and the United Kingdom), customs administrations are part of a single tax and customs authority. However, the countries and the adopted model of customs administration organisation do not have a clear connection (Varava, 2017).

To combat smuggling and corruption during customs clearance, Belgium not only adheres to the traditional repressive approach of criminalising smuggling, but also cares about preventing it. Therefore, this problem is reflected in the COPERNIC reform, which stands for close financial control. By expanding concepts such as 'smuggling', 'corruption' and certain aspects of violation of customs rules in case of abuse of power, Belgium not only limited itself to the criminal aspect, but also left room for such concepts, which gradually led to the creation of the so-called conduct code (Bondarenko, Kuzmenko, 2021).

Since 2016, the regulatory framework for customs relations in Germany has been the Customs Code of the European Economic Community (hereinafter - EEC), adopted in 2013 (Varava, 2017). As of 1 January 2016, a new model of customs administration was introduced in Germany, with the General Customs Directorate (Generallzolldirektion) as the highest

federal authority. In order to ensure customs security, federal legislation vests the German customs authorities with quite broad powers. In addition to collecting customs duties and controlling the movement of goods across the border, the customs authorities are also responsible for combating the smuggling of drugs, tobacco, alcohol, weapons and ammunition, as well as preventing and suppressing the financing of terrorism. Recently, combating illegal labour activities, the work of mobile customs groups to detect these activities, as well as detection of counterfeit goods when they are attempting to enter the territory of the European Union have become particularly important (Petrova, 2019).

The main legislative act regulating social and legal relations in the area under study in Germany is the Law on the Customs Criminal Police Office and Customs Investigation Authorities of 16 August 2002, known as the Law on the Customs Investigation Service (ZFdG) (hereinafter - the ZFdG Law). According to § 1 of this Law, the Customs Investigation Service consists of the Customs Criminal Police Office and the General Directorate of Customs Investigations, which is subordinated to the operational and investigative customs offices (Gesetz über das Zollkriminalamt und die Zollfahndungsämter, 2002). The Customs Criminal Police Department is the central body of the Customs Investigation Service and at the same time one of the Central Departments of the Customs Administration's information and communication system. Officials of this structural subdivision of the Customs Investigation Service are vested with the powers of investigative bodies and are investigators of the Prosecutor's Office (§16) (Moldovan, Zhdanova, 2020).

The German Customs Inspection Service consists of the Customs Criminal Police and eight subordinate customs inspection offices, dealing with everything from moderate crime to organised customs crime. Their main tasks are performed by customs control authorities, such as controlling tobacco and drug smuggling. The Customs Criminal Police serves as the central office and coordinates the activities of the Customs Investigation Unit. This also includes the administration of the so-called Information System for Customs Investigations (INZOLL). An electronic system that stores data on customs offences committed by customs authorities. The Customs Criminal Police initiates its own investigations only for especially grave crimes, such as the proliferation of weapons of mass destruction (Gesetz über das Zollkriminalamt und die Zollfahndungsämter, 2002).

In the course of combating smuggling, corruption and customs violations, some states promote the use of NGOs. For example, in Sweden, a non-governmental organisation Democratic Audit, established in 1994, is engaged in independent supervision of crime in various areas of public life. The organisation includes a large number of domestic political scientists, economists and other scholars. In addition to such supervision and supervision of the general democratic situation, this organisation specialises in the study of various special issues that directly affect combatting smuggling and corruption (Bondarenko, Kuzmenko, 2021).

A relatively new form of cooperation is the activities of the GUUAM Clubs, which have been established in such countries as Bucharest (Romania), Warsaw (Poland), Sofia (Bulgaria), and Tokyo (Japan). GUUAM is an open organisation for other states that share its goals and principles (Havryliuk, Dubyna, Danyliuk, 2007).

