

DAUGAVPILS UNIVERSITY

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RESTRICTION AND PREVENTION OF SMUGGLING TOBACCO
PRODUCTS IN SELECTED EUROPEAN COUNTRIES: A COMPARATIVE
ANALYSIS

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Anotācija

Tabakas kontrabandas ietekme Eiropas valstu kontekstā, tai skaitā starpdisciplinārajā aspektā, gan zinātniskajā literatūrā, gan praksē ir analizēta ļoti šauri, t.i., apvienojot tiesību un ekonomikas jomas kompleksā sabiedrības novērtējumā par tabakas kontrabandas ietekmi uz valstu ekonomiku.

Darba mērķis ir izstrādāt modeli cigarešu kontrabandas ietekmei uz Moldovas, Sakartvelo un Serbijas makroekonomisko situāciju, veicot literatūras analīzi par tabakas kontrabandas saistību ar korupciju, naudas atmazgāšanu. Promocijas darba pirmajā daļā ir apskatīts jautājums par kontrabandu kā noziedzīgu uzvedību un šīs uzvedības kriminalizāciju Lietuvas un Latvijas tiesībās, pievēršoties sociālās uzvedības bīstamības kritērijiem un tās kriminalizācijai, kontrabandas kā sociālās uzvedības jēdzienam, un kontrabandas kā sociālas uzvedības aizliegumam.

Promocijas darba otrajā daļā ir analizēts kontrabandas kā noziedzīgas darbības objekts un tās radītais kaitējums, pievēršoties ēnu ekonomikas jēdzienam, teorijām, faktoriem un formām.

Promocijas darba trešajā daļā ir izklāstīta metodoloģija tabakas kontrabandas ietekmes novērtēšanai atsevišķās Eiropas valstīs, pievēršoties empīriskā pētījuma loģiskajai norisei un izvēlēto metožu prezentācijai.

Promocijas darba ceturtajā daļā novērtēta tabakas kontrabandas ietekme uz Moldovas, Sakartvelo un Serbijas ekonomiku. Novērtējumā sniegts modelis tabakas kontrabandas ietekmei uz makroekonomisko situāciju Eiropas valstīs starpdisciplināritātes kontekstā. Darbs beidzas ar secinājumiem.

Atslēgvārdi: tabakas kontrabanda, Lietuvas un Latvijas tiesības, korupcija, naudas atmazgāšana.

Abstract

The impact of tobacco smuggling in the context of European countries, including the aspect of interdisciplinary, has been analysed very narrowly both in scientific literature and in practice, i.e., by combining the fields of law and economics into a complex assessment of the impact of tobacco smuggling on national economies.

The thesis aims to develop a model of the impact of cigarette smuggling on the macroeconomic situation of Moldova, Sakartvelo and Serbia by carrying out a literature analysis of the links between tobacco smuggling and corruption, money laundering.

The first part of the Doctoral thesis examines the issue of smuggling as a criminal behaviour and the criminalisation of this behaviour in Lithuanian and Latvian law, focusing on the criteria for the danger of social behaviour and its criminalisation, the concept of smuggling as a social behaviour, and the prohibition of smuggling as a social behaviour.

The second part of the Doctoral thesis analyses the object and severity of smuggling as a criminal activity, focusing on the concept of shadow economy, theories, factors and forms.

The third part of the Doctoral thesis presents the methodology for assessing the impact of tobacco smuggling in some European countries, focusing on the logical course of empirical research and the presentation of selected methods.

The fourth part of the Doctoral thesis assesses the impact of tobacco smuggling on the Moldovan, Sarkatvelian and Serbian economies. The evaluation provides a model for the impact of tobacco smuggling on the macroeconomic situation in European countries in the context of interdisciplinarity. The thesis ends with conclusions.

Keywords: tobacco smuggling, Lithuanian and Latvian law, corruption, money laundering.

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Used Abbreviations

AGEPI	Moldovan State Agency on Intellectual Property
ANK	Code of Administrative Offenses of the Republic of Lithuania
CC	Criminal Code
CCS	Customs Criminal Service
COA	Code of Administrative Offenses
COVID-19	Coronavirus disease 2019
DAC	EU Directive on Administrative Cooperation
EC	European Commission
EEC	European Economic Community
EU	European Union
EUBAM	The EU Border Assistance Mission to Moldova and Ukraine
EUR	Euro
FATCA	U.S. Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FCTC	Framework Convention on Tobacco Control
FRONTEX	The European Border and Coast Guard Agency
GDP	Gross Domestic Product
GEL	Currency in Sakartvelo
GINI	Gini index
GP	General Prosecutor's Office of the Republic of Latvia
HS	Harmonized System
IDB	Internal Security Bureau of the Republic of Latvia
IMF	International Monetary fund
INTERPOL	The International Criminal Police Organization
IRI	International Republic Institute (Moldova)
ISO	International Organization for Standardization
IT	Information technologies
JTI	Japan Tobacco International
KNAB	Corruption Prevention and Combating Bureau of the Republic of Latvia
LLRI	Lithuanian Free Market Institute
MDL	Currency of Moldova
MIMIC	Multiple Indicators and Multiple Causes model

MKT	Lithuanian Customs Criminal Service
NCDC	National Centre for Disease Control and Public Health
NCTC	new computerised transit system
NILLND	Anti-Money Laundering Service of the Republic of Latvia
OECD	The Organisation for Economic Co-operation and Development
OLAF	The European Anti-Fraud Office
PABX	Private Automatic Branch Transfer
PEM	Pan-Euro-Mediterranean
PEST	Political, Economical, Social and Technological
PMI	Phillip Moris International
SAB	Office for the Protection of the Constitution of the Republic of Latvia
SIS	Schengen information system
SMA	State Medical Agency
SRS	State Revenue Service
UK	United Kingdom
UNICEF	United Nations International Children's Emergency Fund
UNSTAT	United Nations Statistics Division
US	The United States
USA	The United States of America
USD	The United States dollar
VAT	Value added Tax
VIS	Visa information system
VMI	Lithuanian State Tax Inspectorate
VP	State Police of the Republic of Latvia
VRS	State Border Guard of the Republic of Latvia
VSAT	Lithuanian State Border Guard Service
WCO	World Customs Organisation
WHO	World Health Organization

INTRODUCTION

The Topic of the Doctoral Thesis. Restriction and prevention of smuggling tobacco products in selected European countries: a comparative analysis.

Relevance of the Topic. Europe is undoubtedly among the world's largest consumers of tobacco products. European tobacco use. Tobacco use reflects an important public health issue worldwide, but especially in the WHO European Region, where the highest levels of tobacco-use prevalence (over 29 %) have been reported. Tobacco use causes a significant burden on health, imposes enormous economic costs to society, both directly from healthcare needs and indirectly from loss of productivity, fire damage, and environmental harm. Tobacco use significantly increases the probability of premature death from several non-communicable diseases, accounting for 25 %, 41 %, and 63 % of cardiovascular diseases, cancer, and respiratory disease deaths in men, and 6 %, 10 %, and 37 % of deaths in women, respectively. It also decreases the quality of life among tobacco users and people who survive with a disability or experience the negative effects of treatment to tackle the tobacco-related disease. The EU Strategy identifies China, the United Arab Emirates, Vietnam, Malaysia, the Russian Federation, Singapore, Belarus, and Ukraine as the main sources of origin for smuggled tobacco products.

The majority of illegal consumption in the EU is related to tobacco products originating in non-EU countries, i.e. more than 20 % come from non-EU European countries (mainly Ukraine and Belarus). About half of all detections of illicit tobacco sales were discovered at the Eastern European border. As of 2016, more than 18.8 million cigarettes were banned across the EU's eastern border and more than 400 cigarette smuggling cases were seized. Among the most profitable businesses for criminals and organised groups is cigarette smuggling, which is seen as a source of capital for terrorism and organised crime. The global illicit tobacco market generates between 40 billion and 50 billion dollars a year. Due to the COVID-19 pandemic, the European market for illegal cigarettes reached a historic low in 2020, when only 38.9 billion pieces of illegal cigarettes were purchased by EU consumers. Similarly, to other criminal activities, the pandemic and the related restrictions had a strong impact on cigarette smuggling. During the first global closure, the supply chains were discontinued, and the established methods of transporting cigarettes were disrupted for a longer period of time due to the restrictions on passenger flows at the external borders. The risk of being caught smuggling cigarettes has also increased due to the more intensive border control, but the global shutdown of states and the decline in consumer disposable income have fuelled the demand for cheaper tobacco products. As the black tobacco market was disrupted, organised crime groups incorporated illegal cigarettes into legal freight

transport (freight trains, trucks, sea freight, vans, etc.) in order to overcome strict restrictions. In 2020, out of twenty international operations involving the European Anti-Fraud Office, nearly 370 million illegal cigarettes for the EU market were confiscated. Most of them were illegally imported from outside the EU, i.e. more than two-fifths of the cigarettes detained originate from Eastern Europe. The popularity of Eastern European countries in pursuance of cigarette smuggling is illustrated by recent statistics: 54 % of cigarette smuggling is found at the Eastern European border.

The main cause of illicit trade in tobacco and tobacco products is the price gap between EU Member States and neighbouring countries. Illicit trade and smuggling of tobacco products is a highly profitable and low-risk activity and is therefore particularly attractive to criminal groups. It can be said that the problem of cigarette smuggling in Eastern European countries is relevant. This is evidenced by the cooperation between business, science, national state, and EU institutions aiming to find the best solutions to this problem. When investigating Eastern European countries in the context of cigarette smuggling, there is a limited and non-transparent methodology, reliability of statistics, and problem of interpretation of results. The choice of Eastern European countries was influenced more by the economic impact of illegal tobacco products than by the political context of the country's tax policy. Different geographical spectrum (Sakartvelo, Moldova, Serbia) has been chosen to show that the countries of both Eastern and Southern Europe are interrelated and pave the way for these activities. Eastern and Southern Europe are geographically close to each other.

Scientific novelty of the Doctoral Thesis:

1) The first study of its kind, which demonstrates that combining the analysis of cigarette smuggling legislation with the assessment of the impact of cigarette smuggling on the economy can help to identify the reasons why cigarette smuggling exists in countries and what legal measures need to be taken to regulate this phenomenon more effectively.

2) The integrated application of the methodology, which allows for a wide-ranging analysis of the impact of cigarette smuggling on the economies of Moldova, Sakartvelo and Serbia in the context of interdisciplinarity, can become a guidance methodology, combining different directions of social sciences.

3) The models of the impact of cigarette smuggling on the macroeconomic situation in Moldova, Sakartvelo and Serbia in the context of interdisciplinarity have revealed that corruption and the tax base are the main factors determining the volume of cigarette smuggling, which confirms the need to deal with smuggling and other phenomena, such as corruption, money laundering, and interconnectivity.

The scientific problem of the research: What impact does cigarette smuggling have on the macroeconomic situation in Moldova, Sakartvelo and Serbia in the context of interdisciplinarity?

The thesis aims to develop a model of the impact of cigarette smuggling on the macroeconomic situation of Moldova, Sakartvelo and Serbia by carrying out a literature analysis of the links between tobacco smuggling and corruption, money laundering.

The objectives of the research are:

- 1) Analyse and present the criteria for delimiting smuggling as a criminal and administrative offence;
- 2) analyse theoretical aspects of shadow economy and smuggling concepts in order to understand the origin of smuggling and the nature of shadow economy theories that explain it;
- 3) provide a methodology for assessing the impact of tobacco smuggling on the economies of Moldova, Sakartvelo and Serbia;
- 4) examine the legal framework governing the volume of tobacco smuggling in Moldova, Sakartvelo, and Serbia.
- 5) develop a model of links between tobacco smuggling and the economic situation in Moldova, Sakartvelo and Serbia, including other criminal activities related to tobacco products smuggling.

In order to achieve the goal of the research and fulfil the set objectives, the author puts forward *three research questions*, to which the answers will be provided at the end of the research:

1. What are the shortcomings in determining the composition and qualification of criminal offenses that threaten the interests of the national economy in the sphere of customs activity in Lithuania and Latvia (Articles 190 and 191 of the Criminal Code of Lithuania, Articles 190 and 191 of the Criminal Code of Latvia) and what initiatives to improve legal acts are immediately necessary?
2. What measures of an organisational nature are immediately necessary presently required in order to effectively limit the smuggling of tobacco products in Lithuania and Latvia?
3. What positive lessons in the field of legal regulation and practice could be learned from this for countries whose policies and economy are oriented towards European integration and joining the European Union?

The object of the thesis is the smuggling of tobacco products.

Methods used in the thesis.

1) Analytical research method is applied in researching the content of legal norms, analysing the problem aspects resulting from the interpretation and practical application of the relevant legal norms;

2) Descriptive research method is used to describe the results obtained by knowing the actual situation, problematic aspects, and their possible solutions;

3) Inductive and deductive research methods are used throughout the work to draw logical conclusions;

4) The comparative research method is used in analysing the legal framework and its application;

5) The dogmatic research method is used to obtain a correct understanding of the legal content of legal norms. This method will help to achieve the aim stated in the research – based on the analysis of the existing norms, scientifically based conclusions can be drawn, which could be used to improve the legal norms or the process of their application;

6) The logically constructive research method is used to express conclusions and proposals.

The doctoral thesis also uses the following methods of interpretation of legal norms:

1. Grammatical method of interpretation of legal norms – to learn the meaning of the idea and essence of the legal regulation on limiting the smuggling of tobacco products in Lithuania and Latvia, clarifying the meaning of the legal norm from a linguistic point of view; 2. The historical method of interpretation of legal norms – to find out the historical development of the legal regulation on limiting the smuggling of tobacco products in Lithuania and Latvia, to clarify the differences and connections in different periods of history; 3. The systemic method of interpretation of legal norms – for the interpretation and correlation of legal acts on the restriction of smuggling of tobacco products in Lithuania and Latvia with other legal acts applicable to this field, in order to understand that they logically fit into the unified system regulating customs activities; 4. Teleological method of interpretation of legal norms – to find out the meaning and nature of the legal act, which provides liability for the smuggling of tobacco products, in connection with its application, from the point of view of the intention and motivation of the legislator.

Consolidation of the results of the doctoral thesis:

1. Remeikienė, Rita; Gasparėnienė, Ligita; Chadyšas, Viktoras; **Raistenskis, Evaldas**. Links between corruption and quality of life in European Union//Entrepreneurship and sustainability issues. Wikimedia Commonwealth: Entrepreneurship and Sustainability Centre. eISSN 2345-0282. 2020, vol. 7, iss. 4, pp. 2664-2675. DOI:

- [10.9770/jesi.2020.7.4\(7\)](#). The Emerging Sources Citation Index (Web of Science) Scopus; DOAJ] [CiteScore: 0.00; SNIP: 1,968; SJR: 0.000 (2020, Scopus Sources)]
2. Gasparėnienė, Ligita; Remeikienė, Rita; Sosidko, Aleksejus; Vėbraitė, Vigita; **Raistenskis, Evaldas**. Modelling of EURO STOXX 50 index price returns based on industrial production surprises: basic and machine learning approach//Entrepreneurship and sustainability issues. Wikimedia Commonwealth: Entrepreneurship and Sustainability Centre. ISSN 2345-0282. 2020, vol. 8, no. 2, pp. 1305-1320. DOI: [10.9770/jesi.2020.8.2\(77\)](#). The Emerging Sources Citation Index (Web of Science) Scopus] [CiteScore: 0.00; SNIP: 1,968; SJR: 0.000 (2020, Scopus Sources)]
 3. Davulis, Tomas; Gasparėnienė, Ligita; **Raistenskis, Evaldas**. Assessment of the situation concerning psychological support to the public and business in the extreme conditions: case of Covid-19// Entrepreneurship and sustainability issues. Wikimedia Commonwealth: Entrepreneurship and Sustainability Centre. eISSN 2345-0282. 2021, Vol. 8, No. 3, pp. 308-321. DOI: [10.9770/jesi.2021.8.3\(19\)](#). The Emerging Sources Citation Index (Web of Science) Scopus; Index Copernicus] [CiteScore: 0.00; SNIP: 1.568; SJR: 0,000 (2021, Scopus Sources)]
 4. **Raistenskis E.**, Zahars V., Abuseridze G. (2022) The legal framework affecting smuggling of tobacco products as a form of the shadow economy in Sakartvelo. Sociālo Zinātņu Vēstnesis / Social Sciences Bulletin', 35(2): 115–125. [https://doi.org/10.9770/szv.2022.2\(6\)](https://doi.org/10.9770/szv.2022.2(6)) (ERIH PLUS)
 5. Remeikiene, R., Gaspareniene, L., Fedajev, A., **Raistenskis, E.**, & Krivins, A. (2022). Links between crime and economic development: The EU classification. The Equilibrium. Quarterly Journal of Economics and Economic Policy, 17(4), 909-938. doi: 10.24136/eq.2022.031 (Scopus)
 6. **Raistenskis, E.**, Krivins, A., Aleksejeva, L. (2023). Phehomenon of corruption in Albania: towards cigarette smuggling. Access to science, business, innovation in the digital economy, ACCESS Press, 4(2), 278-295, [https://doi.org/10.46656/access.2023.4.2\(9\)](https://doi.org/10.46656/access.2023.4.2(9)) (Web of Science)

List of scientific conferences:

1. Remeikienė, Rita; Gasparėnienė, Ligita; **Raistenskis, Evaldas**. Assessing the links between cigarette smuggling and corruption in non-European countries//CITPM 2020: proceedings of the 3rd international conference contemporary issues in theory and practice of management, 23-24 April 2020 Czestochowa, Poland/edited by A. Korombel, O. Ławińska, M. Okręglicka. Czestochowa: Czestochowa University of Technology,

2020. ISBN 9788371937323. p. 253-260. (CITPM, ISSN 2544-8579, eISSN 2544-8587; No. 3).
2. Gasparėnienė, Ligita; Remeikienė, Rita; **Raistenskis, Evaldas**. Interdependence between money laundering and cigarette smuggling: empirical evidence from Ukraine//CITPM 2020: proceedings of the 3rd international conference contemporary issues in theory and practice of management, 23-24 April 2020 Czestochowa, Poland/edited by A. Korombel, O. Ławińska, M. Okręglicka. Czestochowa: Czestochowa University of Technology, 2020. ISBN 9788371937323. p. 71-78. (CITPM, ISSN 2544-8579, eISSN 2544-8587; No. 3).
 3. Participation and presentation in the 3rd International Interdisciplinary Conference PLACES organized by Riga Stradiņš university on 29-31 March 2023 in Riga (Latvia). Presentation topic: „Assessment of Legal Framework for Tobacco Control i n Moldova" **Evaldas Raistenskis**; Anatolijs Krivins.
 4. Participation and presentation in the 65th International Scientific Conference of Daugavpils University organized by Daugavpils University on 20-21 April 2023 in Daugavpils (Latvia). Presentation topic: „*The impact of Corruption to EU Green Deal*" **Evaldas Raistenskis**; Anatolijs Krivins.
 5. Participation and presentation in the International May Conference on Strategic Management - IMCSM22 organized by Management Department of Technical Faculty in Bor, University of Belgrade. Presentation topic: „THEORETICAL ASPECTS OF THE CONCEPT OF CORRUPTION". **Evaldas Raistenskis**.

