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## **SMUGGLING OF GOODS AS A FELONY IN REPUBLIC OF SERBIA: THE HISTORICAL ASPECTS**

*The author starts with the thesis that smuggling is part of the shadow economy phenomenon. The emergence and development of smuggling is linked with the emergence of borders between states, which created the conditions for establishing an administrative control over the movement of goods. Harmonization of the legal framework leads to frequent changes in the positive legislation of the Republic of Serbia, which results in huge changes in the field of crime suppression (especially economic and financial). The rich legal tradition and legal heritage must not be overlooked in the process of legal harmonization. The aim of the research is to answer the questions when smuggling emerged as a social but first and foremost criminal law phenomenon, its development in criminal law in the Serbian state throughout history and whether certain lessons can be drawn from our rich legal tradition. The first part of the article analyzes the literature and sources of law in Serbia in the middle Ages, where Dušan's Code is the main source of criminal law and law. The second part explores criminal sources in Serbia in the 19th century after liberation from the occupation of the Turkish Empire. The third part examines the criminal-legal framework in Serbia of the 20th century, in which the communist social political system prevailed. The last part of the article analyzes the positive legislation of Serbia.*

**Key words: Smuggling, Serbia, Customs legislation, Criminal legislation**

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## 1. Introduction

Smuggling of goods<sup>1</sup> and other similar felonies are part of the so-called ‘The shadow economy’. In fact, this term covers all illegal economic activities aimed at gaining economic benefits for the person who performs those activities, and to the detriment of the state and persons who carry out economic activities legally. It is, therefore, a matter of engaging in economic activity beyond or against legal regulations. The shadow economy is also referred to in the literature as tax-free, informal, black, underground, or unofficial. However, regardless of which of these terms are used by individual authors, almost everyone agrees that this is an activity with something that is wrong or wrong with the information about these activities (Jovašević, 2009:826; Jovašević, 2018:381).

The emergence and development of smuggling is linked to the emergence of state borders, which created the conditions for establishing a regime of administrative (customs, police etc.) control over the movement of goods. Throughout history, smuggling has had the stamp of conditionality on specific social and economic occasions. This applies not only to the range of goods, but also to the forms and methods of smuggling. Up until the advent of smuggling capitalism, it could be said that it had more political and military aspects. Later, it gained much more commercial aspects, manifesting itself as a widely spread illicit ‘business’ that in certain periods put the national economy in a difficult position (Delić, 2010:476)<sup>2</sup>.

The perpetrating of this felony by organized crime groups can also lead to economic instability in one country. In addition, smuggling of goods can result in the commission of other serious crimes such as assault and murder of police and customs officers, corruption, terrorism, money laundering, tax evasion, etc. which, in addition to the economy, threaten other forms of security (e.g. individual, public, national, etc.) of a country.<sup>3</sup> Organized criminal groups are increasingly involved in the smuggling of goods and thus gain illicit property gain without leaving a trace that could indicate their criminal activity and the like. By incorporating illicit income into legal flows, organized crime threatens the economic system and healthy market competition, thereby affecting economic, political and even social trends, both nationally and internationally.

Considering all of the above, as well as obligations in the pre-accession negotiations with the EU, certain domestic strategic documents as well as the need for a greater degree of coordination of state bodies in combating corruption,

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1 Synonyms are contraband, trafficking of goods etc.

2 Similar in Nicević, Ivanović, 2013:190-191

3 Paraphrased according to Nicević, Ivanović, 2012:96

financial and economic crime, the Republic of Serbia in 2016 adopted the Law on Organization and Jurisdiction of Government Agencies in the Fight against Organized Crime, Terrorism and Corruption<sup>4</sup>. This legal act as part of the so-called ‘organizational legislation’ for the first time, the felony of smuggling is placed under the jurisdiction of special organizational units of the police, prosecutor’s office and court. For the first time, local police departments do not have, as their original jurisdiction, the suppression of economic crime and therefore smuggling.

In order to assess the time distance, an analysis of available literature and legal regulations was made with the application of historical legal methods was carried out. The aim of the research is to answer the questions when smuggling emerged as a social but first and foremost criminal law phenomenon, such as its development in criminal law in the Serbian state throughout history and whether certain lessons can be drawn from our rich legal tradition.