Cooperation of law enforcement agencies within the Organisation is carried out on the basis of the Agreement on Cooperation among the Governments of GUUAM Participating States in the field of combating terrorism, organised crime and other dangerous types of crime of 20 July 2002 and is actively implemented within the framework of the project of the Virtual Centre of the Interstate Information and Analytical System (VC/IAS) – an association of law enforcement and other state bodies of the GUUAM member states, designed to ensure communication, analysis and exchange of law enforcement information in real time, as well as to facilitate joint operations and coordination of investigations of the most dangerous crimes. The GUUAM Virtual Centre, in accordance with the norms of international law and national legislation of the member states, cooperates in the fight against smuggling and other customs offences (Havryliuk, Dubyna, Danyliuk, 2007).

3. Experience in implementing operational and investigative powers in the Republic of Poland

In the context of the study, the experience of exercising operational and investigative powers of the Ministry of Defence of the Republic of Poland is of particular interest. The Customs Service of the Republic of Poland (Służba Celna Rzeczypospolitej Polskiej) in the system of state authorities performs the role of a controller of international trade, a fiscal authority responsible for the calculation and collection of value added tax and excise duty, as well as the main fighter against smuggling and customs fraud (Moldovan, Zhdanova, 2020).

The organisational structure of the Polish customs system consists of the Department

of Excise and Customs Tax, the Department of Customs Service, the Department of Customs Policy, the Department of Customs and Excise Control, which are structural elements of the Ministry of Finance of the Republic of Poland. The tasks of the Customs Service of the Republic of Poland include the implementation of the state customs policy, as well as other tasks, such as: control over compliance with customs law and other regulations related to the movement of goods across the border; collection of customs duties and other payments related to the movement of goods; tax control, collection of excise tax; cooperation in the implementation of common European policy; maintenance of statistics on internal trade between EU member states (INTRASAT); prevention of illegal export of cultural property; control over the legality of employment of foreigners; cooperation with customs authorities of other EU countries and international organisations (Berezhniuk, 2009). According to the figures cited by A. Butin in his analytical and advisory work entitled 'Is it necessary to criminalise smuggling of goods?', Poland provides for punishment for smuggling in the form of a fine or imprisonment. The threshold after which an administrative offence becomes a criminal offence is PLN 10,500 (about EUR 2,37 thousand). The fine can reach 20 million zlotys (about 4.5 million euros). In Germany, according to the expert, illegal import, export and transit of goods is considered a tax crime. The penalty for this crime may be a fine (from EUR 10,500 to EUR 250,000) or imprisonment for up to 5 years. Organising smuggling on a large scale can result in a 10-year prison sentence (Butin, 2020).

It should be noted that the operational and investigative powers of the Customs Service of the Republic of Poland are transformed into practical actions by officials of the relevant structural units. For example, one of the tasks of the Director of the Customs Chamber is to detect, prevent and combat fiscal offences and crimes and to bring to criminal liability the perpetrators of such offences within the limits set out in the Fiscal Criminal Code of the Republic of Poland (Article 19(1)), while the Head of the Customs Service is called upon to perform similar activities in the field of taxation (Article 20(1)) (Ustawa o Służbie Celnej, 2009). The scope of powers of the officials of the Customs Service of the Republic of Poland who perform customs control also includes the right to search premises with the use of technical devices and sniffer dogs, interview witnesses, conduct investigative experiments in justified cases, collect evidence, make video, audio and photo recordings,

and conduct direct prosecution of a suspect (Article 32(1), (4)). Officials of the so-called 'floating units' of the Customs Service also have the right to pursue ships on the water and stop them if they suspect that crew members or passengers have committed a crime (Article 47) (Ustawa o Służbie Celnej, 2009).