The structure of the thesis.

The first part of the Doctoral thesis examines the issue of smuggling as a criminal behaviour and the criminalisation of this behaviour in Lithuanian and Latvian law, focusing on the criteria for the danger of social behaviour and its criminalisation, the concept of smuggling as a social behaviour, and the prohibition of smuggling as a social behaviour.

The second part of the Doctoral thesis analyses the object and severity of smuggling as a criminal activity, focusing on the concept of shadow economy, theories, factors and forms.

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The fourth part of the Doctoral thesis assesses the impact of tobacco smuggling on the Moldovan, Sarkatvelian and Serbian economies. The evaluation provides a model for the impact

of tobacco smuggling on the macroeconomic situation in Moldova, Sakartvelo and Serbia in the context of interdisciplinarity. The thesis ends with conclusions.

Theoretical and practical rationale for the study.

The impact of tobacco smuggling in the context of Moldova, Sakartvelo and Serbia, including the aspect of interdisciplinary, has been analysed very narrowly both in scientific literature and in practice, i.e., by combining the fields of law and economics into a complex assessment of the impact of tobacco smuggling on national economies.

In most cases, research on this topic deals with individual components of the phenomenon of smuggling. One group of scientists investigates smuggling through the composition of the crime of smuggling and the peculiarities of criminal liability for smuggling, the theoretical and practical aspects of the application of the basic composition of smuggling, the qualifying and privileged features of smuggling, the main criteria for delimiting criminal and administrative liability for smuggling, etc. (Misiūnas; J. Wessels; L. Joossens & M. Raw; S. Bikelis; S. Bikelis et al.; K. Vasiliauskas; I. Stankevicius; L. Hiking; E. Martsiushevskaya & V. Ostroga). Another group analyses the principles of shadow economic theories (S. Golub; Mr Buehn and Mr Farzenegan; Mr LaFaive and Mr Nesbit; T. Burke; A. Hoda & T. Mansoor; J. Benassi et al.; E. Čolakovič; D. H. Enste; Kemal and Ashraf), the third one attempts to find links between areas of the shadow economy, such as corruption, smuggling, money laundering (M. Milovanovic; G. Napal; G. Shabbir & M. Anwar; R.D. Lucian; M. Yip et al.; G. Szabo; L. Gasparėnienė & R. Remeikienė; A. Victoria; R. Remeikienė et al.; D.J. Baker; V. Barrera et al.). Studies show that these phenomena are closely interrelated and rarely exist without each other, therefore, it is not enough to investigate only one phenomenon, such as smuggling. The author recommends that other illegal activities carried out along with smuggling be included in the area of research.

It would be difficult to achieve effective results by formulating and analysing the phenomenon of smuggling only from a legal point of view, without including a broader approach to this phenomenon. Tackling cigarette smuggling is best achieved through balanced political, legal, technological, and fiscal measures. The public's positive attitude towards smuggling, its tolerance, and its justification is seen as one of the biggest obstacles to reducing the smuggling of tobacco in Moldova, Sakartvelo and Serbia. Therefore, the dissertation uses legal/political/economic aspects to present the factors affecting criminal smuggling and their solution methods. Smuggling is a complex phenomenon of the shadow economy, the control and prevention of which fall within the remit of a number of institutions.

1. SMUGGLING AS CRIMINAL OFFENSE: THEORETICAL ASPECT

1.1. The concept, nature, causes and consequences of tobacco products smuggling

Law is justly restricted freedom. Every legal provision restricts freedom, but any restriction on freedom must be just¹. A criminal offence and the criminal penalty for it represent the darkest side of life, as both a disgrace and distress to every country and society. The state and society use criminal penalties to protect their vital interests against the threats of a criminal nature and promote stable and predictable development of the state and society².

No political, economic, social and legal system is perfect, and the levels of social integration, civil society awareness and understanding of values differ, making it impossible to generate universal ideas that would immediately and effectively solve all problems. An organized society, the integration of all political, economic, social and ethnic groups, as well as serving the state's common objectives reduce the formation of criminal offence factors. On the contrary, a disorganized society, a large number of people not integrated into the cultural and historical environment, poorly controlled migration, and social and legal vulnerability of people create a favourable environment for the growth and spread of crime, as well as pose threats to public security³.

It is recognised that the majority of registered criminal offences belong to the category of less serious crimes. The circumstance, in turn, plays a very important role in the application of various simplified forms because, with respect to this category of crimes, similarly to criminal offences, practically all simplified forms can be used, therefore, to the same extent, there are grounds to apply refusal to conduct criminal prosecution⁴.

The modern period of human development is characterized by the rapid progress of science and technology, the complication of social processes and the sudden acceleration of social dynamics. This also applies to the area of deviant, illicit behaviour. The last decade has seen the emergence of the qualitatively new socially dangerous challenges and threats (for instance, cybercrime, acts related to human cloning, changing the human genotype, etc.);

¹ Kriviņš A. Tiesību jēdziens un būtība. Rīga, 2020, 292.lpp.

² Zahars V. Kriminālpolitika: mūsdienu tendences un procesi. Otrais izdevums. Daugavpils Universitātes akadēmiskais apgāds "Saule", 2018, 50. lpp.

³ Zahars V. Kriminālpolitika:mūsdienu tendences un procesi. Otrais izdevums. Daugavpils Universitātes akadēmiskais apgāds "Saule", 2018, 121.-122.lpp.

⁴ Strada-Rozenberga, K., Meikališa, Ā., Kūtris, G., Leja, M., Kulmanis,O., Gribonika, E. Kriminālprocesa obligātums un lietderīgums kā kriminālās justīcijas sistēmas pamatprincips. Zin. red. Ā. Meikališa, K. Strada-Rozenberga. Rīga: Latvijas Universitātes Akadēmiskais apgāds, 2023, 296. lpp.

traditional and long-known manifestations of crime are undergoing transformation along with social assessment of the acts prohibited by the criminal law. All this forces the legislative power to review the range of criminally punishable acts, i.e. to implement criminalization and decriminalization.

The variety of actions during social interaction can be referred to as social behaviour. Hence, social behaviour is a particular form and manner in which social actors express their preferences and attitudes, capabilities and abilities during social actions or interactions.

The reality, however, is quite different, and we can only agree with the warning given to the world more than 100 years ago by one of the founders of modern criminology Franz von Liszt: “Crime is as eternal as death and disease, punishment will never go away, preventive measures will never defeat crime, just as excellent hygiene will never defeat death and disease“.⁵

Criminal behaviour is a complex and complicated social phenomenon. At the present time, the thesis of social conditionality of criminal behaviour is no longer disputed. People become criminals as a result of negative social, economic, socio-psychological, sociocultural and socio-biological influences (or a combination thereof). Nowadays, the main causes and influences of human criminal behaviour are considered to be poor upbringing in the family, low socio-economic status of the family, membership in anti-social groups, domestic violence, an individual’s psychological characteristics, addiction, etc.⁶

Dangerousness can be defined as a qualitative characteristic of an act that mainly depends on significance of the values (legal goods) that are being threatened. Therefore, the nature of dangerousness is affected by the content of the damage caused (material, moral or physical) as well as the form of guilt. The degree of dangerousness is the quantitative characteristic of an act. The nature of dangerousness represents its content, while the degree of dangerousness shows how big this danger is. The degree of dangerousness is determined by many factors: the extent of damage, the way a crime was committed, an offender’s motives, goals and other circumstances⁷.

Conversely, Dr. habil. phil. I. Vedins, Corresponding Member of the Latvian Academy of Sciences, expresses the idea that despite the complicated nature of crime it is revealed at the level of specific causes: “It is probably right to look for the general causes of crime outside the realm of law. Law forms just one of the subsystems of the social realm based on the moral realm

⁵ Лист Ф.фон. Задачи уголовной политики. Преступление как социально-патологическое явление. Сост.и предисловие В.С.Овчинского.-Москва, ИНФРА-М, 2004, С.24.

⁶ Zahars V. Kriminālsodi formālā un neformālā skatījumā. Daugavpils Universitātes akadēmiskais apgāds “Saule”, 2021, 11.lpp.

⁷ Pranka D. Nusikalstamos veikos ir civilinės teisės pažeidimo atribojimo koncepcija Lietuvos baudžiamosios teisėje. Doctoral Thesis. MRU, 2012.

of society. Thus, the nature of the problem at the universal cause level can be explained quite simply - the general cause of crime is an imperfection in the man and mankind. Of course, this answer will not satisfy criminologists, but the problem of the universal causes of crime does not really fall within the field of criminology, but rather within the fields of sociology, philosophy, and religion. In Christianity, the ideal of human perfection is expressed in the saying of Jesus: "You shall love your neighbour as yourself" (Matthew 22:39). When this principle of life's philosophy is realized in society as a whole and in the hearts of every person in the world, then and only then will crime be without cause and thus self-extinguishing.⁸

The foreign doctrine proposes different positions regarding assessment of the significance of dangerousness to society when discussing what constitutes a crime. Some authors highlight the potential of dangerousness and provide the motives of crime, while others identify the differences in the nature of crime in different social strata. It is assumed that the concept of crime does not necessarily need to reflect its material characteristic - dangerousness to society⁹. A similar approach is supported by other foreign authors¹⁰.

Another position, when researchers advocate assessing dangerousness of an act to society as one of the major indicators of a crime, is also accepted. However, it is quite obvious that dangerousness of a criminal act to society is determined by the fact that the act either directly harms social relations or comprises the potential of causing damage. In other words, dangerousness of an act to society is an essential characteristic reflecting the potential of a socially dangerous act to cause great damage to particular social relations¹¹.

Dangerousness of a criminal act affects a state's legal framework. It is dangerousness of an act to society that allows criminal acts to be categorised as misdemeanors and felonies.

Latvian legal scholars J. Teivāns-Treinovskis and N. Jefimovs rightly view the spread of crime as a serious threat to national security. In the name of public security, the state determines what constitutes a criminal offence, regulates the extent of responsibility for committing a

⁸ Vedins I. *Zinātne un patiesība*.-Rīga: Avots, 2008, 277.-278.lpp.

⁹ Shapiro S. P., Collaring the crime, not the criminal: reconsidering the concept of white-collar crime. *American Sociological Review*. Vol. 55, No 3. 1990, 346–365. DOI: 10.2307/2095761.

¹⁰ Innes M., The appliance of science? The theory and practice of crime intelligence analysis. *The British Journal of Criminology*. Vol. 45, iss. 1. 2005, 39–57; Hamdorf K., The concept of a joint criminal enterprise and domestic modes of liability for parties to a crime: a comparison of German and English law. *Journal of International Criminal Justice*. Vol. 5, No 1. 2007, 208–210; Millie A., Anti-social behaviour, behavioural expectations and an urban aesthetic. *British Journal of Criminology*. Vol. 48, No 3. 2008, 379–394.

¹¹ Мальцев В. В., Общественно опасное поведение в уголовном праве (монография). М.: Юрлитинформ, 2014, С. 15.

criminal offence and holds offenders accountable. The state has the right and duty to protect society from the threats of crime.¹²

Dangerousness of an act to society is the basis for criminalization (decriminalization) of acts. If an act is not socially dangerous, then it cannot be criminalized, and decriminalization is applied for an objectively harmless act prohibited by criminal law. Thus, dangerousness of an act to society means that the act is harmful to society, endangers public order, and causes a threat of particular damage to public relations.

Dangerousness to society is a material feature, an internal element of a crime. Being described in law and having legal significance, it exists objectively and does not depend on the will of a legislator or the will of a law enforcement body. An act is dangerous not because a legislator treats it as such, but because its objective content contradicts the norms of society.

The purpose of the norms of criminal law is to properly qualify a criminal act, to impose a penalty on a convicted person and to specify the duration of the penalty. But is that all? On the other hand, a person to whom criminal law applies also experiences additional restrictions on one's rights and freedoms that criminal law does not directly provide for, for instance, coercive measures of a criminal process (arrest, temporary restriction of property rights, temporary removal from office, etc.), conviction-related prohibitions to hold certain positions (for example, a position of a judge, prosecutor, etc.) or engage in certain professional activities (for example, to work as a lawyer, bailiff, an auditor, etc.), etc.¹³.

The issue of criminalization of an act still lacks adequate attention. Ten years ago from today, G. Švedas noted that "in the last fifteen years, only a few scientific publications by J. Bluvštein, V. Pavilionis, A. Dapšis, A. Čaplinskas, J. Misiūnas and V. Poškevičius, and V. Justickis, who focused on the criteria of criminalization (decriminalization) of an act, have been issued". It should be noted that foreign researchers (for example, S. Melander, A. M. Nuutilla, P. Kondratov, A. Kladkov and some others) focus only on certain aspects of criminalization (decriminalization), primarily dangerousness or prevalence of an act, the principle of *ultima ratio*, the principle of protecting public interests, etc.¹⁴. However, even following Švedas's publication, no one has taken the initiative to comprehensively analyse dangerousness of social behaviour and the criteria for its criminalization.

¹² Teivāns-Treinovskis J., Jefimovs N. State national security: aspect of recorded crime. *Journal of Security and Sustainability Issues*, Volume 2(2). Vilnius, 2012, p. 43-44.

¹³ Švedas G. Veikos kriminalizavimo kriterijai: teorija ir praktika, *Teisė*, 82, 2012, 12.

¹⁴ Švedas G. Veikos kriminalizavimo kriterijai: teorija ir praktika, *Teisė*, 82, 2012, 12–13.

Criminalization of acts is one of the major issues of the criminal policy which is always related to adoption of criminal laws. This dissertation will only review the major criteria of criminalization as far as it is related to the topic under consideration.

Recognizing an act as criminal or non-criminal is a political issue that is decided by the state's legislature (the parliament). There is no doubt that in this respect parliamentarians are also affected by the general factors shaping the criminal policy: the state, dynamics and structure of a crime; political, religious, legal and personal views; international and the European Union law; the doctrine of criminology and criminal law; public opinion, etc.¹⁵

Another opinion is that criminalization or decriminalization of an act is not only a political issue, but also a complex process that requires much preparatory work which must include both justification of criminalization or decriminalization and harmonization of a new criminal law (by which an act is criminalized or decriminalized) with existing criminal and other laws¹⁶.

Criminalization is the function of state authorities that aims at recognising certain acts as socially dangerous, describing their characteristics in the text of the current criminal law and prohibiting them by establishing appropriate sanctions. Decriminalization of an act is the opposite of criminalization, and is related to a state's recognition that a specific act has lost its dangerousness to society and its characteristics shall, therefore, be removed from criminal law.

The criminal law doctrine often considers the above-mentioned categories separately as a process and as an outcome. The process of criminalization is a specific activity aimed at establishing the objectives and grounds of criminal liability for particular actions. The outcome of criminalization is a set of established and legally binding norms which include a list of socially dangerous acts as well as specific types and limits of criminal liability. The process of decriminalization refers to an activity aimed at examining the effectiveness of existing criminal norms and identifying the types of crimes that have lost their characteristics of being dangerous to society; based on this, application of criminal law against an offender becomes inappropriate. The outcome of decriminalization is abolition of criminal liability for the commission of a specific act and elimination of inappropriate norms from the texts of criminal law.

Smuggling, as a social phenomenon and a legal category, has been known in Latvia and Lithuania since ancient times. After formation of the state and emergence of the state borders, when treasury and protectionist taxes were introduced and transportation of certain goods and

¹⁵ Švedas G. Baudžiamosios politikos pagrindai ir tendencijos Lietuvos Respublikoje. Vilnius, Teisinės informacijos centras, 2006, 44–76.

¹⁶ Justickis V. Kriminologija. I dalis. Vilnius, LTU Leidybos centras, 2001, 85.

other items was restricted, the problem of smuggling control and prevention arose. This problem can be considered one of the most urgent law enforcement challenges to be solved by the state¹⁷.

According to Vaitkevičiūtė¹⁸, smuggling (it. *contrabbando* < *contra* – against + *bando* – government order) refers to: 1. Import of goods prohibited for import into the country in violation of the law. 2. Illegally imported goods. Vaitkevičiūtė also presents the definition of a smuggler: a smuggler is a person that is involved in smuggling. Smuggling is defined as "secret transportation of goods from another country across the border, bypassing customs and hiding the goods from customs inspection" or "the goods secretly imported from another country."

1.2. The problem of criminalization of tobacco smuggling: example of Latvian and Lithuanian legislation

Article 199 of the Criminal Code defines smuggling as transportation of items, which must be submitted to customs control, across the state border of the Republic of Lithuania without submitting them to customs control or otherwise evading this control¹⁹.

In Latvia smuggling is defined at Section 190 of the Criminal Law. Namely, for a person who commits bringing in of goods or other valuables into the customs territory of the Republic of Latvia or taking out thereof, by avoiding customs control or concealing such goods or other valuables from such control, or not declaring such goods or other valuables, or using false customs or other documents, or in any other illegal way (smuggling), if it is committed on a significant scale, the applicable punishment is the deprivation of liberty for a period of up to one year or temporary deprivation of liberty, or probationary supervision, or community service, or fine, with or without confiscation of property.

If it has been committed by a group of persons according to a prior agreement, the applicable punishment is the deprivation of liberty for a period of up to four years or temporary deprivation of liberty, or probationary supervision, or community service, or fine, with or without confiscation of property.

For the criminal offence committed by an organised group, or for smuggling if it is committed on a large scale, the applicable punishment is the deprivation of liberty for a period of up to ten years, with or without confiscation of property, and with or without probationary supervision for a period of up to three years, with deprivation of the right to engage in

¹⁷ Povilauskienė D. *Teisė ir muitinės veikla*. Vilnius, MRU, 2006, 58.