## **2. Smuggling in the Middle Ages**

Before the Dušan’s Code, there were no independent laws in the field of world law in the Serbian state. The sources of law at that time were: a) numerous charters, which were of a particular nature, b) international treaties that also passed general norms, but limited to international relations, and c) translated Byzantine legal collections, whose application was uncertain. Common law was still prevalent (Krključ, 2002:56).

The earliest information about the existence of an independent fiscal part in our region is recorded in the early Middle Ages. This is already, a time when in many places there are well-established systems for determining and collecting taxes and other levies. Namely, the Dušan’s Code already enacted at the councils of 1349 and 1354 provided for punishment for the perpetrators of the criminal offense of tax evasion or non-payment of taxes (Jovašević, Glamočlija Gajić, 2008:133-134)<sup>5</sup>.

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4 Official Gazette of RS No 94/2016

5 The Dušan’s Code, passed on May 21, 1349 (almost two centuries before the famous German Code of Constitutio Criminalis Carolina of 1543 (Jovašević, 2016b: 26)), at the assembly of Serbian lords and church dignitaries in Skopje (North Macedonia), is the oldest written legal act in this region and ‘one of the most important monuments of our Middle Ages’ (Petrovic, 2014: 6) and ‘lasts as an amanet of a great past, chaos is a messenger of deep political aspirations’ (Krključ, 2002: 61). According to the degree of development at that time, because the original was not preserved there are several variants (manuscripts) of the Dušan’s Code: Strug’s, Prizren’s, Hodoš’s, Hilandar’s, Šišatovac’s, Bistrica’s, Baranja’s, Atonic, Studenica’s, Rakovica’s, Ravanica’s, Grbalj’s, Zagreb’s, Sofia’s, Tekelian, Belgrade’s, Stratimirian, Bordjoškian and Kovilj’s (Solovjev, 1928:18-36). The names of the manuscripts were created on the basis of the places where they were found, or on the basis of the surname where the manuscript was found. Regardless of the various variants, it can be

For the purposes of this article, it is essential to consider the provisions of the criminal law and the possible existence of a felony of smuggling or similar criminal offenses. The synthesis of the provisions concludes that felonies against religion, the state and the monarch are issued here, generally dangerous felonies (arson, witchcraft), then offenses against morality (rape, bloodshed, etc.), life, body and honor (murder, bodily injuries and insults) and against property (theft, theft at the expense of the church and robbery).

Dušan's Code issues the crime of tax evasion or failure to pay. Of course, this act is unnamed in the law itself (which was the custom of all the older legal sources), but its content, nature and character consist precisely in avoiding payment of duties to the ruler. This offense is prescribed by Article 189 of the Dušan's Code according to the Rakovica's Manuscript. Specifically, this legal provision is contained only in this transcript of the Code of Stefan Dusan IV, which originated sometime around 1701. In the primal version, this legal provision refers only to a specific tax (Serb. 'soće'), and some others were added by the transcriber himself (these are terms that are in the known to our people only after the Turkish invasion of the Balkans) (Anđelković, Jovašević, 2006: 143).

Traders were guaranteed freedom of movement and business, and the Emperor's customs officer was forbidden to obstruct and detain them, for which a fine was imposed, for such usurpation (according to Petrović, 2014:78-79; Randjelović, Todorović-Krstić, 2009:40-41). There was even an obligation to provide the trader with lodging, and if he lost any profit or suffered damage from the prohibition of lodging, the village was obliged to compensate him (according to Novaković, 1870:49; Randjelović, Todorović-Krstić, 2009:49).

It is concluded that the Dušan's Code as the basic source of law at the time did not explicitly issue smuggling of goods as a felony. But it must be emphasized that there was a fiscal system consisting of taxes and customs whose non-payment was punishable, and thus the possible occurrence of smuggling of goods and evasion of customs duties was also penalized. The State's Treasury was then considered to be the personal property of the monarch and the income, which was abundantly overflowing, was his personal income. The main sources of wealth were: minting, mines and customs. Government revenue was also increased by inheritance taxes (so-called 'soće'), other taxes, penalties and fines (Salzer, 1960:130).