In 2000, Poland established the Central Bureau of Investigation (CBI), which is independent of the local police, although it has its own units in each region of the country. A well-known Polish criminologist W. Plawaczewski argues that the CBR is a mobile and efficient structure. The CBR is mainly engaged in three areas: a) combating organised crime and illegal acts that contribute to its prosperity (arms and explosives trafficking, extortion, etc.); b) crimes related to drug trafficking (production, smuggling, distribution); c) economic crimes (money laundering, fraud, corruption). The CBR is responsible for exchanging information with law enforcement agencies of other countries and Interpol (Shostko, 2009).

For example, with the support of Europol, a group of smugglers who supplied weapons, in particular to Ukraine, was detected in Poland. As part of a two-year investigation into the smuggling of weapons from Slovakia to Poland, Ukraine and Russia, a criminal group of 12 people was uncovered in Poland with the support of Europol. Earlier, nine Ukrainians were detained in the course of this investigation, the Europol press service said on Thursday. The organisation's press service reports, "According to the investigation, the organised criminal group smuggled weapons from Slovakia to Poland, Russia and Ukraine. The 96 seized firearms include revolvers, pistols, automatic rifles and handguns. Several thousand rounds of ammunition of various calibres and one hand grenade were also confiscated during the day's action. In addition, cash worth more than EUR 50,000, as well as 14 marijuana plants and some amphetamines were found during the search of the house." Europol detailed that this action was part of a larger two-year investigation conducted by the Polish Border Guard, which, in addition to today's confiscation, led to the seizure of almost 200 firearms, including the so-called Flaubert guns and almost 2,700 pieces of ammunition (With the support of Europol, a group of smugglers who were supplying weapons, in particular, to Ukraine, was uncovered in Poland, 2021).

In 1969, Italy created a team of carabinieri for the protection of cultural property, which searches for missing artefacts at home and abroad. An official international list of stolen paintings and works of art is periodically published. A register of such items is created

not only by intergovernmental organisations and national authorities, but also by private individuals. For example, in 1991, a private international database was created to search for stolen works of art and antiques (Art Loss Register). It helped return about 1400 works of art to their rightful owners (Shymonia, 2021).

Therefore, having analysed the experience of European states on the subject of research, we should agree with the position of V. Varava that the customs administrations of the EU countries play a key role in preventing and combating offences related to the evasion of customs duties, excise duties and other taxes, as well as smuggling, drug trafficking, money laundering, illegal movement of individuals and goods across the customs border (Varava, 2017).

In addition, O.I. Haraberyush's position, with which we agree and support, that European and world practice suggests that where units for combating organised crime operate separately, in particular in the UK, France, Italy, the USA and other countries, the effectiveness of their activities is much higher. Therefore, international experience and the experience of Ukraine prove that it is important for effective counteraction to organised crime that the services involved in this counteraction are not part of the same block, but exist in parallel and independently of each other (Kharaberiush, 2015).

It is determined that the volume of smuggling of goods in most EU countries is much lower than in Ukraine. However, in developed countries such as France, Ireland and the United Kingdom (a former EU country), the volume of smuggling is several times higher than in Ukraine. Nevertheless, EU legislation is more stringent in punishing smugglers. The problems of updating technical means of customs control and increasing the motivation of customs authorities in the fight against smuggling remain unresolved (Naidenko, Hunko, Moskalenko, 2024).

Therefore, developed countries demonstrate effective examples of the creation and operation of specialised units that have a narrow specialisation in combating smuggling of cultural values and weapons. The key aspects of their activities are the use of modern technologies, in-depth professional training of personnel and close international cooperation.

- Italy: Carabinieri TPC (Cultural Heritage Protection Unit) Italy is a leader in the protection of cultural property thanks to the work of the Carabinieri TPC, established in 1969. This unit is responsible for the search, investigation and recovery of stolen cultural property. It maintains unique databases of stolen artefacts and actively cooperates with UNESCO, Interpol and museums around the world. Accord-

ing to the Italian authorities, Carabinieri TPC annually returns thousands of cultural objects.