¹⁸ Vaitkevičiūtė V. *Tarptautinių žodžių žodynas*. Vilnius, Leidykla „Žodynas“, 1999, 660.

¹⁹ Lietuvos Respublikos baudžiamojo kodekso 199. *Valstybės žinios*, Nr. 123-5573, 2003; Administracinių teisės pažeidimų kodekso 210 str. paskutinė redakcija. *Valstybės žinios*, Nr. 89-2741, 2000

entrepreneurial activity of a specific type or of all types or to engage in specific employment or the right to take up a specific office for a period of up to five years.

In its basic form the offence of smuggling is a less serious crime (Section 190, Paragraph one). Smuggling committed under qualifying conditions (Section 190, Paragraph two) is a serious crime, while smuggling committed under particularly qualifying conditions (Section 190, Paragraph three) is an especially serious crime. The object of smuggling—national economy interests in the area of customs matters (customs activity). The object of the crime—goods or other valuables subject to customs clearance. Goods are any movable property, while other valuables are items of value, cultural objects, etc.

In this regard, it should be noted that the competence of the Republic of Latvia in customs matters is laid down in the Customs Law of 18 March 2004 (“Latvijas Vēstnesis”, 06.04.2004, No. 54). The Cabinet Regulation No. 8 of 7 January 2003 “Exportation of Works of Art and Antiques from Latvia and Importation into Latvia” prescribes the procedures by which works of art and antiques are exported from Latvia and imported into Latvia, as well as the procedures for temporary exportation of cultural monuments (“Latvijas Vēstnesis”, 10.01.2003, No. 5).

In accordance with Section 2 of the Customs Law, the customs territory of the Republic of Latvia is the entire territory of the Republic of Latvia comprised of land, territorial and inland waters, and air space, and also territories of artificial islands and structures. Section 9, Paragraph one of the Customs Law prescribes that a person shall present goods under customs supervision at customs control points and other places specified in the permits issued by the customs offices, while Paragraph two of the Section prescribes that customs offices shall control goods under customs supervision also in the areas of customs warehouses, temporary storage places, free zones and free warehouses, border control points, as well as storage and processing places for goods under customs supervision. Section 9, Paragraph three of the Customs Law prescribes that the Director General of the State Revenue Service shall authorise customs officials to perform customs control throughout the territory of the Republic of Latvia. The authorised customs officers have the right to detain vehicles within the territory of the Republic of Latvia for the purpose of customs control. Section 15 of the Customs Law provides for an inspection of a person as a form of exception to customs control, which shall be performed in accordance with a written decision of the head of the customs office or an official authorised by the head of the customs office if there are sufficient grounds to believe that this person is hiding goods the movement of which across the State border is prohibited or which are being imported for commercial purposes.

On the objective side, smuggling is characterised by active acts, and it must be established that smuggling is committed on a significant scale (material composition). Bringing smuggled goods into or out of the customs territory of the Republic of Latvia shall be understood as bringing such goods into or out of the customs control area (movement in one direction or the other) in the manner specified in Paragraph one of the Section.

Bringing smuggled goods into or out of the customs territory of the Republic of Latvia shall be understood as bringing such goods into or out of the customs control area (movement in one direction or the other) in the manner specified in Paragraph one of the Section. Smuggling by avoiding customs control shall be understood as the movement of smuggled goods outside the customs control points or other places specified by the customs offices. Article 5 (3) of the Union Customs Code states that customs controls are specific acts performed by the customs authorities in order to ensure compliance with the customs legislation and other legislation governing the entry, exit, transit, movement, storage and end-use of goods moved between the customs territory of the Union and countries or territories outside that territory, and the presence and movement within the customs territory of the Union of non-Union goods and goods placed under the end-use procedure (available at: https://www.vid.gov.lv/dokumenti/muita/savienibas%20muitas%20kodekss/2014/smk_lv.pdf). Smuggling by concealing goods or other valuables subject to customs clearance from the customs control is committed through the use of specially created compartments, disguising the goods as other goods, etc.

Smuggling by not declaring goods or other valuables subject to customs clearance is characterised by the failure to announce or impart during customs procedures the necessary information on goods or valuables which are brought into or out of the customs territory of the Republic of Latvia. All goods intended to be placed under a customs procedure shall be covered by a declaration for that customs procedure (Article 59, Paragraph one of the Regulation (EEC) No 2913/92 of the Council of the European Union of 12 October 1992 establishing the Community Customs Code; Article 158 of the Union Customs Code). Smuggling by means of forged customs or other documents is characterised by presenting or submitting to the customs offices such forged documents as customs declarations, invoices, transport documents, licences, certificates of origin, etc., and presenting them as genuine. Forged documents are false or counterfeit documents where the existing text has been erased, etched away or corrected, new text has been added, etc. (for more details on forged documents see the comments to Section 275 of the CL). If the person who commits the smuggling has forged customs or other documents, and the forged documents are recognised as conferring rights or releasing from obligations, the offence of the person shall be additionally qualified under the relevant paragraph of Section 275 of the Criminal Law.

Smuggling may take other unlawful forms such as bribing a public official to ensure the entry of goods subject to customs clearance into the customs territory of the Republic of Latvia. In accordance with Section 231, Paragraph one of the Law on the Procedure for the Entry into Force and Application of the Criminal Law of 15 October 1998 (“Latvijas Vēstnesis”, 04.11.1998, No. 331/332), smuggling has been committed on a significant scale if the total value of the smuggled goods at the time of the offence was not less than the total of ten minimum monthly wages specified in the Republic of Latvia at that time. The value of the goods shall be determined according to the market prices or prices equivalent thereto at the time when the offence was committed.

To correctly determine the market price of the smuggled goods, the customs value of the goods shall be determined first. The customs value of the goods is calculated in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31992R2913&qid=1682941868363>) and the Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (available at: <http://eur-lex.europa.eu/legal-content/LV/TXT/?uri=celex%3A31993R2454>).

The market price of the smuggled goods consists of the customs value of the imported goods and the calculated administered taxes (import duty, value added tax; also excise tax when importing excise goods). The Department of Criminal Cases has explained that, in accordance with the provisions of Title II, Chapter 3 “Value of goods for customs purposes” of the Council Regulation No 2913/92 of 12 October 1992 establishing the Community Customs Code and Part I, Title V “Customs value” of the Commission Regulation No 2454/93 of 2 July 1993 laying down provisions for the implementation of the Council Regulation No 2913/92 establishing the Community Customs Code, the customs value of the goods shall be the prime cost of the goods brought into the customs territory, which shall be determined uniformly throughout the customs territory of the European Community. The customs value is necessary for the correct calculation and collection of customs duties and taxes, taking into account the tax rates laid down by the national law of each Member State of the Community, which together constitute the average retail value of the goods placed into circulation. Thus, the total value of goods imported into a Member State of the European Community from a country other than a Member State of the European Community consists of the customs value and the calculated administered taxes, which are equivalent to the market price of the object of crime within the meaning of Section 20 of the Law on the Procedure for the Entry into Force and Application of the Criminal Law (decision of

the Department of Criminal Cases of the Supreme Court of 27 May 2015, case No SKK-144/2015, criminal case No 15890011613).

Section 231, Paragraph two of the Law on the Procedure for the Entry into Force and Application of the Criminal Law states that liability for the smuggling of alcohol or other alcoholic beverages which has been committed on a significant scale shall apply if the quantity of alcoholic beverage reaches 10 litres of absolute alcohol. Paragraph two of the Section prescribes increased liability for the criminal offence specified in Paragraph one if it has been committed by a group of persons according to a prior agreement (material composition). To qualify a criminal offence under Paragraph two of the Section, it is necessary to establish the criminal offence specified in Paragraph one, i.e. that the smuggling has been committed on a significant scale and that it has been committed by a group of persons according to a prior agreement. Smuggling committed by a group of persons according to a prior agreement occurs when two or more persons have unlawfully brought goods or other valuables subject to customs clearance into or out of the customs territory of the Republic of Latvia by prior agreement.

Paragraph three of the Section prescribes liability for smuggling in especially aggravating circumstances, which are recognised as: 1) smuggling committed by an organised group; 2) smuggling committed on a large scale. To qualify smuggling under Paragraph three of the Section, it is necessary to establish the elements of smuggling, as well as the elements of an organised group or the commission of smuggling on a large scale.

Smuggling by an organised group (formal composition) occurs when smuggling is committed by more than two persons whose association meets the characteristics of an organised group (see Section 21 of the Criminal Law). Smuggling has been committed on a large scale (material composition) if the total value of the smuggled goods at the time of the criminal offence was not less than the total of fifty minimum monthly wages specified in the Republic of Latvia at that time. The value of the goods shall be determined according to the market prices or prices equivalent thereto at the time when the offence was committed (Section 20 of the Law on the Procedure for the Entry into Force and Application of the Criminal Law of 15 October 1998).

Determining the value of the smuggled goods is crucial to decide whether or not the elements of the crime—smuggling on a large scale— exist in the alleged offence (Decision of the Department of Criminal Cases of the Supreme Court of 3 July 2014, case No. SKK-229/2014, criminal case No. 15890018311). According to Section 1, Clause 27 of the Law on Value Added Tax of 29 November 2012 (“Latvijas Vēstnesis”, 14.12.2012, No. 197), market value is a consideration for goods or services which at the time of supply would have to be paid by the recipient of the relevant goods or services, under conditions of fair competition, to another supplier who is not considered as a related party within the meaning of the Law on Taxes and

Duties (“Latvijas Vēstnesis”, 18.02.1995, No. 26). Where no comparable price for goods or services can be ascertained, market value shall mean:

a) in respect of goods – an amount which is not less than the purchase price of the relevant goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of supply;

b) in respect of services – an amount that is not less than the full cost of providing the service.

The decision of the Department of Criminal Cases of 14 May 2015 states that the concepts “value of the object of a criminal offence” and “tax administration” must be distinguished. In the case of cigarette smuggling, the value of the object of the criminal offence is determined by Section 20 of the Law on the Procedure for the Entry into Force and Application of the Criminal Law and it consists of the customs value, customs tax, excise tax and value added tax of cigarettes in accordance with the laws and regulations in force. The law does not favour cigarette smuggling in comparison with other criminal offences with the same object of the criminal offence (decision of the Department of Criminal Cases of the Supreme Court of 14 May 2015, case No. SKK-58/2015, criminal case No. 15890017612). According to Section 201 of the Law on the Procedure for the Entry into Force and Application of the Criminal Law, liability for the smuggling of alcohol or other alcoholic beverages which has been committed on a large scale shall apply if the quantity of alcoholic beverage reaches 20 litres of absolute alcohol.

On the subjective side, smuggling may be committed with direct intent, which is determined by a person's desire to bring goods or other valuables subject to customs clearance into or out of the customs territory of the Republic of Latvia, knowingly committing the unlawful acts referred to in Paragraph one of the Section. The Subject of the criminal offence - a natural person in sound mental capacity over the age of fourteen²⁰.

The criminal offence provided for in this section shall be recognised as a crime (Smuggling (Section 190 of the Criminal Law) in Paragraph one - a less serious crime, in Paragraphs two and three - a serious crime). Smuggling is bringing in of goods or other valuables into the customs territory of the Republic of Latvia or taking out thereof, by avoiding customs control or concealing such goods or other valuables from such control, or not declaring such goods or other valuables, or using false customs or other documents, or in any other illegal way.

²⁰ Krastiņš U., Liholaja V., Hamkova D. Krimināllikuma komentāri. Trešā daļa (XVIII-XXV nodaļa). Rīga, TNA, 2016, 82.-88.lpp.

The crime specified in Section 190, Paragraph one of the Criminal Law is characterized by active acts. The offence is completed at the time of committing said acts (formal crime).

On the subjective side, a criminal offence can only be committed with direct intent. The offender is aware that he/she is illegally smuggling items across the customs border and wants to do so. The subject of the crime has the characteristics of the general entity, since the responsibility for customs offences in the case of a legal person also lies with the natural persons who have committed the offence as representatives of the legal person, on its behalf or in its service²¹.

Dangerousness of smuggling to society is manifested in the fact that this act violates the established economic order which regulates the domestic market, foreign trade interests and implementation of the customs policy²².

According to Martsiushevskaya and Ostroga²³, currently, the concept of smuggling is practically established, although it is still debatable. Nevertheless, literature provides various definitions of this phenomenon both at international and national levels. The major characteristics of smuggling emphasized in different definitions are reviewed in Table 1 of Appendix 1.

When defining smuggling by the nature of an offence, it is emphasized that smuggling is a crime or an administrative offense that is related to illegal transportation of goods or other objects across the state border²⁴.

With consideration of which regulations are violated, smuggling is defined as a violation of customs order and procedures²⁵), although as noted by Abramavičius et al.²⁶, items or people can be transported not only through customs posts, but also bypassing them, so that what is being transported is hidden from customs inspection.

When defining smuggling by an object of an offence, researchers consider specific material objects exploitation of which can cause damage to the legal good or threatens to cause such damage²⁷. In other words, an object represents what is being smuggled. In this respect,

²¹ Krastiņš U., Liholaja V., Niedre A. Krimināltiesības. Vispārīgā un sevišķā daļa.-Rīga, Tiesu Namu Aģentūra, 2001, 281.-282.lpp.

²² Misiūnas V. BK 312 straipsnis. Kontrabanda. *Verslo&Komerčinė teisė*, 4-5, 1999, 216–228.

²³ Martsiushevskaya E., Ostroga V. Smuggling as a crime of international character: concept, characteristics, qualifications. *Customs Scientific Journal*, № 1, 2012, 49–59.

²⁴ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017, Stankevič I. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

²⁵ Martsiushevskaya E., Ostroga V. Smuggling as a crime of international character: concept, characteristics, qualifications. *Customs Scientific Journal*, № 1, 2012, 49–59.

²⁶ Abramavičius A. et al. Baudžiamoji teisė. Specialioji dalis. 2 knyga, 2-asis papildytas leidimas. Vilnius, Eugrimas, 2001.

²⁷ Wessels J. Baudžiamoji teisė. Bendroji dalis: baudžiamoji veika ir jos struktūra. Vilnius, Eugrimas, 2003.

smuggling is defined as transportation of goods, valuables and/or people across the border of a certain country, when the goods, valuables and/or people are hidden from customs control, undeclared, declared by providing misleading documents and/or misleading means of customs identification, and/or when declaration is disputable²⁸. Many sources indicate transportation of goods, money, artistic values or other items that must be declared to customs, as well as firearms, ammunition, explosives, detonating and radioactive or other strategic goods (dual-purpose – civil and military – goods and technologies, nuclear materials and equipment used in nuclear activities, dual-purpose goods that can be used in nuclear activities), included in the lists of the strategic goods and technologies approved by national governments, poisonous and psychoactive, psychotropic or narcotic substances and their precursors. Martsiushevskaya and Ostroga²⁹ also note nuclear, chemical, biological and other types of weapons of mass destruction, as well as materials and equipment that can be used for the production of these weapons, raw materials of strategic importance, transportation of the above-mentioned items/materials/substances in excess of the permitted quantities, transportation by abusing public service or assistance of a person who holds position in public service and is allowed to cross the border.

Article 199 of the Criminal Code of the Republic of Lithuania stipulates that an object of smuggling refers to material items that have monetary value and must be submitted to customs control³⁰. Providing the analysis of Article 312 of the Criminal Code, Misiūnas³¹ indicates that *the major object of a smuggling attack is the economic order, and the additional objects are state finances and public safety. In accordance with disposition of Article 312 of the Criminal Code, an object of smuggling includes goods, money, art values and other items. Article 210³² of the Code of Administrative Offenses considers goods, valuables or other items to be objects of smuggling. There is no fundamental difference between the definitions provided above. Since under certain conditions, administrative liability for smuggling <...> transforms into criminal liability (Article 312 of the Criminal Code), it is important to properly explain and understand an object of smuggling (p. 217)³³. An object of smuggling also includes the items specifically listed in the Criminal Code: firearms, ammunition, explosives, detonating, radioactive or other*

²⁸ Martsiushevskaya E., Ostroga V., *supra* note 25.

²⁹ Martsiushevskaya E., Ostroga V., *supra* note 25.

³⁰ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

³¹ Misiūnas V. BK 312 straipsnis. Kontrabanda. *Verslo&Komerčinė teisė*, 4-5, 1999, 216–228.

³² Currently, this corresponds to Article 208 of the Code of Administrative Offenses of the Republic of Lithuania <https://www.e-tar.lt/portal/lt/legalAct/4ebe66c0262311e5bf92d6af3f6a2e8b>

³³ Misiūnas, *supra* note 31: 216–228.

strategic goods, as well as poisonous, psychoactive, psychotropic and narcotic substances and their precursors.

Povilauskienė³⁴ states that the most common objects of smuggling are as follows: non-ferrous and ferrous metals (copper scrap, aluminum scrap), narcotics and precursors (poppy straws, opium and heroin), food products (sugar, meat products, canned goods, poultry, frozen fish, nuts, pasta), alcoholic beverages (spirit, vodka, wine), tobacco and its products, cars and other vehicles, petroleum products (gasoline and diesel fuel), consumer goods (clothes, footwear, perfumery, household appliances, mink fur, fruits, vegetables). According to Povilauskienė³⁵, from criminological, legal and other points of view, smuggling is a phenomenon that poses a risk to national and international security in the following aspects:

1) mandatory taxes (customs duties, excise, value-added tax) are not paid when transporting smuggled goods to Lithuania; as a result, the state does not collect part of the budget revenue, and a greater tax burden falls on ordinary taxpayers (this causes great moral damage to the society, leads to disappointment in the authorities, damages awareness of the young generation).

2) smuggling is one of the major sources of income for organized crime (the income from smuggling is invested in movable and immovable property, used for privatization of particular objects and committing serious, extremely dangerous crimes); the networks, funds and connections created by smugglers can be exploited by international terrorists, which can pose a significant risk to society.

3) smuggling damages legal business (legal businesses go bankrupt, become unable to compete with cheap smuggled goods), undermines competitiveness and economic development. When selling smuggled goods, consumers are deceived (smuggled goods are usually of lower quality or falsified); when selling falsifications of brands or industrial designs, business reputation suffers.