From the 15th and 16th centuries most of the territory inhabited by the Serbian people was within the Ottoman Empire whose occupation lasted until the First Serbian Uprising in 1804. The sources of rights at that time were Sharia law, that

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concluded that the Dušan's Code, by virtue of Byzantine legal acts, contains provisions of church, civil and criminal law.

is, the religious laws of Islam on which the individual legal acts of the Sultan were based, e.g. *canoes*, *fermans*, *hatysheriffs*, *ahdnams* and the like (Krkljuš, 2002: 155-157). Considering the fact of free trade, the socio-political situation, the constant armed conflicts and the expansion of the Ottoman Empire, one can conclude that the smuggling of goods was not the focus of the legal activity of the Turkish monarchs.

### 3. Smuggling during the 19th century

The first customs tariff was issued by Prince Milos on March 1<sup>st</sup>, 1819 and amended on December 16<sup>th</sup>, 1822. This tariff included a total of 31 items (the highest tax was for horses and cattle, two groats per head, 20 pairs for pigs and 10 pairs for sheep). For other goods, it is envisaged that, in relation to value, two pairs will be taken for each goat. The above tariff was valid until March 7<sup>th</sup>, 1828, when it was replaced by a new one. The new tariff included 71 items and was slightly lower than the previous tariff. Import-export duties were also levied on other territories (Tur. *Paşalık*). Seven years later, on July 3<sup>rd</sup>, 1835, a ‘short supplement’ of the tariff of 1828 was issued, which prescribed customs duties on eight items (seven livestock and wheat), for products exported to Turkey, which was very high (20 groats for horses and 10 groats for oxen and pigs).<sup>6</sup>

If we also look at the sources of criminal law (in the narrow sense) in the Middle Ages, we can conclude that the provisions on smuggling are not an immanent part of criminal law. Specifically analyzing the Law of archpriest Mateja<sup>7</sup>, Karadjordje’s Criminal Code<sup>8</sup> and the Criminal Code of the Principality of Serbia<sup>9</sup>, we do not find contraband provisions. At the assembly of Valjevo district, in May 1804, the first judges were elected and were instructed to stand trial with several provisions, which were called the Law of archpriest Mateja after the text was published by archpriest Mateja Nenadović in his Memoirs. According to the time in which the uprising against the Turkish Empire was made, this legal act refers primarily to serious crimes against life and body, state authorities and the army (according to Krkljuš, 2002:193-194).

The Karađorđe’s Code (or Karađorđe’s Criminal Code-KsCC) contains a slightly broader scope of provisions relating to criminal and civil law. It regulates felonies against the state and social order, life and body, military offenses and

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6 According to <http://www.carina.rs/cyr/ONama/IstorijatCarinskeSluzbe/Stranice/IstorijatZakonalTarife.aspx> accessed at 23.06.2019

7 According to Krkljuš, 2002:193-194; Jovašević, 2016a:65

8 According to Krkljuš, 2002:194-196; Mirković, 2008; Jovašević, 2016a:65-74

9 According to Randelović, Todorović-Krstić, 2009:77-80 и 145-160; Nikolić, 1991

disciplinary offenses, etc. In terms of the types of penalties, it is imbued with cruelty, relying on the legal tradition of the Dušan's Code, the influence of Sharia law and Austrian border law (Mirković, 2008). The peculiarities of the construction of the Serbian state after 1815, its rather specific international legal status, as well as the social, economic situation, population structure, etc., inevitably influenced the character of domestic law in general, and therefore criminal law (Nikolić, 1991:60).

The KsCC did not divide the provisions into a general and a separate section (although such systematics were already known in the criminal law of Europe since the French Revolutionary Criminal Code of 1791). In a separate section, which represents the most extensive part of KsCC, two distinct areas can be clearly distinguished: a) general felonies and b) military felonies. They describe the individual felonies and punish them for their perpetrators in accordance with the above general provisions (Jovašević, 2016a:66, 68).

The Criminal Code of the Principality of Serbia consists of three parts: a) introductory provisions, b) provisions on criminal offenses (and penalties) and v) provisions on appearances as a third type of unlawful acts. From the aspect of the crime of smuggling, the second part that regulates the crimes that are classified according to the protective object against which they are directed is most important (Nikolić, 1991:98).