- France: Central Office for the Fight against Trafficking in Cultural Goods (OCBC) The French Central Office for the Fight against Trafficking in Cultural Goods (OCBC) specialises in investigating complex cases involving cultural objects. They actively use the Interpol database, provide expert evaluation of confiscated objects and engage in international cooperation, including joint operations with neighbouring countries.

- European Union: Operation Pandora Under the auspices of Europol and Interpol, large-scale international operations are conducted to combat trafficking in cultural heritage. For example, Operation Pandora involved law enforcement from more than 30 countries and resulted in the seizure of thousands of cultural objects such as paintings, archaeological artefacts and weapons.

- Germany: Federal Criminal Police Bureau (BKA) The German BKA has specialised departments that investigate cases of arms and cultural property smuggling. One of their tools is cooperation with auction houses to identify illegally sold objects.

Special emphasis should be placed on foreign experience in the use of information and analytical support for combating smuggling of cultural property and weapons.

Law enforcement agencies of foreign countries widely use automated information retrieval systems that can significantly optimise the detection and investigation of crimes committed by members of organised groups. Considering foreign experience, the national identification information system should be based on a single technology that enables processing of a wide variety of information. Therefore, the introduction of the most modern techniques, means, methods and technologies for preventing, exposing and counteracting the activities of organised criminal groups into the practical activities of law enforcement agencies is essential. In the era of globalisation, increasing precedents for the use of artificial intelligence, and the rapid development of information and communication technologies, it is advisable to use modern integrated information and analytical bases to increase efficiency in the fight against organised crime, which will enable law enforcement practitioners to identify signs of organised crime and prevent such activities more promptly and objectively (Shepetko, 2017).

Therefore, it should be noted that, in general, several years ago it became apparent that the use of artificial intelligence technologies in various prevention strategies, including at the border,

would facilitate rapid decision-making based on the analysis of huge amounts of information, which would ensure a quality of prevention that is otherwise unattainable. With regard to the significant cost of such developments, it is necessary to apply technological solutions that already allow achieving significant proactive results in crime prevention (Filippov, 2019).

Therefore, law enforcement bodies need to be re-equipped with more modern technical means of customs control, namely through artificial intelligence technologies, which should contribute to better control and counteraction to smuggling of goods and excisable goods. The National Revenue Strategy 2030 (2023) also provides for the upgrade of customs control equipment with a focus on new information technologies, but does not provide for direct measures to introduce artificial intelligence technology (Naidenko, Hunko, Moskalenko, 2024).

4. Conclusion.

To sum up, it should be noted that smuggling of cultural values and weapons is one of the most dangerous threats to international security. The loss of cultural objects weakens national identity and cultural heritage, while the illegal circulation of weapons contributes to conflicts, terrorism and crime. In this context, the study of legal regulations and the practice of law enforcement agencies of different countries allows us to identify effective mechanisms for combating these crimes and the possibility of their adaptation to national conditions.

It is established that in order to find the optimal models of the counteraction to smuggling, the foreign experience and structure of their special units for combating organised crime have been studied, and the structure of police departments of the USA, European and Asian countries has been analysed. Thus, comparing the experience of special police units in combating smuggling of weapons and ammunition in the USA, European and Asian countries, it should be noted that the approaches of law enforcement agencies are completely different in nature. For example, in European countries and the United States, the functions of counteraction give way to prevention, which is primarily aimed at using preventive measures with the subsequent elimination of causes and conditions with the use of confidential assistance from citizens. In contrast to European countries and the United States, Asian states strictly adhere to strict repressive measures. Legal acts, practice of foreign law enforcement agencies (special services) and criminal legislation on counteraction to smuggling of cultural values and weapons in European countries have been analysed. For example, a survey of SSU employ-

ees found that 89% of respondents supported the position that Ukraine should adopt positive foreign experience in combating smuggling of cultural values and weapons. The experience of foreign law enforcement agencies shows that a comprehensive approach, including regulatory frameworks, modern technology and international cooperation, is key to effective counteraction to smuggling of cultural property and weapons. Ukraine can adapt these methods to its own national circumstances.