4) smuggling transported from Lithuania and through Lithuania to foreign countries causes political damage to the state of Lithuania.

5) the latency of smuggling complicates assessment of the damage it causes to the state budget and the economy; smuggling also distorts official statistics, due to which economic indicators are wrongly assessed (p. 59 – 60).

³⁴ Povilauskienė D. *Teisė ir muitinės veikla*. Vilnius, MRU, 2006.

³⁵ Povilauskienė D, *supra note 34*: 59–60.

In the Section 191 of Criminal Law (Unauthorised Activities with Goods and Other Valuable Property Subject to Customs Clearance) it is stated: for a person who commits storage, movement, forwarding or disposal of goods or other valuable property subject to customs clearance in the customs territory of the Republic of Latvia without the permission of the customs authorities, if it has been committed on a significant scale, the applicable punishment is the deprivation of liberty for a period of up to two years or temporary deprivation of liberty, or probationary supervision, or community service, or fine, with or without confiscation of property. For committing the criminal offence provided for in Paragraph one of this section, if it has been committed by a group of persons according to a prior agreement, the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or probationary supervision, or community service, or fine, with or without confiscation of property.

For a person who commits storage, movement, forwarding or disposal of goods or other valuable property subject to customs clearance in the customs territory of the Republic of Latvia without the permission of the customs authorities, if it has been committed on a large scale, the applicable punishment is the deprivation of liberty for a period of up to six years, with or without confiscation of property, with or without probationary supervision, with deprivation of the right to engage in entrepreneurial activity of a specific type or of all types or to engage in specific employment or the right to take up a specific office for a period of up to five years.

The offence referred to in Paragraphs one and two of the Section is recognised as a less serious crime, while the offence referred to in Paragraph three of the Section—a serious crime. In respect of the object and subject of the criminal offence, see the comments to the Section 190 of the Criminal Law.

On the objective side, the criminal offence manifests in the storage (storing in or outside of specially equipped or adapted storage facilities), movement (moving from one place to another using any vehicle), forwarding (sending from one place to another, for example, using postal services, services of another person, etc.) or disposal (transferring any goods or other valuables subject to customs clearance to another person, whether or not for a consideration) of goods or other valuables subject to customs clearance in the customs territory of the Republic of Latvia without the permission of the customs authorities.

Criminal liability shall apply if the activities involving goods or other valuables subject to customs clearance are committed in the customs territory of the Republic of Latvia without the permission of the customs authorities on a significant scale (material composition). Thus, “significant scale” is a threshold, separating a criminal offence from an administrative offence. In respect of a significant scale and the customs territory of the Republic of Latvia, see the

comments to Section 190 of the Criminal Law. It is clear from Section 9, Paragraph two of the Customs Law that the customs authorities, inter alia, perform the control of goods under customs supervision at the places where the goods are presented, in the areas of customs warehouses, temporary storage places, free zones and free warehouses, border inspection points, as well as storage and processing places for goods under customs supervision.

Article 158 of the Union Customs Code provides that all goods intended to be placed under a customs procedure, except for the free zone procedure, shall be covered by a customs declaration appropriate for the particular procedure. Within the meaning of the Section, the entry into the customs territory of the Republic of Latvia of goods subject to customs clearance has been lawful, while their storage, transportation, forwarding or disposal of in the customs territory of the Republic of Latvia takes place without the permission of the customs authorities. It is clear from Section 5, Clauses 3 and 27 of the Union Customs Code that any operations involving goods subject to customs clearance require permission.

Paragraph two of the 191. Section of Criminal Law prescribes increased liability for the criminal offence referred to in Paragraph one if it has been committed by a group of persons according a prior agreement. To qualify the criminal offence under Paragraph two of the Section, it is necessary to establish the criminal offence referred to in Paragraph one, i.e., that it has been committed on a significant scale and that it was committed by a group of persons according to a prior agreement (material composition). In respect of a group of persons according to a prior agreement, see the comments to Section 190 of the Criminal Law. Paragraph three of the Section prescribes liability for a criminal offence committed in especially aggravating circumstances—the storage, movement, forwarding or disposal of goods or other valuables subject to customs clearance in the customs territory of the Republic of Latvia in large quantities without the permission of the customs authorities (material composition).

Illegal activities with goods or other valuables subject to customs clearance are committed on a large scale if the total value of the object of the criminal offence at the time of commission of the offence was not less than the total of fifty minimum monthly wages specified in the Republic of Latvia at that time. The value of the objects shall be determined according to the market prices or prices equivalent thereto at the time when the criminal offence was committed (Section 20 of the Law on the Procedure for the Entry into Force and Application of the Criminal Law of 15 October 1998).

On the subjective side, the offence under consideration can be committed with direct intent because the offender knowingly stores, moves, forwards or disposes of goods or other valuables subject to customs clearance without the permission of the customs authorities. The subject of the criminal offence can be any natural person who has reached the age of fourteen. If

the person himself/herself has committed the smuggling prescribed in Section 190 of the Criminal Law, liability shall apply only in accordance with Section 190 of the Criminal Law.

When assessing the international aspect of smuggling, the definitions provided in literature propose that smuggling is an illegal cross-border activity, i.e. objects of smuggling indicated in previous paragraphs are transported from one state to another³⁶. For this reason, as noted by Joossens and Raw³⁷, smuggling can also be analyzed in an international context.

Finally, by the damage area, smuggling is defined as an activity that causes significant damage to national economic and financial systems, fair business activities, and general social welfare³⁸. This treatment is also reflected in Chapter XXXI "Crimes and misdemeanors against the economy and business order"³⁹ of the Criminal Code of the Republic of Lithuania, which entered into force on May 1, 2003

Given the fact that smuggling activities are carried out not only by individuals, but also by organised groups and networks, it is relevant to examine the concept of organised smuggling in more detail. In this respect, organised smuggling is part of organised crime.

Although heavily regulated and widely discussed, organised crime still remains a criminological phenomenon, the concept of which does not have a universally accepted definition. For instance, Article 2, Part A of the United Nations Convention against Transnational Organised Crime (the so-called Palermo Convention) (United Nations General Assembly, Resolution No. 55/25, adopted on 15 November 2000) explains that although organised crime is not directly defined, an organised crime group refers to an organised group consisting of three or more persons, directly or indirectly cooperating for a certain period of time with the aim of committing one or more criminal acts or grossly violating legal norms in the hope of financial or other material benefits.

Aghazadeh et al.⁴⁰ cite a similar definition of an organised crime group provided by the International Criminal Police Organization (INTERPOL), according to which an organised crime

³⁶ Abramavičius A. ir kt. Baudžiamoji teisė. Specialioji dalis. 2 knyga, 2-asis papildytas leidimas. Vilnius, Eugrimas, 2001, Joossens L., Raw M. From cigarette smuggling to illicit tobacco trade. *Strategic Directions and Emerging Issues in Tobacco Control*, 21(2), 2012, 230–234, Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017, etc.

³⁷ Joossens L., Raw M. From cigarette smuggling to illicit tobacco trade. *Strategic Directions and Emerging Issues in Tobacco Control*, 21(2), 2012, 230–234.

³⁸ Malinauskaitė J., Šulija G., Šulija V. Kontrabanda: kontrolė ir prevencija Lietuvoje. Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos, Teisės institutas, dizaino studija „Daba“, 2002..

³⁹ LR Baudžiamojo kodekso, įsigaliojusio 2003 m. gegužės 1 d., *ypatingosios dalies XXXI skyrius* „Nusikaltimai ir baudžiamieji nusižengimai ekonomikai ir verslo tvarkai“, Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555>

⁴⁰ Aghazadeh A., Ardebili M., Ashouri M., Mahdavisabet M. Organized smuggling of goods in the criminal law of Iran and Turkey. *Journal of Politics and Law*, 10(5), 2017, 24–28.

group refers to any group that is characterized by a common (joint) structure and whose main aim is to obtain financial benefits (money) by conducting illegal activities and acts of corruption or intimidation.

Literature provides over 100 definitions of organized crime. Different definitions emphasize different characteristics of this phenomenon, depending on the analysis direction selected by researchers. The major characteristics of organised crime reflected in definitions of different context are systematised in Table 2 of Appendix 1.

Organised crime is defined by its five major dimensions:

1. The common aim of the group members - to obtain or protect profit/income.
2. Activity duration and volume.
3. Hierarchical structure and tight control characteristic of an organised crime group.
4. Maintaining control/power.
5. Close social interaction among the members of an organised crime group.

The concept of organised crime, as noted by Aghazadeh et al.⁴¹, was transferred to criminal law from the area of criminal sociology in which it originated. Definitions of organised crime emphasize such features of this phenomenon as a group action and a single and continuous structure characterized by methodical organisation of illegal activities with the aim to obtain income, financial benefits or even gain political power. According to Borricand⁴², organised, or corporate, crime refers to criminal acts committed by certain organised groups of individuals who seek to obtain financial benefits. In other words, each member in an organised crime group plays an important role when pursuing a common interest since each member benefits from a share of the common joint activity.

Conklin⁴³, Allum and Gilmour⁴⁴ and other authors argue that organised crime is characterized by the features of a formal organization: a hierarchical structure (according to Abadinsky⁴⁵, a hierarchical structure has at least three levels), division of labour, coordination of activities and distribution of tasks to protect the organisation from external and internal threats and thus ensure its survival. Abadinsky⁴⁶ highlights the non-ideological aspects of an organised

⁴¹ Aghazadeh A., Ardebili M., Ashouri M., Mahdavisabet M. Organized smuggling of goods in the criminal law of Iran and Turkey. *Journal of Politics and Law*, 10(5), 2017, 24–28.

⁴² Borricand, J. F. Organized crime and criminal law. *Legal Research Journal of Shahid Beheshti University*, 4, 1999, 11–21.

⁴³ Conklin J. E. *Criminology* (10th ed.). Boston, Pearson, 2010.

⁴⁴ Allum F., Gilmour S. *Routledge handbook of transnational organized crime*. London, Routledge, 2012.

⁴⁵ Abadinsky H. *Organized crime* (9th ed.). Belmont, Wadsworth, 2010.

⁴⁶ Abadinsky H., *Ibid.*

crime group and emphasizes that this group is characterized by close social interaction among its members, as well as by mutual trust and unification for a common aim.

In the theory of Lithuanian criminal law, according to Gutauskas⁴⁷, there is no unanimous opinion on how exactly an organised crime group should be defined. For instance, Jovaišas and Misiūnas⁴⁸ believe that it is a permanent group of persons connected by intentional activities aimed at committing several crimes (p. 107). The assumption that the persons operating in an organised crime group have a pre-agreed and well-coordinated plan and details of a crime is supported by Šumskas⁴⁹, but his explanations imply that a crime is a singular phenomenon, which contradicts the interpretation by Jovaišas and Misiūnas⁵⁰ who indicate that the activities on an organised crime group are aimed at committing several crimes.

In an attempt to summarize various definitions of an organised crime group found in the theory of Lithuanian criminal law, Gutauskas⁵¹ suggests defining an organised crime group as a group in which two or more persons agree in advance to commit one or more crimes and each member of the group, while committing a crime, performs a certain task or has a certain role (p. 63). In the Universal Lithuanian Encyclopedia, A. Petkus⁵² defines organised crime as a negative social phenomenon, a concentration of criminal elements in a certain region or state that is characterized by a hierarchical structure and has leaders who organise and manage the criminal structure to ensure protection and guarantees for its members. The latter definition of an organised crime group can be considered most comprehensive in the theory of Lithuanian criminal law because it most accurately reflects the nature of the activity of an organised crime group, close interaction among its members, and the hierarchical structure of the group.

Thus, by combining the concepts of smuggling and organised crime, organised smuggling can be defined as the illegal cross-border activity of transporting goods, valuables and/or people which is conducted by an organised group consisting of 3 or more persons that has common plans, organised management and directs the joint action efforts towards material

⁴⁷ Gutauskas A. Organizuota grupė kaip organizuoto nusikalstamumo forma ir jos baudžiamasis teisinis vertinimas. *Jurisprudencija*, 41(33), 2003, 60–71.

⁴⁸ Jovaišas K., Misiūnas J. Baudžiamųjų įstatymų komentaras (nusikaltimai nuosavybei, valstybės tarnybai, teisingumui, ūkininkavimo tvarkai, finansams). *Verslo ir komercinė teisė*, 4–5, 1999.

⁴⁹ Šumskas A. Baudžiamųjų bylų nagrinėjimas teisme. Vilnius, Justitia, 2000.

⁵⁰ Jovaišas K., Misiūnas J. Baudžiamųjų įstatymų komentaras (nusikaltimai nuosavybei, valstybės tarnybai, teisingumui, ūkininkavimo tvarkai, finansams). *Verslo ir komercinė teisė*, 4–5, 1999.

⁵¹ Gutauskas A. Organizuota grupė kaip organizuoto nusikalstamumo forma ir jos baudžiamasis teisinis vertinimas. *Jurisprudencija*, 41(33), 2003, 60–71.

⁵² Petkus A. Organizuotas nusikalstamumas. *Visuotinė lietuvių enciklopedija*. Available at: <https://www.vle.lt/Straipsnis/organizuotas-nusikalstamumas-339> [online 10.03.2020].

gain⁵³. Considering the results of the literature analysis, the author of this dissertation proposes to define the activity of organised smuggling as *an economic crime related to cross-border illegal transportation of goods or other objects committed or conducted by an organised, hierarchically managed group of individuals characterised by strict regulation and close interaction among the members pursuing material benefits*.

Smuggling is against the law by its very nature. Therefore, this activity has always been related to particular restrictions of social behaviour. Smuggling is subject to criminal liability. What lies behind the essence of criminal liability?

First of all, it is necessary to understand that a person acts of one's own free will. Freedom when choosing to act is a necessary condition of liability because only when a person is free, he/she is able to choose a certain behaviour that causes consequences positively or negatively assessed by society.

Second, criminal liability applies only in accordance with the accepted legal norms prescribing liability for smuggling. On the basis of these norms, a specific subjective right and the requirement to perform legalising duties arise.

Third, liability involves two following aspects: the factual basis of the positive legal liability (initiative, positive assessment, performance of duties for the benefit of society and voluntary compensation for the damage caused because of violation of the rights of another person) and the factual basis of the negative legal liability (violation of the law, destruction of the balance of rights and duties when a person refuses to perform the duties that legitimise the rights).

One of the characteristics of a modern democratic legal state is development and improvement of legal regulations for protection of human rights and freedoms. In terms of criminal law, this *inter alia* means that the purpose of criminal law is to protect the rights and freedoms of an individual and citizens, as well as the interests of society and the state.

On the other hand, imperfections of legal regulation make it difficult to achieve the primary purpose; legal regulation is also affected by vulnerability of human rights. In the current national legal acts, we can find a number of cases when some types of liability are provided for violation of the law, which means that an act is subject to regulation of several branches of law. Then the problem of conflict of laws arises. An applier of a legal norm has to decide which branch of law to follow. The decision, however, is not always simple. Most questions arise

⁵³ Aghazadeh A., Ardebili M., Ashouri M., Mahdavisabet M. Organized smuggling of goods in the criminal law of Iran and Turkey. *Journal of Politics and Law*, 10(5), 2017, 24–28.

concerning application of administrative and criminal law. This situation exists because of unclear legislation, when legal norms are formulated without defining the features of an administrative offence and a criminal offence; moreover, sometimes they are formulated identically⁵⁴. Thus, the Code of Administrative Offenses and the Criminal Code contain a number of articles that provide for both administrative and criminal liability for the same act. Smuggling is one of those acts for which administrative and criminal liability is provided.

1.2.1. Criteria for smuggling Criminalisation

Literature analysis revealed that most authors recognise the same criteria for criminalization of an act: 1) the belief of the majority that criminal law protects social values that are vital for the desired order to prevail in society; 2) a specific social value cannot be defended without applying strict criminal law; 3) prevalence of an act to be criminalized; 4) the ability to identify a criminal act following criminal proceedings. Among the above-listed criteria, most researchers tend to highlight two - dangerousness of an act to society and prevalence of this act.

Western European and US researchers emphasise such criteria as the principle of protecting public interests (criminal law can and must be used only to protect the public interest), the principle of *ultima ratio*, the principle of evaluating the benefits and costs of criminalization (the benefits of criminalization must be greater than the damage of criminalization; final benefits must exceed societal costs and other losses)⁵⁵.

Prohibition of dangerous behaviour by applying criminal law is understood as a strict reaction of a state to an undesirable form of behaviour.

When issuing criminal laws, the legislature is subject to requirements that do not allow the essence of criminal law to be distorted. The principle of *ultima ratio* (the last argument, the last measure⁵⁶) is one of these criteria. In general, this principle proposes that criminal law and the measures provided by this law can be applied only as the last argument, i.e. only when it is impossible to protect legal goods by any other legal means⁵⁷.

This principle has never been given sufficient attention. Only a few studies focused on some issues related to the principle of *ultima ratio*. For instance, V. Justickis, V. Pavilionis and

⁵⁴ Piesliakas V. Lietuvos baudžiamoji teisė. Pirmoji knyga. Baudžiamasis įstatymas ir baudžiamosios atsakomybės pagrindai. Vilnius, Justitia, 2006, 140.

⁵⁵ Nuutilla A. M. Punishment and Fundamental Rights. *Turku Law Journal*, no. 2, 2000, 1–18; Melander S. Principles of Criminalization and European Criminal Law. In *Crime and Crime Control in an Integrating Europe. Research Seminars. 27–30 August*. Scandinavian research council for criminology, Helsinki, 2003, 187–194.

⁵⁶ <http://tzz.lt/u/ultima-ratio/>

⁵⁷ Pranka D. Nusikalstamos veikos ir civilinės teisės pažeidimo atribojimo koncepcija Lietuvos baudžiamojoje teisėje. Doctoral Thesis. MRU, 2012, 38.

G. Švedas mention *ultima ratio* as one of the criteria of criminalization, but do not analyse it in detail⁵⁸. Literature analysis proposes that the principle of *ultima ratio* is mentioned in different contexts when examining the issue of distinguishing between criminal acts and other types of offences⁵⁹.