However, if we look at criminal law sources in a broad sense, then in Serbian first Customs Law of 1850, Article 121, we can find provisions on smuggling (according to Lončarić, 1908:17). As a young country, and similar to the more developed European countries, Serbia issues smuggling as a crime to protect the economy and the customs system. The act of committing this felony consisted of the secret entry, removal and transfer of goods (*auth. rem.* through the border or customs line). The object of smuggling was removal goods which were forbidden to be traded and the offense could only be carried out in the border area. Removal goods were goods that could be traded. According to the form of culpability, an intent was required, which not only was presumed, but it was an irrefutable presumption where the offender intended to avoid paying duties and putting the goods on the market (Lončarić, 1908:18-25). It must be emphasized here that 'duties' did not imply only customs duties but all other taxes levied by the state at that time for the import of goods (toll, monopoly taxes, etc.).

Customs laws of 1863, 1897, 1899 and 1904 were later enacted, which did not substantially alter the grounds laid down. Until the enactment of the 1899 law, smuggling could only be carried out with the intent which the customs officer (a bureaucrat official) was obliged to determine. By enacting the law of 1899, the

perpetrator of the felony of smuggling could be punished for the willful and negligent commission of this crime (Lončarić, 1908:18). The act of doing this felony (Šuput, 2015:69) was determined alternatively as:

- 1) Entry of goods from abroad via customs line in the territory of the Kingdom of Serbia, avoiding reporting to the competent customs office;
- 2) Transfer of goods specified in the import or export via hidden, not roads that served for export or unloading of such goods on a side road;
- 3) Unloading of goods in the territory of the Kingdom of Serbia without reporting to the competent customs or authorities;
- 4) Failure to report to the competent customs office the goods on which customs duties and other duties were levied; and
- 5) Arbitrarily disposal (e.g. sale or gift of imported goods) before the goods are declared to the competent customs house or in the same way the disposal of goods designated for customs warehousing or other goods required to be reported to the competent customs house in accordance with the Customs Law of the Kingdom of Serbia.

In addition to the basic form of the felony, the amendment of 1899 in Article 151 also issued a more serious form of smuggling, which consisted of committing the felony of restitution, if the export or import of the goods was prohibited or if the goods were transferred at night. These circumstances had to be covered by the intent of the perpetrator, in which case the penalty was increased by 50% of the sentence prescribed for the basic form of the felony.

When it comes to penalties, the laws at the time were not rigorous. The Customs Laws of 1850 and 1863 provided for a fine of half of the goods to be smuggled - with the confiscation of half of the smuggled goods. Later amendments to the customs legislation of 1879 issued the penalty by requiring the confiscation of all smuggled goods, and even introduced a 'real' fine of ten times the amount of the duties at the time, which had to be paid. If the offender could not pay the fine, it could be replaced by a prison sentence.

#### **4. Smuggling in 20th century**

Until the advent of capitalism, smuggling could be said to have had a more political and strategic-military aspect (Nicević, Ivanović, 2013:190). The basics laid down by customs legislation in the 19th century were also followed by the amendments to the Customs Law of 1904, where, in addition to smuggling in the border zone, smuggling was introduced in the country (Lončarić, 1908:18-19). The act of committing a felony consisted in the transfer of goods (domestic or foreign

origin) across the state border and the placing of such goods in free circulation, which resulted in the avoidance of payment of certain taxes and consequently damage to the state budget. The customs authorities were obliged to carry out a certain procedure when importing or exporting the goods and to charge certain fees. The smugglers sought to avoid this procedure and thereby reduce their own costs (Lončarić, 1908:21-29).

The analysis of legal regulations concludes that the felony of smuggling remains part of the secondary criminal legislation in the subsequent periods of the historical development of the Serbian state and the subsequent unification of the southern Slavs.<sup>10</sup>

After World War II, a large number of different, combined factors led to the expansion of the smuggling of various commodities. Namely, trade was in disarray, and the lack of many goods, most often the elementary ones, was increasingly felt. Also, the pronounced migration of the population, refugees and prisoners of war from one end of the world to the other, as well as one general confusion due to the effects of the WWII lead to the creation of favorable conditions for the flowering of smuggling, not only professional but also amateur, which reaches unprecedented proportions (Nicevic, Ivanovic, 2013:191).