Considering the analysed positive foreign experience of law enforcement agencies combating the smuggling of cultural values and weapons, a number of recommendations are proposed for law enforcement agencies combating the smuggling of cultural values and weapons in Ukraine: high-quality logistical and financial support; expanded cooperation: conclude new international agreements and strengthen information exchange between states; a national registry: develop a database of cultural values and objects at risk; strengthened border control: introduce specialised units at customs to check cultural values and weapons; training of personnel: conduct regular trainings and seminars for customs and law enforcement officers; facilitation of the return of valuables: simplify the procedures for the restitution of cultural objects for the countries from which they were illegally removed; use the latest information and analytical support to combat the smuggling of cultural values and weapons, especially artificial intelligence technologies, as well as creating joint automated information and search systems in the EU: "Weapons and ammunition smuggling" and "Cultural value smuggling".

References:

- Batyhareieva, V.S., Holovkin, B.M., Novikov, O.V.** (2020). Zapobihannia koruptsii u pryvatnomu sektori [Preventing corruption in the private sector]. Kharkiv: Pravo (in Ukrainian).
- Berezniuk, I.H.** (2009). Reformuvannia mytnoi systemy Polshchi [Reforming the Polish customs system]. *Visnyk Akademii mytnoi sluzhby Ukrainy*, no. 2, 20-29 (in Ukrainian).
- Bondarenko, O.S., Kuzmenko, V.V.** (2021). Kryminalno-pravova kharakterystyka teoretychnykh ta porivnialno-pravovykh zasad doslidzhennia protyidii kontrabandi ta koruptsii pid chas mytnoho oformlennia tovariv [Criminal law characteristics of theoretical and comparative legal foundations of research on combating smuggling and corruption during customs clearance of goods]. *Yurydychni naukovyi elektronnyi zhurnal*, no. 10, 418–420 (in Ukrainian).
- Butin, A.** (2020). Chy potrebna kryminalizatsiia tovarnoi kontrabandy? - analychno-konsultatyvna robota [Is it necessary to criminalize commodity smuggling? - analytical and advisory work]. Kyiv (in Ukrainian).
- Filippov, S.O.** (2019). Protydiia transkordonnoi zlochynnosti: hlobalnyi kontekst i realii Ukrainy [Countering cross-border crime: global context and realities of Ukraine]. Odesa: Feniks
- Gesetz über das Zollkriminalamt und die Zollfahndungsämter** (Zollfahndungsdienstgesetz – ZFdG). Ausfertigungsdatum: 16.08.2002. Retrieved from <https://www.gesetze-im-internet.de/zfdg/ZFdG.pdf> (in German).
- Havryliuk, V.I., Dubyna, V.I., Danyliuk, M.P.** (2007). Aktualni aspekty mizhnarodnoho spivrobitnytstva orhaniv vnutrishnikh sprav Ukrainy na napriamku protyidii torhivli liudmy [Current aspects of international cooperation between the internal affairs bodies of Ukraine in combating human trafficking]. K.: Tsyfra (in Ukrainian).
- Karafa, A.** (2018). The Effect of Contraband on Government Revenue: Case of Segen Area Peoples Zone. *Global Journal of Management and Business Research: B Economics and Commerce*, no. 18 (3), pp. 141-145 (in English).
- Kharaberiush, O.I.** (2015). Protydiia kontrabandi v Ukraini: operatyvno-rozshukovyi aspekt [Countering smuggling in Ukraine: operational and investigative aspect]. K.: VD «Dakor» (in Ukrainian).
- Kniaziev, V.S.** (2020). Zberihannia ta rozporiadzhennia mainom, shcho pereishlo u vlasnist derzhavy: mytno-pravovyi aspekt [Storage and disposal of property that has become state property: customs and legal aspects]. Odesa : Vydavnychiy dim «Helvetyka» (in Ukrainian).
- Krasnytskyi, I.V.** (2008). Kryminalna vidpovidalnist yak instytut kryminalnoho prava Frantsii ta Ukrainy: porivnialnyi analiz [Criminal liability as an institution of criminal law in France and Ukraine: a comparative analysis]. Lviv: Lvivskyi derzhavnyi universytet vnutrishnikh sprav (in Ukrainian).
- Krylovetskyi, A.L.** (2020). Vzaiedodiia syl bezpeky, sudovykh ta pravookhoronnykh orhaniv Ukrainy pid chas vykonannia sluzhbovo-boiovykh zavdan z protyidii kontrabandi: postanovka problem [Interaction of security forces, judicial and law enforcement agencies of Ukraine during the performance of official and combat tasks to combat smuggling: problem statement. Current problems of legal support of state security]. *Aktualni problemy pravovoho zabezpechennia derzhavnoi bezpeky*, no. 1, pp. 34-36 (in Ukrainian).
- Kukshynova, O.O., Nosenko, D.S.** (2021). Perspektyvy borotby ta zapobihannia kontrabandnoi zlochynnosti v mezhakh ukrainskoho zakonodavstva [Prospects for combating and preventing smuggling crime within the framework of Ukrainian legislation]. *Naukovyi visnyk Uzhhorodskoho Natsionalnoho Universytetu*, no. 67, pp. 241-245 (in Ukrainian).
- Lisnichenko, M., Plynkos, D., Halan, O.** (2023). Mytna sprava v Ukraini u mizhnarodnomu vymiri [Customs in Ukraine in the international dimension]. *Naukovi innovatsii ta peredovi tekhnologii*, no. 7, 263-277 (in Ukrainian).