Authors analysed the principle of *ultima ratio* more comprehensively. According to O. Fedosiuk⁶⁰, the modern legal doctrine recognizes that criminal liability is an extreme measure (*ultima ratio*) undertaken to protect society from violations of the legal order. However, there is no clarity concerning the legal status and binding force of this idea, based on rationality and criminological research, when developing and applying criminal law. O. Fedosiuk presents conceptual justification of the idea of criminal liability as the last measure and discusses applicability of this idea in legislation and court practice. A. Dambrauskienė⁶¹ states that *ultima ratio* represents the idea of criminal liability as the last measure to protect legal goods; *ultima ratio* is interpreted not only as a recommendation or a principle of legislative ethics; it is considered an independent normative legal principle. Given the fact that *ultima ratio* primarily applies when criminalising particular acts, it is considered a special principle of criminal policy.

Foreign literature also provides scientific studies⁶² devoted to the principle of *ultima ratio*. These studies mostly focus on the essence of this principle and its place in the system of legal principles.

The jurisprudence of the Constitutional Court of the Republic of Lithuania⁶³ emphasizes that <...> to prevent illegal acts, it is not always appropriate to recognize an act as a crime and to

⁵⁸ See more: Justickis V. *Kriminologija*. I dalis. Vilnius, LTU Leidybos centras, 2001; Pavilionis V. Baudžiamosios politikos pagrindai, *Justitia*, 1996, nr. 3, p. 22; Švedas G. Baudžiamosios politikos pagrindai ir tendencijos Lietuvos Respublikoje. Vilnius, Teisinės informacijos centras, 2006, p. 27–29; Švedas G. Veikos kriminalizavimo kriterijai: teorija ir praktika, *Teisė*, 82, 2012, p. 12–25.

⁵⁹ E.g., Čaplinskas A., Dapšys A., Misiūnas J. Baudžiamosios ir administracinės atsakomybės atribojimo teorinės problemos. *Teisės problemos*, 4 (46), 2004, 44–82; Fedosiuk O. Baudžiamoji atsakomybė už vertimąsi neteisėta komercine, ūkine, finansine ar profesine veikla: optimalių kriterijų beiėškant. *Jurisprudencija*, 20(1), 2013, 301–317; Ivoška G. Nusikalstamų veikų ekonomikai ir verslo tvarkai atskyrimas nuo panašių nusikaltimų ir kitų teisės pažeidimų. *Teisė*, nr. 48, 2003, 100–109; Pranka D. Lietuvos Respublikos baudžiamojo kodekso 179 straipsnyje numatyta nusikalstamą veiką ir civilinį teisės pažeidimą skirianti riba. *Socialinių mokslų studijos*, t. 3(2), 2011, 649–664; Pranka D. Nusikalstamos veikos ir civilinės teisės pažeidimo atribojimo koncepcija Lietuvos baudžiamojoje teisėje. Doctoral Thesis. MRU, 2012.

⁶⁰ Fedosiuk O. Baudžiamoji atsakomybė kaip kraštutinė priemonė (*ultima ratio*): teorija ir realybė. *Jurisprudencija*, t. 19 (2), 2012, 715–738.

⁶¹ Dambrauskienė A. *Ultima ratio* principo samprata. *Teisė*, vol. 97, 2015, 116–134.

⁶² Husak D. Applying *Ultima ratio*: A Sceptical Assessment. *Ohio state journal of criminal law*, vol. 2, no. 2, 2005, 535–545; Jareborg N. Criminalization as Last Resort (*Ultima Ratio*). *Ohio state journal of criminal law*, vol. 2, 2004, 521–534; Melander S. *Ultima Ratio* In European Criminal Law. *Oñati Socio-Legal Series*, vol. 3, no. 1, 2013, 42–61; Minkkinen P. The ‘Last Resort’: A Moral and/or Legal Principle? *Oñati Socio-Legal Series*, vol. 3, no. 1, 2013, 21–30; Touri K. *Ultima Ratio* as a Constitutional Principle. *Oñati Socio-Legal Series*, vol. 3, no. 1, 2013, 6–20; Wendt R. The Principle of „*Ultima Ratio*“ And/Or the Principle of Proportionality. *Oñati Socio-legal Series*, vol. 3, no. 1, 2013, 81–94.

impose the most severe measure - criminal penalty. Therefore, every time it is necessary to decide whether to recognize an act as a crime or another offence; it is extremely important to assess what outcomes can be achieved by the means other than imposing criminal penalties (administrative, disciplinary, civil sanctions or public impact measures, etc.) <...>. The rulings of the Supreme Court of the Republic of Lithuania also indicate that <...> criminal liability in a democratic society must be perceived as an extreme, last measure (*ultima ratio*) used to protect legal goods and values in cases when the same objectives cannot be achieved by imposing milder means <...>⁶⁴.

The content of the *ultima ratio* principle comprises⁶⁵: a) sufficiently dangerous violation of the law which encroaches on the legal goods most important to an individual, society and the state; b) the absence of any alternative measures of influence in other branches of law to prohibit the unwanted behaviour <...>. Since the *ultima ratio* principle primarily manifests itself in legislation, i.e. in the process of criminalization when the legislator draws the limits of discretion, this principle should be considered a specific independent principle of criminal policy.

Criminal laws often become not the last, but quite often the very first means of protecting values and public interests. Legislators, and often practitioners, apply criminal law as the best and fastest means of solving many problems.

According to O. Fedosiuk, criminal legislation often ignores the *ultima ratio* principle. The Criminal Code of the Republic of Lithuania is characterised by excessive criminalization and abstract definitions of criminal acts that leave too much freedom for interpretation⁶⁶.

Every time, when it is necessary to decide whether to recognize an act as a crime or another offence, it is extremely important to assess what outcomes can be achieved by applying means other than criminal penalties. The legal draft of a criminal law which proposes to criminalize or decriminalize a certain act must be subject to an independent assessment (an expertise) that would allow to justify the relevance and reasonableness of this criminal law, its compliance with the requirements of international and the European Union law as well as the principles of the constitutional rule of law and *nullum crimen sine lege*⁶⁷.

⁶³ <https://lrkt.lt/lt/teismo-aktai/paieska/135/ta400/content> and <https://lrkt.lt/lt/teismo-aktai/paieska/135/ta248/content>

⁶⁴ Lietuvos Aukščiausiasis Teismas. 2009 m. spalio 6 d. nutartis baudžiamojoje byloje Nr. 2K-369/2009; 2011 m. gegužės 24 d. nutartis baudžiamojoje byloje Nr. 2K-262/2011.

⁶⁵ Dambrauskienė A. *Ultima ratio* principo samprata. *Teisė*, vol. 97, 2015, 129–130.

⁶⁶ Fedosiuk O. Baudžiamoji atsakomybė kaip kraštutinė priemonė (*ultima ratio*): teorija ir realybė. *Jurisprudencija*, 19(2), 2012, p. 734.

⁶⁷ Švedas G. Veikos kriminalizavimo kriterijai: teorija ir praktika, *Teisė*, 82, 2012, 23.

Thus, when analysing the *ultima ratio* principle in the context of cigarette smuggling, the question arises of whether criminalization of this act is relevant. Perhaps taxes or other financial measures could be reviewed.

Smuggling of goods is one of the most common economic crimes. It impedes productive investment, violates the principles of fair and healthy competition, promotes the shadow economy, and thus causes irreversible damage to national economic systems. Conducted by crossing national borders and involving various money laundering schemes, smuggling also endangers national economic and political security.

Group work or network based smuggling leads to a rapid intensification of this activity, which makes it difficult for national justice systems to detect smuggling acts and fight them. Organized crime, which according to Aghazadeh et al.⁶⁸, is one of the fastest developing forms of crime, has a negative impact not only on economic or political, but also on social life and the general culture of society because organized crimes are often accompanied and caused by the spread of bureaucratic and/or financial corruption. For the aforementioned reasons, criminal law and policy makers must follow the principles of proportionality of the crime and punishment, distributive justice and the theories of punishment when analysing the characteristics of smuggling as a criminal offense, and consider these characteristics to create an effective system for combating the phenomenon of smuggling.

It is appropriate to start the analysis of smuggling in criminal law with the legal concept of smuggling. Although the concept of smuggling is close to tax evasion and illicit trade, these concepts are not identical and must be distinguished. According to Joossens and Raw⁶⁹, tax evasion is an illegal activity aimed at paying less tax or not paying it at all, while illicit trade is any illegal practice or behaviour that involves production, transportation, receipt, storage, distribution, sale or acquisition of products, as well as any practice or conduct that facilitates execution of the above-mentioned processes.

Although smuggling has features of both tax evasion and illicit trade, its concept is somewhat different. In a broad sense, smuggling is a violation of customs order and procedures⁷⁰, illegal cross-border trade⁷¹. The next section provides a more detailed analysis of the definitions of smuggling and organized smuggling from a legal perspective.

⁶⁸ Aghazadeh A., Ardebili M., Ashouri M., Mahdavisabet M. Organized smuggling of goods in the criminal law of Iran and Turkey. *Journal of Politics and Law*, 10(5), 2017, 24–28.

⁶⁹ Joossens L., Raw M. From cigarette smuggling to illicit tobacco trade. *Strategic Directions and Emerging Issues in Tobacco Control*, 21(2), 2012, 25.

⁷⁰ Martiushevskaya E., Ostroga V. Smuggling as a crime of international character: concept, characteristics, qualifications. *Customs Scientific Journal*, № 1, 2012, 31.

Smuggling by the type of offence includes smuggling that entails administrative liability and smuggling that entails criminal liability. This separation of liability is grounded on the value of smuggled items: if the value of smuggled items does not exceed the value indicated in the relevant law, administrative liability (fines) is entailed, but if the value of smuggled items exceeds the value indicated in the relevant law, criminal liability (arrest, imprisonment) is entailed.

Article 208 of the Code of Administrative Offences of the Republic of Lithuania (hereinafter – CAO) and Article 199 of the Criminal Code⁷² stipulate that criminal liability is entailed when the value of smuggled items exceeds the amount of 150 base fines.

1.2.2. Smuggling as an Administrative Offence

Administrative liability is one of the types of legal liability, characterised by the general features of legal liability. On the other hand, the institute of administrative liability has its specific characteristics which separates it from other types of legal liability.

Legal basis for administrative liability: in the case of positive administrative liability, the norms of administrative law determining the possibility of acquiring special rights. In the case of negative administrative liability, the norms of administrative law, which set sanctions for infringements of the law, define the list of offences, penalties and the institutions and officials who apply them.

The factual basis for administrative liability: in terms of positive administrative liability, it is the person's proactive and conscious performance of assigned duties in order to acquire additional rights. Professor A. Vaišvila proposes that proactively provided services should also be considered on this basis. Therefore, the performance of initiative duties and services will be considered as a factual basis of positive liability. Since positive administrative liability is of a continuous nature (meaning a permanent conscious commitment guaranteed by the continuous performance of obligations), the acquisition of additional rights, such as a licence, on the basis of the latter, to exercise the subjective right conferred on the entity, in accordance with the rules and in compliance with the established obligations, the failure or improper performance of which will deprive it of the right to engage in the activities specified in the licence. The result is the acquisition of special rights guaranteed by new obligations; in terms of negative administrative liability, the factual basis is an act that violates the norms of administrative law (infringement).

⁷¹ Joossens L., Raw M. From cigarette smuggling to illicit tobacco trade. *Strategic Directions and Emerging Issues in Tobacco Control*, 21(2), 2012, 25.

⁷² Lietuvos Respublikos baudžiamojo kodekso 199. *Valstybės žinios*, Nr. 123-5573, 2003.

Article 5 of the Code of Administrative Offences⁷³ provides that an administrative offence is a prohibited dangerous act (action or inaction) corresponding to the composition of an administrative offence for which an administrative penalty is provided. The article itself states that the offence consists of the subjects (perpetrator, fault), objective characteristics (action or inaction) of the offence and sanction (penalty).

It is understood that an administrative offence is regarded only as a dangerous act to the public, violating public relations and causing certain consequences. However, according to I. Deviatnikovaitė, “for some reason the legislature forgot to mention the public interest because the danger must be linked to the public interest, for example, a drunk person driving a car poses a threat to the public because it is not known when and which members of society may suffer as a result of such an act by the offender. An offence can only be prohibited, illegal act. If there is no opposition to the law, we cannot talk about the administrative liability of a person, because such an action or inaction will not have the characteristics of an administrative offence.”⁷⁴

In administrative law, the set of the typical characteristics of an offence constitutes the composition of an administrative offence. The object, the objective side, the subject and the subjective side are the groups of attributes of the composition of the offence.

The object of the offence is social values and goods, described in laws and protected on the basis of the norms established therein. Thus, the object of an administrative offence is a good to which the offender encroaches upon, either by acting dangerously or by failing to act.

The facultative characteristic of the composition of the offence may in some cases be a material matter, i.e., a specific object that the offender directly targets. In such cases, the objects (documents) are the purpose of the act.

Regarding the objective characteristics of an offence, the necessary condition is that the act must be dangerous, there must be consequences and the existence of a causal link between them. Objective factors make it possible to separate offenses from each other. “An act means human will in an objective reality, manifesting itself in a dangerous action or inaction contrary to the established legal norms.”⁷⁵. The objective side of the offense is also characterised by other signs such as the manner, place, time, means of committing the act.

According to Article 217 of the Code of Administrative Offences (smuggling), the objective characteristics of an offence are the transportation of various goods and objects across

⁷³ Lietuvos Respublikos administracinių nusižengimų kodeksas. Available at: <https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=32wf59ar&documentId=TAPIS.79590&category=TAP>

⁷⁴ Deviatnikovaitė I. Administracinė teisė. Bendroji dalis. Vilnius, MRU, 2021, 538.

⁷⁵ Deviatnikovaitė I., *op. cit.*: 540.

the State border of the Republic of Lithuania without submitting them to customs control or otherwise avoiding such control, as well as failure to present them to customs.

The subject of an administrative offence is the offender, a natural person who has committed an act contrary to the law, who is 16 years of age at the time of the offence and is responsible. Thus, “the tortious subjectivity of the offender is associated with a certain maturity of reason and will, attained at a certain age.”⁷⁶ Any natural person with Lithuanian citizenship, or a foreigner or a person without citizenship can be the subject of an offence in Lithuania. Exceptions may be made for persons with immunity established by law or international treaties. Issues of their administrative liability are resolved in accordance with international agreements and other norms and principles of international law.

The main characteristic of the subjective side of an administrative offence is the fault, and the additional ones are the motive and the purpose. “The motive of the action are those incentives which give rise to the offence and the purpose is the result sought by the offender”.⁷⁷ The motive and the purpose of the act are not always relevant to its qualification.

The term of fault is not defined in the Code of Administrative Offences, and is not explained, but is used in the articles that provide rules for the selection of administrative penalties and administrative sanctions. This presupposes that guilt is an important element in the application of administrative liability. In addition, Article 2 of the Code of Administrative Offences, among the basic provisions on administrative liability, provides that a person is liable under the Code of Administrative Offences only if he or she is guilty of an administrative offence.

The forms of fault laid down in Article 7 of the Code of Administrative Offences are intent and negligence, and Articles 8 and 9 detail the meanings and types of intent and negligence. Looking at the offence of smuggling in question, it should be noted that, in administrative law, this offence is always intentional, since the offender realises that he is transporting smuggled goods across the border of the Republic of Lithuania and does not present them to customs, wants to act in this way and is aware of the dangerous nature of his behaviour, foresaw (knows) that such behaviour entails liability.

⁷⁶ Deviatnikovaitė I., *op. cit.*: 541.

⁷⁷ Šedbaras S., *Administracinė atsakomybė* Vilnius, Justitia, 2005, 220.

1.2.3. Smuggling as a Criminal Offence

In order to determine and establish whether a particular person or group of persons has committed a criminal offence, it is necessary, in the first place, to identify, in the acts of that person or group of persons, all the necessary objective and subjective characteristics of the constituent elements of the offence which allow a particular offence to be considered criminal or non-criminal, i.e., to qualify it as criminal or non-criminal. In other words, the situation is first legally assessed by comparing a specific case with the norms laid down in the Criminal Code (CC), and that comparison leads to a conclusion as to whether the analysed behaviour is characteristic or not characteristic of the constituent elements of the offence or misdemeanour established by the CC.

According to the expression, the constituent elements of the criminal offence are divided into objective and subjective. Based on the interpretation of Gutauskas⁷⁸ presented in the online universal Lithuanian encyclopaedia, the part of the act that is assigned to objective attributes is in objective reality, i.e., observed or fixed externally, directly. These are the values protected by the criminal law (object), dangerous act (the latter two are considered to be the most important attributes), as well as “the subject of the criminal offence, the manner, time, place, means, circumstances, consequences, causal link between the committed act and the resulting dangerous consequences provided for by the law, the age of the person to be prosecuted, the attribute of the special entity”.

Since *the main* (i.e. those which, regardless of whether these attributes are or are not described in a specific article of the CC, are necessary to establish for the offence to be criminalised) and *the facultative* (i.e. those which, in order for an offence to be recognised as criminal, need to be identified only if they are described in a specific article of the CC) characteristics of the composition of the criminal offence⁷⁹, are distinguished according to their importance for proof, criminal law includes the categories of *the main objective* and *facultative objective* categories of characteristics of a criminal offence, respectively. According to the material of the Case No 1A-579-81-2010 examined by the Kaunas Regional Court⁸⁰, the following characteristics are attributed to the main objective characteristics:

- 1) values protected by criminal law;

⁷⁸ Gutauskas A. Nusikalstamos veikos objektyvieji požymiai. *Visuotinė lietuvių enciklopedija* Retrieved from: <https://www.vle.lt/Straipsnis/nusikalstamos-veikos-objektyvieji-pozymiai-9921>

⁷⁹ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017; Stankevič I. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

⁸⁰ Kauno apygardos teismas. Byla 1A-579-81-2010. „Dėl Jonavos rajono apylinkės teismo 2010-06-01 nuosprendžio“. Available at: <https://eteismai.lt/byla/23254349085479/1A-579-81-2010> [viewed 09/04/2020].

- 2) dangerous acts;
- 3) dangerous consequences of a criminal offence provided for in the law (in the material compositions of criminal offences);
- 4) causal link between the act committed and the dangerous consequences provided for in the law (in the material compositions of criminal offences);
- 5) the age of the person prosecuted.

Meanwhile, the facultative objective characteristics include the dangerous consequences of the act, the causal link between the dangerous act and the dangerous consequences, the subject of the criminal offence, the time, place, tools, means, methods, and circumstances, as well as the characteristic of a special entity (Case No 1A-579-81-2010 examined by the Kaunas Regional Court⁸¹).