The Second World War was followed by the rebuilding of the country first in social, political, economic and normative terms. In 1976, the SFRY Customs Law<sup>11</sup> (further: CLSFRY) was adopted<sup>12</sup>, which in Chapter XVI was titled: ‘Penal Provisions’ in Art. 359-365 issued the crime of smuggling. The object of protection of this crime was the customs system of the former SFRY. The felony had two basic and one qualified forms.

The act of execution of the first basic form (Article 359 of the CLSFRY) consisted in engaging in the transfer of goods across the customs line, avoiding measures of customs control. Engaging in implied a certain contingency so that if the offender only once transported the goods through a customs line outside the customs control, he/she did not commit this felony. The customs line was defined

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10 According to Živanović, 1939:64-66; Law on Suppression of Illicit Trade, Illegal Speculation and Economic Sabotage (Official Gazette of the FPRY, No 56/46 and 74/46 – correction); Krivični zakon SR Srbije, Krivični zakon SAP Vojvodine, Krivični zakon SAP Kosova i Zakon o izvršenju krivičnih sankcija sa registrima pojmova, 1977; Krivični zakon Savezne republike Jugoslavije (prečišćen tekst), Krivična dela predviđena posebnim zakonima Savezne republike Jugoslavije, Krivični zakon Republike Srbije (prečišćen tekst), Krivična dela predviđena posebnim zakonima Republike Srbije, Pravilnik o uslovima i načinu upotrebe sredstava prinude, 1995; Bačić et. al., 1995:830-831

11 Official Gazette of the SFRY No. 10/1976, 36/1979, 52/1979, 12/1982, 61/1962, 7/1984, 25/1985, 38/1986, 28/1988, 40/1989, 70/1989 and 21/1990

12 Later, a new Customs Law was adopted (Official Gazette of the SFRY, No. 34/90), which essentially did not make many changes from the point of view of smuggling other than changes in numbering (Article 340) and increased individual penalties.



in Article 1, paragraph 2 of the CLSFRY and coincided with the SFRY border line. Customs surveillance included measures taken to prevent the unauthorized handling of customs goods and to ensure their identity until the customs procedure was carried out, and in particular: 1) safekeeping and inspection of customs goods, 2) customs clearance, 3) putting the customs marks, 4) sampling, prospectuses, photographs or other data to ensure the identity of the goods 5) search of means of transport and transfer and of the crew or crew, and 6) inspection of the luggage of passengers and personal search of passengers (Article 6 of the CLSFRY). This form of crime could only have been committed intentionally, for which a sentence of imprisonment of one to five years and a fine were cumulatively issued. The *ratio legis* of such a solution stems from the intent of the perpetrator to obtain unlawful material gain in this way, and therefore the fine is a normal response of the state to endangering the customs system.

The second basic form of the felony was issued in Article 360 of the CLSFRY. It existed if the transfer of goods through the customs line was made armed, in a group or by use of force. Here it was enough to carry the goods once because there was no engaging as a condition, but the person had to have with him a weapon that he/she did not have to use when carrying the goods. The group was not defined by customs or criminal legislation, so it was interpreted that the group must have three or more persons. Force, in addition to the use of physical or mechanical strength, according to criminal legislation<sup>13</sup> was also considered the use of hypnosis or seductive means to overcome the resistance of a passive subject or to bring him to an unconscious state.

This form of felony could only be committed with intent, while the punishment was differently determined depending on whether the felony was committed with a weapon or in a group (imprisonment for one to three years) or the use of force (imprisonment for one to five years). In both cases, a fine was imposed in addition to imprisonment. Although, by its nature, this form of crime is more severe than the first, the legislature did not issue a severe sentence at the time, but on the contrary issued a milder sentence for dealing with a weapon or in a group.