Lozynska, I.O. (2016). Analiz ta adaptatsiia zarubizhnogo dosvidu yak napriam udoskonalennia systemy derzhavnogo upravlinnia [Analysis and adaptation of foreign experience as a direction for improving the public administration system]. *Publichne administruvannia: teoriia ta praktyka*, no. 2, 1–10 (in Ukrainian).

Lutsenko, Yu.V. (2024). Natsionalnyi ta zarubizhnyi dosvid borotby z koruptsiieiu ta orhanizovanoi zlochynnistiu: suchasnyi kontekst [National and foreign experience in combating corruption and organized crime: modern context]. *Vcheni zapy-sky TNU imeni V.I. Vernadskoho*, no. 3, 132–139 (in Ukrainian).

Maksymenko, S.O. (2014). Zarubizhnyi dosvid kryminalnoi vidpovidalnosti za kontrabandu tovariv [Foreign experience of criminal liability for smuggling goods]. *Yurydychnyi naukovi elektronnyi zhurnal*, no. 4, 538–540 (in Ukrainian).

Moldovan, E.S., Zhdanova, V.P. (2020). Zarubizhnyi dosvid operatyvno-rozshukovoi diialnosti mytnykh orhaniv: uroky dlia Ukrainy [Foreign experience of operational and investigative activities of customs authorities: lessons for Ukraine]. *Yurydychnyi naukovi elektronnyi zhurnal*, no. 4. Retrieved from http://lsej.org.ua/4_2020/78.pdf (in Ukrainian).

Naidenko, O., Hunko, K., Moskalenko, N. (2024). Causes of occurrence and ways of combating violations of customs rules. *Development Management*, no. 23, 20–31 (in English).

Petrova, I. (2019). Mytna sluzhba Nimechchyn v integrovani systemi mytnykh sluzhb yevropeiskoho soiuзу [German Customs Service in the Integrated System of Customs Services of the European Union]. *Pidpriemnytstvo, hospodarstvo i parvo*, no. 1, 121–126 (in Ukrainian).