Subjective characteristics of the composition of the criminal offence are those that describe the inner side of the criminal activity, i.e., the thinking process of the person or persons who committed the criminal offence, the ability to understand the essence of their actions and to control them⁸². According to the interpretation of Gutauskas, if the objective characteristics represent an externally visible part of the criminal offence, then the subjective characteristics belong to the internal, directly invisible part of the act⁸³. Like the objective characteristics, the subjective characteristics of a criminal act are the main and the facultative. *The main subjective characteristics* include the guilt and the accountability of the person or persons who committed the offence, whereas the *facultative subjective characteristics* include the purpose and the motives of the criminal offence⁸⁴.

Being externally invisible, the subjective characteristics are not described in the CC, contrary to the objective characteristics of a criminal offence. However, if the objective characteristics do not correspond to the subjective ones, priority is given to the latter, since it is the subjective attributes of a criminal act that characterise the person's mental state, his perception, intentions and the ability to foresee the consequences at the time of committing the criminal act. For this reason, by prioritising subjective characteristics, it is possible to make a legal decision regarding the liability of a person for the committed offence⁸⁵.

The objective and subjective features of smuggling are further analysed in this paper.

⁸¹ *Ibid.*

⁸² Stankevič I. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017, 14.

⁸³ Gutauskas A. Nusikalstamos veikos objektyvieji požymiai. *Visuotinė lietuvių enciklopedija* Available at: <https://www.vle.lt/Straipsnis/nusikalstamos-veikos-objektyvieji-pozymiai-9921>.

⁸⁴ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

⁸⁵ Gutauskas A. Nusikalstamos veikos objektyvieji požymiai. *Visuotinė lietuvių enciklopedija* Available at: <https://www.vle.lt/Straipsnis/nusikalstamos-veikos-objektyvieji-pozymiai-9921>.

The objective characteristics of the composition of the criminal offence are the object and the objective side.

The object of the crime is what the crime causes damage to or threat of damage⁸⁶. In a broader sense, it is public interest, legal good⁸⁷ or public relations protected by criminal law⁸⁸, certain rights (The Constitutional Court of the Republic of Lithuania, 1997, ruling in the Case No 4/97)⁸⁹, which are the subject of a criminal offence, since it is this factor that determines the dangerousness of a person's behaviour, which becomes the basis for prosecuting the person⁹⁰.

“The object of the crime is what is being attacked by the crime. There is no consensus in the legal literature regarding the object of the crime. Some authors suggest to consider “interests” as the object of the crime, others – “legal goods”, third – “social relations together with legal norms”⁹¹. “According to Article 6(2) of the Criminal Code, other persons who have committed crimes abroad may be prosecuted in accordance with the laws of the Republic of Lithuania only if the committed act is recognised a criminal offence and is punishable under the criminal laws of the place where the offence was committed and the criminal laws of the Republic of Lithuania”⁹².

Depending on the danger or the damage caused to one or more values against which the criminal offence was committed, the theory of the criminal law distinguishes the main, additional and facultative objects of the criminal offence⁹³. The main object of the criminal offence is a value which is directly related to the essence of the criminal offence which was threatened and which is primarily intended to be protected by criminal laws⁹⁴. An additional object of the criminal offence is a value that is not directly related to the essence of the offence, but was also threatened, and is protected by criminal laws⁹⁵. It should be noted that both the main and the additional objects are essential elements of the composition of the criminal offence. The

⁸⁶ Stankevič I. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

⁸⁷ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

⁸⁸ Abramavičius A. et al. Baudžiamoji teisė. Specialioji dalis. 2 knyga, 2-asis papildytas leidimas. Vilnius, Eugrimas, 2001; Wessels J. Baudžiamoji teisė. Bendroji dalis: baudžiamoji veika ir jos struktūra. Vilnius, Eugrimas, 2003.

⁸⁹ Lietuvos Respublikos Konstitucinio teismo nutarimas „Dėl Lietuvos Respublikos administracinių teisės pažeidimų kodekso 50 straipsnio atitikimo Lietuvos Respublikos Konstitucijai“. Vilnius, 1997 m. lapkričio 13 d. Available at: https://www.lrkt.lt/data/public/uploads/2015/02/d1_1997-11-13_n.pdf.

⁹⁰ Piesliakas V. Lietuvos baudžiamoji teisė. Pirmoji knyga. Baudžiamasis įstatymas ir baudžiamosios atsakomybės pagrindai. Vilnius, Justitia, 2006.

⁹¹ Abramavičius A. Kai kurie baudžiamosios atsakomybės už nusikaltimus ūkininkavimo (verslo) tvarkai klausimai pagal naująjį Lietuvos Respublikos baudžiamąjį kodeksą: *Teisė*, 48, 2003, 9.

⁹² Abramavičius A. Kai kurie baudžiamosios atsakomybės už nusikaltimus ūkininkavimo (verslo) tvarkai klausimai pagal naująjį Lietuvos Respublikos baudžiamąjį kodeksą: *Teisė*, 48, 2003, 9.

⁹³ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

⁹⁴ Abramavičius A. et al. Baudžiamoji teisė. Specialioji dalis. 2 knyga, 2-asis papildytas leidimas. Vilnius, Eugrimas, 2001.

⁹⁵ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017..

facultative object of a criminal offence is a value or legal good that was threatened during a specific criminal offence, but this object is not an essential element of the composition of the criminal offence⁹⁶. According to the material of the Case No 1A-579-81-2010 examined by the Kaunas Regional Court⁹⁷, the identification of the facultative characteristics simply makes the main criminal offence less or more dangerous.

In the context of smuggling Stankevič provides a rather broad interpretation of the object of smuggling: according to the author, the object of smuggling as a crime can be the state economy, farming and business order, the development of the country's domestic market, the interests of foreign trade, the implementation of customs policy⁹⁸, since these objects are damaged or threatened by a criminal offence. In a narrower sense, the main object of the offence of smuggling is "the procedure for the transportation of items, which must be presented to customs control, across the State border of the Republic of Lithuania, established by the laws of the Republic of Lithuania and other legal acts"⁹⁹.

An additional object of smuggling as a criminal offence is the country's financial system, since the stability of this system is threatened by the transport of undeclared goods across state borders¹⁰⁰, and the state budget is affected by the failure to pay mandatory customs duties. Article 199(2) and (3)¹⁰¹ of the Criminal Code recognise public security, culture, the health and life of its citizens as a facultative object of smuggling, since these values can be (but not necessarily are) encroached upon illegally transporting weapons, ammunition, explosives, explosives, radioactive, nuclear materials, toxic and powerful psychotropic or narcotic substances, art values, antiques, etc.

The objective side of the criminal offence is the external side, which dangerously encroaches upon the values and the legal goods protected by criminal laws¹⁰². It includes the dangerous act itself (action or inaction), the consequences of that act, the causal link between the act and the resulting consequences, the manner, time, place, means and circumstances of the offence¹⁰³.

⁹⁶ Wessels J. Baudžiamoji teisė. Bendroji dalis: baudžiamoji veika ir jos struktūra. Vilnius, Eugrimas, 2003.

⁹⁷ Kauno apygardos teismas. Byla 1A-579-81-2010. „Dėl Jonavos rajono apylinkės teismo 2010-06-01 nuosprendžio“. Available at: <https://eteismai.lt/byla/23254349085479/1A-579-81-2010>.

⁹⁸ Stankevič I. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

⁹⁹ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

¹⁰⁰ Stankevič I. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

¹⁰¹ Criminal Code Law, Article 199 // Lietuvos Respublikos baudžiamasis kodeksas. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

¹⁰² Wessels J. Baudžiamoji teisė. Bendroji dalis: baudžiamoji veika ir jos struktūra. Vilnius, Eugrimas, 2003.

¹⁰³ Gutauskas A. Nusikalstamos veikos objektyvieji požymiai. *Visuotinė lietuvių enciklopedija* Available at: <https://www.vle.lt/Straipsnis/nusikalstamos-veikos-objektyvieji-pozymiai-9921>.

In the context of smuggling, the objective side of the offence of smuggling is usually linked to the performance of active actions: the subject of smuggling are considered to be material values, goods (in this paper they are discussed in more detail by analysing the main features of smuggling in the legal context (see section 2.1.1¹⁰⁴)) that are transported across the state border, hidden from customs officials, etc. According to Misiūnas¹⁰⁵ “the subject of the smuggling can be transported in various ways: by road, rail, air, sea, means of transport mail, by foot, passing through border devices, etc.” Transportation means not only transportation by means of transport, active transportation also includes the transport of smuggled items by foot, swimming, throwing, pipelines, power lines, water and air currents, etc.¹⁰⁶.

The subject of smuggling can be illegally transported across the state border of the Republic of Lithuania through customs or outside customs¹⁰⁷.

“If goods, money, artistic values or other smuggled items that must be submitted to customs are transported through customs, then the transportation will be illegal and will entail liability for smuggling in accordance with Article 312(1) of the CC, under one of the following conditions:

- a) if the smuggled item is not presented to customs or transported in another way, avoiding customs control;
- b) if a forged customs declaration or other documents are used;
- c) if goods or items with other names than those specified in the customs declaration or other documents are transported”¹⁰⁸.

Since only the crossing of the State border at the places where customs posts are established, as well as at railway stations, international seas, rivers and airports and other places designated by the Customs Department is considered to be legal, the transportation of goods across the State border in places other than those mentioned is certainly illegal (Decision No 43 of the Senate of the Supreme Court of Lithuania “On court practices in smuggling cases”, 2003)¹⁰⁹. As Žygytė observes, in the case of the Republic of Lithuania, since the country is a member of the European Union and the internal borders of the European Union are open, there is

¹⁰⁴ Law on the Criminal Code, 2.1.1. subsection // Lietuvos Respublikos baudžiamasis kodeksas. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

¹⁰⁵ Misiūnas V. BK 312 straipsnis. Kontrabanda. *Verslo&Komerčinė teisė*, 4-5, 1999, 216–228: 222.

¹⁰⁶ Bieliūnas E., Švedas G., Abramavičius, A. Lietuvos Respublikos baudžiamojo kodekso komentaras, 2 tomas, 99–212 str. Vilnius, VĮ Registrų centras, 2009.

¹⁰⁷ Misiūnas V. *supra note 104*: 222.

¹⁰⁸ Misiūnas V. *supra note 104*: 222.

¹⁰⁹ Lietuvos Aukščiausiojo Teismo senato nutarimas Nr. 43. „Dėl teismų praktikos kontrabandos byloje“. 2003 m. gruodžio 29 d. Vilnius. Available at: <http://www.teisesgidas.lt/modules/paieska/lat.php?id=26465>.

no obligation to declare material goods to customs officials when transporting them¹¹⁰. Hence, in this case, active actions considered as the objective side of smuggling are possible when transporting material goods across the borders of the Republic of Lithuania with countries that are not members of the European Union..

If the people who participated in any stage of the criminal offence agree to commit, continue or terminate the criminal act, each of the participating accomplices are considered to have committed at least part of the smuggling offence in accordance with Article 199 of the Criminal Code of the Republic of Lithuania¹¹¹. If a person organised the criminal act but did not participate in it himself, and the act was realised through a person who did not know the real intentions, then the offence of the organiser is additionally qualified in accordance with Article 24 of the Criminal Code of the Republic of Lithuania¹¹². According to Čekanauskas, the organiser, instigator or assistant of the act, in accordance with the provision of Article 26(4) of the Criminal Code of the Republic of Lithuania, is liable not only in accordance with the Article of the Special Part of the Criminal Code, which provides for liability for the act committed by the perpetrator, but also in accordance with Article 24(4), (5) or (6) of the Criminal Code, which in turn means that the liability of each accomplice is individualised depending on his or her specific contribution to the criminal offence under investigation.¹¹³.

Žygytė emphasises that the composition of smuggling as a criminal offence is formal, which means that in the case of smuggling there is no legal obligation to determine any consequences of this act, and smuggling is considered to be a completed crime from the moment when the mandatory documents of the transported items have not been submitted to customs control or customs control was avoided in another illegal way, i.e., from the moment of crossing the border of the Republic of Lithuania¹¹⁴. This is also confirmed in the case law of the Lithuanian courts. For example, in Case No 1A -76-495/2018¹¹⁵ examined by the panel of judges of the Criminal Cases Division of the Court of Appeal of Lithuania, attention was drawn to the fact that in cases where the subject of smuggling from the territory of other countries to the State of Lithuania is not transported through customs posts and at the same time illegally crosses the State border of the Republic of Lithuania, then the smuggling is considered to be a completed

¹¹⁰ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

¹¹¹ Criminal Code Law, Article 199 // Lietuvos Respublikos baudžiamasis kodeksas. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

¹¹² Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

¹¹³ Čekanauskas I. Bendrininkavimas ir jo reikšmė baudžiamajai atsakomybei. Master thesis. Vilnius, VU, 2016. Available at: <https://epublications.vu.lt/object/elaba:35469472/>.

¹¹⁴ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

¹¹⁵ Lietuvos apeliacinis teismas. Byla Nr. 1A-76-495 / 2018. Available at: <https://eteismai.lt/byla/161971767102479/1A-76-495/2018>.

crime from the moment when the subject of smuggling enters the territory of the Republic of Lithuania after the illegal crossing of the Lithuanian border (cassation ruling in a criminal case No 2K-520/2012¹¹⁶). Therefore, when assessing the circumstances established in the case concerning the entry of cigarettes into the territory of the Republic of Lithuania, it was considered that the actions corresponding to the constituent elements of smuggling (pursuant to Article 199(1) of the Criminal Code) had been completed from the moment when boxes containing cigarettes marked with the stamps of the Republic of Belarus were brought to the territory of the Republic of Lithuania. Meanwhile, after the convicts took possession of these cigarettes, all their subsequent actions with them in the territory of the Republic of Lithuania did not fall within the scope of the act prohibited by Article 199 of the Criminal Code, but within the scope of the regulation of the act prohibited in Article 1992 of the Criminal Code and were regarded as illegal disposal of excise goods.

In cases where the subject of smuggling is found with the persons (or person) carrying it before the persons (or person) cross the state border of the Republic of Lithuania (e.g. when documents indicating the quantities, prices, types, etc. of the transported items that are forged are found), such an act is considered as an attempt to commit smuggling and is qualified in accordance with Article 22(1) of the CC and the corresponding part of Article 199 of the CC¹¹⁷.

The subjective characteristics of the crime are the subject and the subjective side.

A person who has violated the provisions of the criminal law, i.e., having committed a dangerous act, which has endangered the interests protected by the criminal law, the legal good, and public relations, is considered to be the subject of a criminal offence. This entity is subject to criminal liability when expressing a negative public reaction to the committed criminal offence. According to the provisions of the CC, both natural and legal persons can be the subjects of a criminal offence.

The main provisions of the criminal liability of a person are established in Article 2 of the Criminal Code, which¹¹⁸, states that a person is liable according to the Criminal Code if his or her act was prohibited by the criminal law that was in force at the time of the commission of the criminal offence (paragraph 1), and if his or her act corresponds to the constituent elements of an offence or a misdemeanour (paragraph 4). Another condition is that a person is liable under

¹¹⁶ Lietuvos Aukščiausiasis teismas. Kasacinė nutartis baudžiamojoje byloje Nr. 2K-520 / 2012. Available at: <https://eteismai.lt/byla/11366110487494/2K-520/2012>

¹¹⁷ Bieliūnas E., Švedas G., Abramavičius, A. Lietuvos Respublikos baudžiamojo kodekso komentaras, 2 tomas, 99–212 str. Vilnius, VĮ Registrų centras, 2009, 157.

¹¹⁸ Criminal Code Law, Article 2 // Lietuvos Respublikos baudžiamasis kodeksas. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

criminal law if he or she is guilty of committing a criminal offence, and at the time of the act, it was possible to demand him or her to behave in accordance with the law (Art. 2, Paragraph 3 of the CC). Therefore, the subject of a criminal offence is a person who is guilty of committing a criminal offence prohibited by criminal laws, which has all the mandatory characteristics of a crime or misdemeanour, and lawful conduct could be required from that person during the criminal act, i.e., he was aware of his conduct and its consequences. This is a person who has participated in a criminal act himself, was in accomplice in the commission of a criminal offence (under Article 24 of the Criminal Code of the Republic of Lithuania, a former perpetrator, organiser, instigator or assistant of a criminal offence) and capable of taking punishment (capable or partially capable, having reached the age of 16 provided for by the criminal law). The citizenship of a natural person is not important in this case – both citizens of the Republic of Lithuania, foreign countries and persons without citizenships, are responsible for the criminal act.

The subject of the criminal offence - a natural person in sound mental capacity over the age of fourteen. On the subjective side, smuggling may be committed with direct intent and is determined by a person's desire to bring goods or other valuables subject to customs clearance into or out of the customs territory of the Republic of Latvia by knowingly performing the unlawful activities provided for in Paragraph one of the Section.¹¹⁹

The object of smuggling—national economy interests in the area of customs matters (customs activity). On the objective side, smuggling is characterized by active acts to achieve a criminal goal. The object of the crime—goods subject to customs clearance or other valuables. Goods are any movable property, while other valuables are items of value, cultural objects, etc.¹²⁰

In its Resolution of 8 June 2009 “Regarding certain provisions of the Criminal Code regulating the criminal liability of a legal person”¹²¹, the Constitutional Court of the Republic of Lithuania stresses that a natural person is prosecuted only for the criminal offence committed *by him or her* and in case of his or her guilt. From this point of view, the liability of natural and legal persons as subjects of a criminal offence is somewhat different, since a legal person cannot

¹¹⁹ Krastiņš U., Liholaja V., Hamkova D. Krimināllikuma komentāri. Trešā daļa (XVIII-XXV nodaļa). Rīga, TNA, 2016, 88.lpp.

¹²⁰ Krastiņš U., Liholaja V., Hamkova D. Krimināllikuma komentāri. Trešā daļa (XVIII-XXV nodaļa). Rīga, TNA, 2016, 82.-84.lpp.

¹²¹ Lietuvos Respublikos Konstitucinio teismo 2009 m. birželio 8 d. nutarimas „Dėl kai kurių baudžiamojo kodekso nuostatų, reglamentuojančių juridinio asmens baudžiamąją atsakomybę“. Santrauka. Available at: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta523/summary>.

act without the participation of natural persons, the liability of a legal person is associated with the *act committed by natural persons*.