The qualifying form of this felony existed if someone organized a group or a network of persons for the purpose of transferring customs goods through a customs line while avoiding customs controls. The qualifying circumstance for this form of offense is organization, which implied criminal association or the existence of a network of traders of smuggled goods. This form of crime was punishable by one to seven years prison sentence. It should be noted that even belonging to a group was punishable, regardless of whether a member of the group committed

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13 Criminal Law of SFRY (Official Gazette of the SFRY, No. 44/76)

the crime or not, for which the legislature provided him the possibility of imposing a sentence of up to one year in prison and a fine (privileged form of felony).

With regard to security measures and the handling of smuggled goods, the CLSFRY issues the mandatory seizure. The goods subject to the commission of the crime had to be seized, later sold and the value thereof, which, according to the provisions of the Customs Laws at that time, constituted the customs duty basis. Later, the customs procedure for collecting customs duties and other import duties was also carried out. It was also issued that the means of transport/transfer, as well as the smuggling goods, which was seized or charged, would be handed over to the competent customs office, which was treated them according to the regulations, and the proceeds from the basis for collecting the value of the items was the revenue of the SFRY budget.

In addition, Article 364 of the CLSFRY issued the seizure of a means of transport or a means of transfer who's secret and hidden places were used for the transfer of goods that were smuggled or intended for smuggling. The precondition was that the owner or user of the vehicle knew or had to know that the item will be used for the purpose of smuggling (eventually intention) or if the value of the goods subject to smuggling exceeded one third of the customs duty base of that means of transport or means of transfer at the time of the felony.

With the breakup of the SFRY, the former republics declared independence, leaving only Serbia and Montenegro together, which established the Federal Republic of Yugoslavia, which had a single customs territory regulated by the Customs Law<sup>14</sup> (further: CLFRY). The felony of smuggling was issued in the provisions of Art. 179-184, in Chapter XVIII. The essential of felony remained the same with the minimal differences we cite (Bačić, et. al., 1995:830-831):

- 1) there was one basic form with three alternatively set enforcement acts (engaging in, with weapons and in groups) and the same penalties (imprisonment for one to five years and a fine);
- 2) there were three qualifying forms (use of force, organizing a group or network to carry out the basic form, and organizing a network of resellers or brokers for dispersing non-cleared goods) for which one to eight years' imprisonment and a fine were imposed.

Subsequent socio-political changes inevitably led to changes in the normative framework, and thus in 2003 Serbia adopted a new Customs Law<sup>15</sup> (further:

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14 Official Gazette of the FRY, No. 45/92 with later Novels published in the Official Gazette of the FRY, No. 16/93, 50/93, 24/94, 28/96, 29/97, 59/98, 23/01, 36/02 and 7/03 - decision CC

15 Official Gazette of the RS, No. 73/03, with later amendments published in the Official Gazette of the RS, No. 61/05, 85/05 - other law, 62/06 - other law and 63/06 - other law

CL/03). Article 330 issues the felony of smuggling with one basic and three qualified forms.

The basic form of the felony was partially modified in relation to the CLFRY. The enforcement act consisted of seven alternatively issued actions of transferring through a customs line, entering into a customs territory, receiving, hiding, buying, selling or any other operation with customs goods that enabled the transport, concealment or sale of smuggled goods. For the existence of the felony, it was necessary to take these actions in order to avoid customs supervision, which included a set of general measures and actions of the Customs Administration in order to enforce customs and other regulations in relation to goods subject to customs control, including measures to ensure the identity of goods from their arrival at the customs territory until the completion of the customs procedure (monitoring and safekeeping of customs goods, taking of samples, prospectuses, photographs or other data), putting customs marks and certification of the prescribed documents (Article 5, paragraph 1, item 11 of CLFRY).

To commit this form of felony required intent. It was punishable by a term of imprisonment of six months to five years and a fine. Here we see that the legislature has decided to move the special legal minimum of the issued prison sentence from one year to six months, while maintaining a special legal maximum for the basic form of smuggling, which has led to changes in the penal policy.

The first qualified form of smuggling existed if the basic form of the felony was committed in a group, armed or using force or threat, for which one to eight years' imprisonment and a fine were imposed. We note here that the legislature recognized the qualifying nature of the use of weapons, force, threat and the smuggling in a group, which was not the case in the previous period.