Popivniak, O.I. (2018). Mizhnarodnyi dosvid zabezpechennia mytnoi bezpeky [International experience in ensuring customs security]. *Pravova prosvita: elektronne naukofo-fakhoie vydannia*, no. 2. Retrieved from http://www.pravo.nayka.com.ua/pdf/2_2018/82.pdf (in Ukrainian).

Predborskyi, V.A. (2005). Ekonomichna bezpeka derzhavy [Economic security of the state]. K.: Kondor (in Ukrainian).

Proekt Zakonu Ukrainy Pro vnesennia zmin do Kryminalnogo kodeksu Ukrainy ta Kryminalnogo protsesualnogo kodeksu Ukrainy shchodo kryminalizatsii kontrabandy tovariv ta pidaktsyznykh tovariv, a takozh nedostovirnoho deklaruvannia tovariv: vid 23 kvitnia 2021 r. № 5420 [Draft Law of Ukraine On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine regarding the criminalization of smuggling of goods and excisable goods, as well as false declaration of goods: dated April 23, 2021 No. 5420]. (2021). *rada.gov.ua*. Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71756 (in Ukrainian).

Shepetko, S.A. (2017). Mizhvidomche informatsiino-analitychne zabezpechennia diialnosti subiektiv, yakii zdiisniuiut borotbu z orhanizovanoi zlochynnistiu [Interdepartmental information and analytical support for the activities of entities com-

bating organized crime.]. *Naukovi visnyk Uzhhorodskoho natsionalnogo universytetu*, no. 43, 103–106 (in Ukrainian).

Shostko, O. (2007). Suchasni tendentsii orhanizovanoi zlochynnosti v yevropeiskykh krainakh [Modern trends of organized crime in European countries]. *Visnyk Akademii pravovykh nauk Ukrainy*, no. 2, 168–176 (in Ukrainian).

Shostko, O.Iu. (2009). Analiz efektyvnoi diialnosti systemy kryminalnoi yustyttsii u sferi proty-dii orhanizovanoi zlochynnosti v okremykh yevropeiskykh krainakh [Analysis of the effective operation of the criminal justice system in the field of combating organized crime in selected European countries]. *Problemy zakonnosti*, no. 1, 176–186 (in Ukrainian).

Shymonia, I.V. (2021). Kontrabanda kulturnykh tsinnosti v Ukraini: poniattia, problemni aspekty ta shliakhy vyrishennia [Smuggling of cultural values in Ukraine: concepts, problematic aspects and solutions]. Retrieved from <https://ndekczakarpatyia.org/science/754> (in Ukrainian).

Tuliantseva I. (2007). Kulturni tsinnosti v konteksti systemy zakhystu natsionalnykh interesiv Ukrainy [Cultural values in the context of the system of protection of national interests of Ukraine]. *Visnyk Akadii mytnoi sluzhby Ukrainy*, no. 2. pp. 112–116 (in Ukrainian).

Ustawa o Służbie Celnej z dnia 27 sierpnia 2009 r. Retrieved from https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=82768&p_lang=en (in Polish).

Varava, V.V. (2017). Vladni subiekty vykryttia i rozsliduvannia kontrabandy v Ukraini ta providnykh krainakh YeS: komparatyvnyi analiz kompetentsii [Power actors in the detection and investigation of smuggling in Ukraine and leading EU countries: a comparative analysis of competence]. *Pravova pozytsiia*, no. 1, 120–127 (in Ukrainian).

Yurynets, O.V. (2021). Priorytetni problemy roboty mytnykh orhaniv Ukrainy v umovakh yevropeiskoi ta yevroatlantychnoi intehratsii [Priority problems of the work of the customs authorities of Ukraine in the context of European and Euro-Atlantic integration]. *Menedzhment ta pidpriemnytstvo v Ukraini: etapy stanovlennia i problemy rozvytku*, no. 3, 96–103 (in Ukrainian).