Criminal liability of legal persons in the Criminal Code was established relatively recently – since 25 January 2002, when the Seimas of the Republic made additions to the Criminal Code. These additions not only establish the criminal liability of legal persons, but also provide for the types and amounts of punishments that may be imposed on them. According to Article 20(2) of the Criminal Code, a legal person shall be liable for acts committed by a natural person if these acts were committed for the benefit of the legal person or on its behalf by a person acting both individually and in the name of the legal person. This point states that a person acting individually or on behalf of a legal person could have committed criminal offences if he has held a leading position within the legal person and, therefore, was entitled for this legal entity to: represent; make decisions on its behalf; control the activities of a legal person.

A legal person shall also be liable for criminal acts, if an employee or an authorized representative of a legal person represented him, made decisions on his behalf or controlled his activities for the benefit of the legal person on the instructions or permission of the manager of this legal person, due to lack of supervision or control of the manager (Article 20(3) of the Criminal Code of the Republic of Lithuania)¹²². A legal person shall also be liable for criminal acts committed by another legal person under its control or representing it, if they were committed by the manager, authorised person or an employee of that controlled or represented legal person on the manager's instruction, permission, due to lack of supervision or control of the manager (Article 20(4) of the Criminal Code of the Republic of Lithuania)¹²³.

Thus, it can be seen from the presented provisions of the Criminal Code that the liability of a legal person for a criminal offence derives from the actions (or inactions) carried out by a natural person (the head of a legal person, a person authorised by him, an employee). However, regardless of whether the criminal liability of that natural person is recognised, whether he or she is exempted from criminal liability or is not prosecuted for other reasons, this does not remove the criminal liability of the legal person (Article 20(5) of the Criminal Code)¹²⁴.

It should be noted that the aforementioned provisions of the Criminal Code, according to which the guilt of a natural person is transferred to a legal person, raise legal doubts as to

¹²² Criminal Code Law, Article 20, Part 3 // Lietuvos Respublikos baudžiamasis kodeksas. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

¹²³ Criminal Code Law, Article 20, Part 4 // Lietuvos Respublikos baudžiamasis kodeksas. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

¹²⁴ Criminal Code Law, Article 20, Part 5 // Lietuvos Respublikos baudžiamasis kodeksas. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

whether the constitutional principle of equality of persons (in this case, natural and legal) is not violated or the principles of the right to a fair trial enshrined in Article 31 of the Constitution, prohibition of second punishment for the same act and other principles are violated. Vilnius Regional Court appealed to the Constitutional Court of the Republic of Lithuania challenging the provisions of Article 43(4) of the Criminal Code and arguing that the criteria for the imposition of a penalty for a criminal offence are clearly defined by law for a natural person, whereas these criteria are not clearly defined for a legal person. In its ruling (Resolution of the Constitutional Court of the Republic of Lithuania of 8 June 2009 “On certain provisions of the Criminal Code governing the criminal liability of a legal person”¹²⁵), the Constitutional Court of the Republic of Lithuania emphasises that a legal person is a participant in legal relations, namely through natural persons (manager, authorised representative, employee, etc.), i.e. a legal person cannot act on its own, but only through natural persons, without whom the activity of the legal person would be impossible. Therefore, the provisions of the Laws of the Criminal Code are established taking into account this specific characteristic of a legal person, and the criminal liability of a legal person is linked to the conduct of natural persons. The Resolution also clarifies that a legal person may be prosecuted if the criminal act was committed by a person discharging managerial responsibilities on behalf of that legal person or acting individually, its authorised representative (under contractual representation relations, power of attorney or under procuratorship, etc.) or by an employee (a natural person related to the legal person). Here it is specified that, depending on the legal entity’s structure, both the single management body — the manager, the director, the president, etc. — and the member representing the collegial management body — the chairman of the board, the head of the division or division, etc. — can be considered as the managing person, it is important that this person has the right to represent the legal person, act and take decisions on behalf of the legal person, and to control the activities of this legal person. Thus, on the basis of this ruling of the Constitutional Court of the Republic of Lithuania, it can be stated that such a legal regulation, according to which the liability of a legal person for a criminal act is linked to an act committed by a natural person, does not violate the equality of persons, fair trial and other legal principles.

Nevertheless, the association of liability of a legal person with an act committed by a natural person has been subject to active criticism from lawyers and legal scientists. For example, Ligeikaitė observed that in practice there are often cases where it is not possible to

¹²⁵ Lietuvos Respublikos Konstitucinio teismo 2009 m. birželio 8 d. nutarimas „Dėl kai kurių baudžiamąjo kodekso nuostatų, reglamentuojančių juridinio asmens baudžiamąją atsakomybę“. Santrauka. Retrieved from: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta523/summary>.

identify a natural person representing a legal person who committed a criminal offence¹²⁶. In order to reasonably extend the limits of criminal liability of a legal person, amendments were made in 2016 to the Criminal Code and to the Code of Criminal Procedure, which provide for the application of the liability of a legal person in cases where it is not possible to identify the natural person(s) who committed the offence, but there are reasonable grounds for believing that one or more persons associated with the legal person, independently or jointly, have committed a criminal offence¹²⁷.

In the context of smuggling, a person who unlawfully transports goods (smuggling items) which are required to be presented to the customs authorities through the State border of the Republic of Lithuania, transports them bypassing customs, transports them without a mandatory authorisation or with falsified documents is considered to be a smuggler. The physical entity must comply with the characteristics identified for the offender: to be accused or to a limited extent to be accused and having reached the age set by the criminal law (16 years, since it is assumed that at this age a person can fully understand the danger of his actions)¹²⁸. Punitiveness refers to a person's ability to understand and manage his actions, while limited punctuality is treated as a person's mental state, "which, at the time of the prohibited act, due to a mental disorder that does not have sufficient grounds for declaring him innocible, does not allow the person to fully understand the nature of his or her dangerous criminal activity or to manage his actions"¹²⁹ (as a result, the penalty for the offence committed is relaxed).

In accordance with the above-described grounds of criminal liability of a legal person, a legal person shall be considered to be a smuggled entity if the items required to be presented to the customs authorities through the State Border of the Republic of Lithuania are unlawfully transported by a person acting on behalf of that legal person or acting individually in this legal person, acting in that legal person's managerial position, his authorised representative or employee.

It should be noted that, in accordance with Article 20(6)¹³⁰ of the Criminal Code, the State, municipal, state and municipal institutions, state and municipal institutions and international public organisations, state and municipal enterprises, public bodies owned or

¹²⁶ Ligeikaitė I. Juridinio asmens baudžiamosios atsakomybės sąlygos. *Jurisprudencija*, 45(37), 2003, 55.

¹²⁷ Tirylytė-Zelenina R. Nauji juridinio asmens baudžiamosios atsakomybės kriterijai Lietuvos Respublikos teisėje. *Teisės problemos*, 2(96), 2018, 79–106.

¹²⁸ Abramavičius A. et al. Baudžiamoji teisė. Specialioji dalis. 2 knyga, 2-asis papildytas leidimas. Vilnius, Eugrimas, 2001.

¹²⁹ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017: 41.

¹³⁰ Criminal Code Law, Article 20, Part 6 // Lietuvos Respublikos baudžiamasis kodeksas. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

owned by the State or municipality and public limited-liability companies the shares of which are wholly or partly owned by the State or municipality are not responsible for criminal acts. At first sight, it may appear that this part of the law creates an environment for the abuse of office positions by the managers and/or staff of those institutions, where criminal offences may be committed under the direction or representation of those institutions. However, in accordance with Article 199 of the Criminal Code (Contraband), Article 225 of the Criminal Code (Discrimination), Article 228 of the Criminal Code (Abuse) and other articles, officers and civil servants who are complicit in the smuggling offence are liable on the basis of a coincidence or offence against the public service and public interests ¹³¹.

The subjective side of the offence is closely related to the subjective aspect of the offence. The subjective side of a criminal offence is a set of subjective, i.e., related to the subjective characteristics of the criminal offence, describing the mental relationship of that subject with the dangerous act being committed or committed and the consequences of that act¹³². In other words, the subjective side of a criminal act consists of a person's mental state, processes in consciousness, perception of one's behaviour, its motives, its direction, justification, the relationship between mental state and will and behaviour, etc. Since these processes in the person's consciousness are externally invisible, they are assessed through externally visible objective data. For example, it analyses which tools, tools and techniques have been used (circumstances to explain the nature of the action), whether the actions were one-off, repeated, intense or not, large and small in scope (type of action), or changed, and if so, how the person's behaviour before and after the commission of the offence (whether the act was planned in advance, how the person discovered and prepared the means and tools, whether the preparation was concealed or attempted to involve/included accomplices, etc.), the personality and other factors of the subject itself.

The main characteristics of the subjective side of the offence include fault, the motive and the purpose of the offence.

Guilt is defined as "a person's mental relationship with the dangerous act (act or omission) and its consequences"¹³³. It is a necessary component of the criminal offence, which is proven by objective characteristics in each criminal case. Evidence of guilt is particularly important in law, since, as provided for in Article 2(3) of the Criminal Code, a person is liable

¹³¹ Bieliūnas E., Švedas G., Abramavičius, A. Lietuvos Respublikos baudžiamojo kodekso komentaras, 2 tomas, 99–212 str. Vilnius, VĮ Registrų centras, 2009.

¹³² Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

¹³³ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

under criminal law only if he or she is guilty of a criminal offence and only if, at the time the act was committed, he could be required to conduct in accordance with the law.

Although Articles 15 and 16 of the Criminal Code define two forms of fault — intentionally and negligently, in the case of smuggling, there is essentially a question of intentional activity (intent), since it is a form of an act in which a person perceives the severity of his or her act, anticipates the consequences of that act and seeks or deliberately allows them to cause them¹³⁴. Thus, the offence of smuggling has all three characteristics of intent:

- 1) perception of a dangerous act (perception of the subject matter and objective side of the offence — the person committing the offence understands what items he is transporting without placing them under customs control, transporting bypassing customs control posts, transporting without authorisation, knowing why he is falsifying the documents of the goods being transported, etc.);
- 2) anticipation of dangerous consequences (the person organising and/or carrying out the smuggling activity may foresee that the goods documents will be checked, the vehicle searched, attempting to circumvent the customs control post, it will be detained and, in case of disclosure, will be prosecuted);
- 3) achieving the consequences or knowingly allowing them to arise (will attempts to achieve the objective of transporting smuggling items across the state border in such a way that this is not subject to customs controls, customs duties are not payable, the actual quantities, prices, etc. of the goods transported are concealed).

Bearing in mind that the legal recognition of direct and indirect intentional recognition is in most cases only *direct intentional*, that is to say, a person is deliberately seeking perceived dangerous consequences. In view of the time at which the fault occurred, smuggling is to be considered *intentionally deliberately*, since between the intention to commit the offence and the commission of the offence there is a certain period of time during which the offence is planned (e.g. searching for the transport of goods bypassing customs), thought-out methods (e.g. choice of means of transport), preparation of means (e.g. hiding places, fictitious documents).

In its basic form the offence of smuggling is a less serious crime (Section 190, Paragraph one). Smuggling committed under qualifying conditions (Section 190, Paragraph two) is a

¹³⁴ Abramavičius A. et al. Baudžiamoji teisė. Specialioji dalis. 2 knyga, 2-asis papildytas leidimas. Vilnius, Eugrimas, 2001.

serious crime, while smuggling committed under particularly qualifying conditions (Section 190, Paragraph three) is an especially serious crime.¹³⁵

Paragraph two of the Section prescribes increased liability for the criminal offence specified in Paragraph one if it has been committed by a group of persons according to a prior agreement (material composition). To qualify a criminal offence under Paragraph two of the Section, it is necessary to establish the criminal offence specified in Paragraph one, i.e. that the smuggling has been committed on a significant scale and that it has been committed by a group of persons according to a prior agreement. Smuggling committed by a group of persons according to a prior agreement occurs when two or more persons have unlawfully brought goods or other valuables subject to customs clearance into or out of the customs territory of the Republic of Latvia by prior agreement.¹³⁶

To qualify smuggling under Section 190, Paragraph three of the Criminal Law (smuggling committed in especially aggravating circumstances), it is necessary to establish: (a) the elements of smuggling; (b) the elements of an organised group or the commission of smuggling on a large scale.

Smuggling by an organised group (formal composition) occurs when the smuggling is committed by more than two persons whose association meets the characteristics of an organised group (see Section 21 of the Criminal Law).

Smuggling has been committed on a large scale (material composition) if the total value of the smuggled item at the time of the criminal offence was not less than the total of fifty minimum monthly wages specified in the Republic of Latvia at that time. The value of the items shall be determined according to the market prices or prices equivalent thereto at the time when the offence was committed (Section 20 of the Law On the Procedure for the Entry into Force and Application of the Criminal Law of 15 October 1998).¹³⁷

In addition to the fault of the subjective party of the offence, the other important characteristics of the subjective side of the offence are the reason and purpose of the offence, since, as a general rule, the mere attribute of guilt does not reveal the result sought in the commission of the offence. However, in the case of smuggling, the reason and purpose of the classification of the criminal activity are irrelevant (Decision No 43 of the Senate of the Supreme

¹³⁵ Krastiņš U., Liholaja V., Hamkova D. Krimināllikuma komentāri. Trešā daļa (XVIII-XXV nodaļa). Rīga, TNA, 2016, 86.lpp.

¹³⁶ Krastiņš U., Liholaja V., Hamkova D. Krimināllikuma komentāri. Trešā daļa (XVIII-XXV nodaļa). Rīga, TNA, 2016, 86.lpp.

¹³⁷ Krastiņš U., Liholaja V., Hamkova D. Krimināllikuma komentāri. Trešā daļa (XVIII-XXV nodaļa). Rīga, TNA, 2016, 87.lpp.

Court of 29 December 2003 on case law in smuggling cases)¹³⁸, it is not the subjective attributes necessary for the classification of the offence of smuggling (cassation ruling in criminal case No 2K-7-130-699/2015¹³⁹). In this case, the subjective side of the smuggling is characterised by a fault manifested directly intentionally (case 2K -278-489/2017, heard by the Criminal Division of the Supreme Court of Lithuania)¹⁴⁰, since, being direct intentionally thought out, smuggling is a crime of increased danger. However, the most common motives — material gain, income, tax evasion — according to article 54(1)(3) of the criminal code of the republic of Lithuania, are relevant for the imposition of a penalty for the offence of smuggling¹⁴¹.

To sum up, it can be said that the main object of smuggling as a crime is the additional object of the transportation of items established by the laws and other legal acts of the Republic of Latvia and Lithuania, which must be presented for customs control, through the state border of the Republic of Latvia and Lithuania, the financial system of the country, whose stability is threatened by transporting undeclared goods across national borders. The objective side of smuggling is the actions of illegal smuggling across the border of the Republic of Lithuania in various forms — failure to submit things to customs control, transportation bypassing customs, transportation without authorisation, falsification of documents on the items being carried, etc. The composition of the smuggling activity is formal, therefore, in the case of smuggling, it is not legally necessary to determine the consequences of this activity, and the smuggling is considered to be a completed crime from the moment when the mandatory documents of the items being transported were not presented for customs control or customs control was avoided in another illegal way, i.e. from the moment of crossing the Lithuanian state border.

A person who has reached the age of the criminal law or on behalf of a legal person acting individually in this legal person, or a person acting individually in this legal person, his authorised representative or employee, who unlawfully transports goods (smuggling items) required to be presented to customs, transports them bypassing customs, transports them without compulsory authorisation or with false documents. The main subjective side of the offence of smuggling is the fault of the subject, whereas the motives and objectives of the act are not the subjective attributes necessary for the classification of the offence of smuggling, since, being direct intentionally thought out in advance, smuggling is treated as a crime of increased danger.

¹³⁸ Lietuvos Aukščiausiojo Teismo senato nutarimas Nr. 43. „Dėl teismų praktikos kontrabandos bylose“. 2003 m. gruodžio 29 d. Vilnius. Available at: <http://www.teisesgidas.lt/modules/paieska/lat.php?id=26465>.

¹³⁹ Lietuvos Aukščiausiasis teismas. Kasacinė nutartis byloje Nr. 2K-7-130-699 / 2015. Available at: <https://eteismai.lt/byla/78090579681115/2K-7-130-699/2015>.

¹⁴⁰ Lietuvos Aukščiausiasis teismas. Nutartis byloje Nr. 2K-278-489 / 2017. Retrieved from: <https://eteismai.lt/byla/51084987331591/2K-278-489/2017>.

¹⁴¹ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

To understand Latvia's situation, as it relates to the elements of legality and opportunity of criminal proceedings, the provision of the Criminal Procedure Law on refusal to initiate and/or conduct criminal proceedings should be examined in conjunction with the totality of the Criminal Law provisions on releasing a person from criminal liability. According to Ā.Meikališa and K.Strada- Rozenberga, examining the legal regulation on the legality and opportunity of criminal proceedings, the authors express the opinion that, notwithstanding the fact that the enumeration of the fundamental principles of the criminal procedure law starts with the legality of criminal proceedings, Latvia, actually, belongs to those countries where alongside legality, in the classical understanding thereof, existence of institutions, based on the principle of opportunity, is envisaged. Thus, it can be recognised that the 'pure' legality of criminal proceedings does not exist in Latvia (neither on the level of normative regulation nor in the application of law). At the same time systemic examination of these provisions has led to the acknowledgement that, alongside legal criminal proceedings and, accordingly, criminal prosecution, also discretionary approach is recognised, i.e., the possibility for prosecutors or investigators under prosecutor's supervision to refuse conducting proceedings when there are no legal obstacles to it. Thus, it can be concluded that the Latvian criminal justice has been built on the legality principle of criminal proceedings, including derogations that follow from the opportunity principle, i.e., in fact, the coexistence of the principles of legality and opportunity is recognised in Latvia.¹⁴²

1.2.4. The characteristics of organised smuggling of goods.

According to Baltrunienė and Šarauskas, when analysing the criminalistic character of smuggled acts, it is important to determine the reasons for these crimes¹⁴³. The authors distinguish the following reasons:

1. Lack of market equilibrium. This is traditionally the case in planned economies where producers and sellers of goods are unable to meet the demand for goods because the price of the product is too low and does not correspond to the market equilibrium price.

2. Changes in prices. As a general rule, prices rise unevenly, and their variation is also driven by subjective causes, such as people's expectations, etc. In addition to objective reasons.