Second qualified form of smuggling existed if a network was organized to carry out the basic form. Although the legislator *explicite* omitted resellers and brokers, they were not exempt, but the concept of the network was extended to all persons who are part of the smuggling network from transferring/bringing in goods through receiving, hiding, buying, reselling and selling. This form of smuggling was punishable by two to eight years in prison and a fine. We note here that the legislature has increased the special legal minimum of imprisonment to two years and thus further qualified the organization of the smuggling.

The third qualified form of smuggling recognizes the objects of the crime as a qualifying circumstance and they are narcotics, weapons, nuclear material and hazardous wastes. Here, the legislature shifted the legal maximum of a prison sentence and provided for a sentence of two to ten years in prison and a fine. It must be noted that the main and secondary criminal legislation (federal and republican)

criminalized illicit activities with weapons, narcotics, nuclear and waste materials, so this more severe form, as we will see in later novelties, has been deleted. The reason for this may be sought in the fact that the issued form of the crime has identical special elements of other crimes that have incriminated certain acts with narcotic drugs, nuclear material, etc.

Other provisions regarding the seizure of smuggled goods, means of transport and means of transfer remained the same with one supplement. A transport, transfer or other means specially made or tampered with to enable the concealment of goods shall be forfeited regardless of the value of the goods or the right of ownership of that means of transport.

Smuggling remains part of the secondary criminal legislation in Serbia until the major codification of criminal legislation in 2005, when it was exempted from customs legislation and became part of the main criminal legislation in the Republic of Serbia.

## **5. Contemporary solutions**

According to the positive law of the Republic of Serbia, smuggling is criminalized as a felony of blank character against the economy in Article 236 of the Criminal Code<sup>16</sup>. It has a basic and qualified form. The criminal law norms in this section are supplemented by the customs legislation governing the procedures and procedures for import and export of goods to Serbia, customs line and customs control.

The object of protection of the felony of smuggling, in the narrow sense, are customs and the customs system, while, in the broader sense, they are the market and the market economy. For this felony the criminal sanctions (cumulative imprisonment and a fine) and security measures (confiscation of items) are issued. The perpetrator may also be imposed another criminal sanction if the conditions provided for by the law (work in the public interest, probation and educational measure against a juvenile offender) are fulfilled. The qualifying form of smuggling also requires seizure of proceeds of crime (so-called extended seizure) (Nikač, Leštanin, 2019:160).

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16 Official Gazette RS No.85/05, 88/05-corr., 107/05-corr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19

## 6. Conclusion

Smuggling occurs at a time when states, aware of the need to protect their own economy and in order to increase the yield of the monarch's cash register, introduce customs. Although it was not explicitly issued, already in the time of Emperor Dušan the Mighty, certain forms of customs aimed at merchants were introduced. The first legal source who issued smuggling as a felony was the 1850 Law on the Establishment of Customs as part of the secondary criminal legislation, which was made in accordance with the then Austrian legislation.

This situation, with minimal changes in the nature and elements of the crime, persisted during the time of communism (socialist self-government) until the great codification of the criminal legislation in 2005. In essence, smuggling is a form of tax evasion and involves multiple handling (transfer, concealment, storage, purchase, sale, etc.) of goods that are subject to customs procedure and which are subject to customs duties while avoiding customs controls. Consequently, goods that are so brought into the market become cheaper than those for which customs duties have been paid, and unfair competition and damage to the state budget occur.

Considering that in the process of harmonization of our legal framework with EU, material criminal legislation may (will) be amended. The object of protection of this felony is and should remain the customs and the customs system in general. The basic form of the felony should involve (engage in) the transfer of goods through the customs line, while the qualified forms should take into account qualifying circumstances such as the *modus operandi* (using firearms), the value of the goods, the circumstances under which the basic form was carried out and the like. With regard to criminal sanctions, in addition to penalties (fine and imprisonment), the imposition of confiscation of items used to commit or be smuggled must be mandatory. Lastly, the most important recommendation is that institutions that actively participate in the fight against smuggling (customs, police, public prosecution, criminal court, etc.) must strengthen their resources, educate their officers, strengthen their integrity and thus become more efficient.

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