Za pidtrymky Yevropolu v Polshchi rozkryto hrupu kontrabandystiv, yaki postavlialy zbroiu, zokrema, do Ukrainy. Interfaks-Ukraina [With the support of Europol, a group of smugglers who were supplying weapons, in particular, to Ukraine, was uncovered in Poland]. 2021. Retrieved from <https://ua.interfax.com.ua/news/general/750730.html> (in Ukrainian).

Zakirova, S. (2021). Kryminalizatsiia kontrabandy: novi pidkhody do vyrishennia starykh problem [Criminalization of smuggling: new approaches to solving old problems]. *Hromadska dumka pro pravotvorenna*, no. 8, 8–17 (in Ukrainian).

Zharovska, H.P. (2018). Transnatsionalna orhanizovana zlochynnist v Ukraini: fenomen, determinatsiia, protydia [Transnational organized crime in Ukraine: phenomenon, determination, counteraction]. Cherniv. nats. un-t im. Yurii Fedkovycha. Chernivtsi: ChNU: Ruta (in Ukrainian).

Віталій Винниченко,

здобувач, Науково-дослідний інститут публічного права, вул. Г. Кірпи, 2а, Київ, Україна,
індекс 03035, vinnychenkovitalii.net

ORCID: orcid.org/0000-0001-5376-3294

ПРОТИДІЯ СПЕЦІАЛЬНИМИ ПІДРОЗДІЛАМИ ПРАВООХОРОННИХ ОРГАНІВ КОНТРАБАНДИ КУЛЬТУРНИХ ЦІННОСТЕЙ ТА ЗБРОЇ: ЄВРОПЕЙСЬКИЙ ДОСВІД

Анотація. Метою статті є правовий аналіз позитивного європейського досвіду протидії спеціальними правоохоронними органами контрабанді культурних цінностей та зброї. **Результати.** Контрабанда культурних цінностей і зброї є одними з найбільш небезпечних загроз для міжнародної безпеки. Втрата культурних об'єктів послаблює національну ідентичність і культурну спадщину, тоді як нелегальний обіг зброї сприяє конфліктам, тероризму та злочинності. У цьому контексті дослідження нормативно-правових актів і практики правоохоронних органів різних країн дозволяє виявити ефективні механізми протидії цим злочинам та можливості їх адаптації до національних умов. У європейських країнах та США функції протидії поступаються місцем запобіганню, що впершу чергу направлене на використання саме запобіжних заходів з подальшим усуненням причин та умов із використанням конфіденційної допомоги громадян. **Висновки.** Ураховуючи проаналізований позитивний зарубіжний досвід протидії правоохоронними органами контрабанді культурних цінностей та зброї було запропоновано ряд рекомендацій щодо протидії правоохоронними органами контрабанді культурних цінностей та зброї в Україні: якісне матеріально-технічне та фінансове забезпечення; розширення співпраці; Укладання нових міжнародних угод і посилення інформаційного обміну між державами; створення національного реєстру; розробка бази даних культурних цінностей і предметів, що перебувають у зоні ризику; посилення контролю на кордонах; впровадження спеціалізованих підрозділів на митницях для перевірки культурних цінностей і зброї; навчання кадрів: проведення регулярних тренінгів і семінарів для працівників митних служб і правоохоронних органів; сприяння поверненню цінностей: спрощення процедур реституції культурних об'єктів для країн, звідки вони були незаконно вивезені; використання новітнього інформаційно-аналітичного забезпечення протидії контрабанді культурних цінностей та зброї, особливо це стосується технологій штучного інтелекту, а також створення спільних автоматизованих інформаційно-пошукових систем в ЄС: «Контрабанда зброї та боєприпасів» та «Контрабанда культурних цінностей».

Ключові слова: контрабанда, культурні цінності, зброя, боєприпаси, протидія, інформаційно-аналітичного забезпечення, зарубіжний досвід.

The article was submitted 11.11.2024

The article was revised 03.12.2024

The article was accepted 23.12.2024