¹⁴² Strada-Rozenberga K., Meikališa Ā., Kūtris G., Leja M., Kulmanis O., Gribonika Ē. Kriminālprocesa obligātums un lietderīgums kā kriminālās justīcijas sistēmas pamatprincips. Rīga, LU Akadēmiskais apgāds, 2023, 275.lpp.

¹⁴³ Baltrūnienė J., Šarauskas G. Kontrabandinių nusikalstamų veikų kriminalistinė charakteristika ir praktiniai šių nusikaltimų atskleidimo aspektai Lietuvoje. *Mokslinių straipsnių rinkinys Visuomenės saugumas ir viešoji tvarka / Public Security and Public Order*, 2011 (6), 49-62. Available at: <https://repository.mruni.eu/bitstream/handle/007/14846/Baltr%20nien%20.pdf?sequence=1>.

Given the fact that prices in different countries increase at different rates, there is a market for the sale of smuggled goods.

3. Incompatibility of the labour market. Like many other economic crimes, the practice of smuggling cases shows that motivation is selfishness — the desire to gain wealth for yourself or others. Sometimes smuggled crimes are committed because people do not have minimum living conditions.

4. Non-operational controls on customs transit procedures. Some border police officers negligently perform their duties and often even criminalise.

5. Insufficient control of the financial activities of trading companies, other economic entities. This allows smuggled goods to be disposed of on the internal market without exporting goods for export. Goods are not removed from the country in case of falsification of documents, but the purchase value added tax is withdrawn from the state budget.

6. Lack of social citizenship education and education. Already older class students are involved in smuggling, actively participating in criminal associations and groups of smugglers.

Aghazadeh et al. which examined the elements of organised smuggling of goods in criminal law, highlights the networked nature of organised smuggling and distinguishes the following three representative networks for organised smuggling of goods¹⁴⁴:

1. The smuggling network.
2. Cross-border smuggling network.
3. Smuggling distribution network.

A smuggling network can be used for intra-country supply of smuggled goods, as well as for the criminalisation of goods out of the country (export smuggling) or for entry into the country (import smuggling). In the case of export or import, smuggled goods are delivered to a cross-border smuggling network.

The cross-border smuggling network serves to carry out operations related to the export and import of smuggled goods. After exploring possible smuggling routes, representatives of the cross-border smuggling network choose both or one of the two options: smuggling through customs and/or smuggling outside customs.

The Smuggling Distribution Network is designed for the distribution and sale of exported or imported smuggled goods (for export and import smuggling respectively).

¹⁴⁴ Aghazadeh A., Ardebili M., Ashouri M., Mahdavisabet M. Organized smuggling of goods in the criminal law of Iran and Turkey. *Journal of Politics and Law*, 10(5), 2017, 24–28.

If it is established that the smuggling of goods took place through organised networks, that fact may become one of the objective indications that this type of criminal activity can be regarded in a particular case as an act of organised smuggling of goods. However, this feature alone may not be sufficient. On the basis of the literature analysis carried out, it can be concluded that the characteristics of organised smuggling of goods are:

- 1) Directing (leadership) a criminal group of more than three persons (although some sources refer to two persons).
- 2) Coordination, planning, unification and allocation of tasks among the members of the group.
- 3) The contribution of each member of the organised crime group which imposes, in accordance with the principle of proportionality, a penalty for participating in a criminal offence.

The first of those indications implies that the mere finding that more than three persons involved in an organised criminal group were involved in collaborating activities for the smuggling of goods may not be sufficient for that type of offence to be regarded as an organised act of smuggling of goods. There must be a leader or leader in a systemic organised crime group who is in practice responsible for assigning tasks to each member of the group and coordinating the performance of these tasks. The role of manager (or leader) is recognised by Conklin¹⁴⁵, Abadinsky¹⁴⁶, Wright¹⁴⁷ and many others. If the activities of an organised group are carried out without control and coordination of one or more specific persons (leaders, leaders), the case cannot be considered as criminal for lack of one of the main elements of the organised smuggling of goods. On the other hand, the case may be dealt with as a criminal offence for involvement in smuggling. It can therefore be argued that there is an absolute public-private link between organised smuggling of goods and participation in smuggling activities¹⁴⁸. In other words, every organised crime is a form of participation in a criminal offence. However, participation in smuggling activities is not, in itself, regarded as a form of organised crime, since it can also be committed in isolation.

Another characteristic of organised smuggling of goods is the coordination, planning, unification and allocation of tasks among the members of the group in order to achieve

¹⁴⁵ Conklin J. E. *Criminology* (10th ed.). Boston, Pearson, 2010.

¹⁴⁶ Abadinsky H. *Organized crime* (9th ed.). Belmont, Wadsworth, 2010.

¹⁴⁷ Wright, A. *Organized crime*. New York, Routledge, 2013.

¹⁴⁸ Aghazadeh A., Ardebili M., Ashouri M., Mahdavisabet M. Organized smuggling of goods in the criminal law of Iran and Turkey. *Journal of Politics and Law*, 10(5), 2017, 24–28. doi: 10.5539 / jpl.v10n5p24.

predetermined objectives and common interests (Borricand¹⁴⁹; Šumskas¹⁵⁰; Gutauskas¹⁵¹; Abadinsky¹⁵², etc.). That characteristic reflects the fact that the joint discipline existing within a group of organised smuggling of goods strengthens the members of the organised criminal group and maintains the viability of that group. In this way, it can be concluded that the subjective side of the offence, that is to say, the thoughts, attitudes, minds or objectives of the persons involved in the act, is not sufficient to deal with the case concerning the organised smuggling of goods. Thirdly, if the substantive and procedural conditions relating to the number of members of an organised criminal group are met, it is established that the members of the group had a common purpose, shared tasks, and the plans of the group were coordinated by one or more of the group leaders (leaders), then each member of such a group who was aware of the group's plans and activities and who had created the conditions both for the preliminary preparation and the execution of the offence (e.g., after supervising the act, having led it, given instructions, forging documents, transporting goods, etc.) is regarded as an accomplice in the main offence of smuggling and deserves punishment for the act committed. Conversely, if it is not established in the course of the proceedings how the criminal acts of an entity acting with a group of accomplices are manifested, the entity, as an accomplice, realised the objective side of the offence of smuggling, what actions were actually carried out, what was the nature of the actions, the intensity of the actions, the situation in which they were committed, this means that there are no grounds for finding the entity guilty under Article 199(3) of the Criminal Code as having acted with a group of accomplices (the Supreme Court of Lithuania, case No 2K-8-1073/2020)¹⁵³.

In the course of the proceedings, all operations carried out by the organised crime group shall be taken into account. More severe penalties are imposed on the head of an organised crime group (leader) and less severe penalties for each member of the group, since, in the case of an organised or corporate criminal group, each member of the group plays his or her role in the group in pursuit of a common goal in order to ultimately achieve and share the benefits resulting from joint collective action. For this reason, the role and tasks of each member of the group may change at a different stage of the criminal offence, for example, the same person may act as an

¹⁴⁹ Borricand J. F. Organized crime and criminal law. *Legal Research Journal of Shahid Beheshti University*, 4, 1999, 11–21.

¹⁵⁰ Šumskas A. Baudžiamųjų bylų nagrinėjimas teisme. Vilnius, Justitia, 2000.

¹⁵¹ Gutauskas A. Nusikalstamos veikos objektyvieji požymiai. *Visuotinė lietuvių enciklopedija* Available at: <https://www.vle.lt/Straipsnis/nusikalstamos-veikos-objektyvieji-pozymiai-9921>.

¹⁵² Abadinsky H. *Organized crime* (9th ed.). Belmont, Wadsworth, 2010.

¹⁵³ Lietuvos Aukščiausiasis teismas. Byla Nr. 2K-8-1073 / 2020 Available at: <https://e-teismai.lt/byla/110278291421391/2K-8-1073/2020>.

assistant at one stage of the offence, but at the next stage as the perpetrator of the offence. Criminal liability for smuggling is further discussed in the next section of this work.

In summary, although one of the objective characteristics of organised smuggling of goods is the organisation of a network activity, that characteristic alone may not be sufficient to treat this type of criminal activity as an act of organised smuggling of goods. On the basis of the literature analysis carried out, it can be concluded that the characteristics of organised smuggling of goods are: leadership (leadership) of a criminal group, coordination, planning, unification and allocation of tasks among the members of the group, and the contribution of each member of the organised crime group, which imposes a penalty, in accordance with the principle of proportionality, for participating in a criminal offence.

1.2.5. Separation of Administrative and Criminal Legal Responsibilities for Smuggling

It should be noted that, in accordance with the laws in force in the Republic of Lithuania, the liability of entities for smuggling and for the movement of excise goods may be administrative and criminal. The nature of the liability depends on the value of the subject matter of the smuggling (until 1 January 2019, if the value of the goods transported was up to 250 MLS, administrative liability has been applied, if from 250 MLS — criminal liability, but from 1 January 2019 these provisions have been amended, and criminal liability begins with the value of the smuggling being transported above the amount of the 150 basic fines) (Article 208 of the Code of Administrative Offences of the Republic of Lithuania (hereinafter referred to as ‘the Code of Administrative Offences’) and Article 199 of the Criminal Code, respectively). In addition, administrative misconduct differs from crime with less seriousness. Such separation of administrative and criminal liability is considered to contribute to ensuring the equilibrium and effectiveness of the applicable penalties and to ensuring the fairness and proportionality of the measures applicable to offenders in cases of smuggling, unlawful disposal of excise goods, confiscation of property, etc. It follows that ‘the sanctions imposed by the State for infringements of the law must be proportionate to the infringement of the law, must be consistent with the legitimate and general objectives pursued and must not restrict the person manifestly more than is necessary to attain those objectives’¹⁵⁴.

Administrative Responsibility. As mentioned above, the administrative liability of smugglers is laid down in Article 208 of the Code of Administrative Offences of the Republic of

¹⁵⁴ Bikelis S. Permaštant sankcijas už kontrabandą. Proporcingumo problema (I). Proporcingumo principas ir bausmės už kontrabandą. *Teisės problemos*, 4(78), 2012, 5–24.

Lithuania. Subject to the provisions of this Article, a fine shall be imposed on the smuggler for items such as items of smuggling, money, art goods or other items required to be presented to customs, with the exception of movable cultural goods or antiques, firearms, ammunition, explosives, explosives, radioactive materials or other strategic goods, certain doping substances specified in the Lithuanian Law on the Control of Certain Doping Substances, toxic and potentially acting, psychotropic or narcotic substances, their precursors, transportation across the State border of the Republic of Lithuania without their being subject to customs control or otherwise avoiding such control, where the value of illegally transported goods, money, art goods or other items required to be presented to customs does not exceed the amount of five basic penalties and penalties (EUR 250) (one basic amount of penalties and penalties of EUR 50).

The amounts of the fines provided for are given in Table 3 of Appendix 1.

According to Lithuanian law, the amount of the fine for smuggling as an administrative offence depends on the value of the trafficked items expressed in the basic amounts of penalties and penalties: the minimum fines apply to items of up to EUR 250, average fines between EUR 251 and EUR 2500 and a maximum of EUR 2501-7500..

In all cases, as an additional (alternative) administrative measure, there is a possible confiscation of smuggled items, as well as transportation and other means of transporting or concealing smuggling items across the Lithuanian state border, or a fine may be imposed without confiscation. In traffic practice, the means of committing an administrative offence — smuggling — is confiscated if it has been specifically designed for that purpose or if the amount of smuggled goods could not have been transported without customs control. The aim is to ensure that the vehicle used for smuggling activities will not be used in a similar way in the future.

In any event, when confiscating a vehicle as an additional means of administrative influence, it is necessary to take into account the requirements of the principle of proportionality, as enshrined in the case-law of the Constitutional Court, which states that the sanctions envisaged for infringements of the law must be adequate for the infringement of the law, they must meet the legitimate and general objectives pursued, they must not restrict the person manifestly more than necessary to achieve those objectives, so that a fair balance (proportionality) must be struck between the objective of penalising offenders for the prevention of future offences and the means chosen to achieve that objective (proportionality) (Constitutional Court of the Republic of Lithuania, Fundamentals of the Constitutional Order¹⁵⁵).

¹⁵⁵ Konstitucinės santvarkos pagrindai. *Lietuvos Respublikos Konstitucinio teismo oficialiosios konstitucinės doktrinos nuostatos 1993–2009*. Vilnius, 2010, 15–156. Available at: <https://www.lrkt.lt/data/public/uploads/2016/06/1993-2009.-i-skyrius.pdf>.

In addition, when imposing additional measures, the court must always take into account the most effective type of penalty in order to achieve the objectives set out in Article 22(2) of the Code of Conduct:

- 1) to deter persons from committing administrative offences or criminal offences and to influence persons who have committed administrative offences so that they comply with the law and do not commit administrative offences again;
- 2) punishing persons who have committed administrative offences;
- 3) to deprive or restrict the possibility for persons who have committed administrative offences to commit new administrative offences.

Thus, when deciding on confiscation in each case, the circumstances of the case must be assessed with particular care, taking into account the individuality of the situation and the requirement of proportionality (Supreme Court of Lithuania Order No 2AT-23-942/2016 of 17 February 2016¹⁵⁶). The classification of a vehicle as a means of transport is also decided in the case-law on the basis of all the circumstances identified in the case, which describe the very subject matter of the smuggling (e.g. its quantity), the specific means of transport, the smuggling mechanism (for example, the manner of concealing the subject matter or finding the subject matter, etc.) and other circumstances indicating the importance of the use of the vehicle in connection with the smuggling (realising the constituent elements) (Supreme Court of Lithuania Order No 2AT-39-2013)¹⁵⁷.

When deciding on the seizure of a vehicle during the smuggling of cigarettes, account shall also be taken of the quantity, value and value of the vehicle to be confiscated, the identity of the offender and other circumstances (orders No 2AT-36-2014¹⁵⁸, 2AT-18-2014¹⁵⁹, 2AT-60-2014¹⁶⁰).

In the case-law, when it comes to the quantity of the subject matter of smuggling that can be transported across the State border without a car, the view is taken that it is not necessary to assess whether the infringer would have been physically able to carry such a quantity of cigarettes across the national border, but whether he could have done so secretly, without being

¹⁵⁶ Lietuvos Aukščiausiasis teismas. Byla Nr. 2AT-23-942 / 2016. Available at: <https://eteismai.lt/byla/179276612458546/2AT-23-942/2016>

¹⁵⁷ Lietuvos Aukščiausiasis teismas. Byla Nr. 2AT-39-2013. Available at: <https://eteismai.lt/byla/165201815776671/2AT-39-2013>.

¹⁵⁸ Lietuvos Aukščiausiasis teismas. Byla Nr. 2AT-36-2014. Available at: <https://eteismai.lt/byla/48184720155375/2AT-36-2014>.

¹⁵⁹ Lietuvos Aukščiausiasis teismas. Byla Nr. 2AT-18-2014. Available at: <https://eteismai.lt/byla/33358918486030/2AT-18-2014>

¹⁶⁰ Lietuvos Aukščiausiasis teismas. Byla Nr. 2AT-60-2014. Available at: <https://eteismai.lt/byla/278736794906367/2AT-60-2014>.

subject to customs control. The above-mentioned factors are assessed on a case-by-case basis (e.g. in Case No ATP-394-312/2016 it was decided that the transport of 953 packets of smuggled cigarettes without a vehicle would not have been possible, Case No ATP-249-658/2015-180 packets, Case No ATP-1083-628/2013-112 packets, etc.; meanwhile, in Case No 2AT-23-942/2016, it was decided that the transport of 170 packets of smuggled cigarettes would have been possible without a vehicle, Case No ATP-1329-209/2015-150 packets, etc.).

Criminal liability. Under Article 199 of the Criminal Code, smuggling is considered a serious crime with severe sanctions. According to Bikelis, the severity of these sanctions is based on the premise that penalties for smuggling as a criminal offence should outweigh the potential profits of the perpetrators of the crime, so if the potential profits to be made are high, the sanctions must be severe. The penalties are accompanied by tax claims and confiscations, which take advantage of the crime from the perpetrators¹⁶¹.

Criminal liability for smuggling is provided for in Article 199 of the Criminal Code¹⁶²:

1. Any person who has not submitted or otherwise evaded the customs control of items with a value of more than 150 MLS but not exceeding 250 MLS when transporting goods which are required to be presented to customs through the State border of the Republic of Lithuania shall be punished with a fine or imprisonment of up to four years.

2. Any person who transports materials specified in the Lithuanian Law on the Control of Certain Doping Substances without placing or otherwise avoiding customs control or without authorisation across the State Border of the Republic of Lithuania shall be punishable by a fine or arrest or imprisonment of up to six years.

3. Any person who, while transporting goods with a value exceeding 250 MLS which are required to be presented to customs via the State Border of the Republic of Lithuania, has not submitted them for customs control or otherwise avoided such control or who has not been authorised to transport cultural goods or antiques through the State Border of the Republic of Lithuania shall be punished with a fine or imprisonment of up to eight years.

4. Anyone who transports firearms, ammunition, explosives, explosives, explosives, explosives or other strategic goods, toxic, potent, narcotic, psychotropic substances or drug precursors through the State border of the Republic of Lithuania without placing them under

¹⁶¹ Bikelis S. Permaštant sankcijas už kontrabandą. Proporcingumo problema (I). Proporcingumo principas ir baismės už kontrabandą. *Teisės problemos*, 4(78), 2012, 5–24.

¹⁶² Criminal Code Law, Article 199 // Lietuvos Respublikos baudžiamasis kodeksas. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

customs control or otherwise avoiding it, shall be punishable by a term of imprisonment of between three and ten years.

5. The legal person shall also be liable for the acts provided for in this Article.’

According to Žygytė¹⁶³, since the distinguishing limit for determining the type of legal liability is the value of the detained items, the amount of the MLS, the exchange rate and the value of the items determined at the time of the crime are taken into account in the qualification of the act. The value of the seized goods shall be calculated on the basis of their customs value, including the taxes due. However, the value of the subject matter of smuggling does not include the value of those items which are lawfully transported, even though part of these items is simultaneously smuggled (Decision No 43 of the Senate of the Supreme Court of 29 December 2003 on case law in smuggling cases)¹⁶⁴. According to the provisions of Chapter I (3)(4) of Order No 1B-431 of 28 April 2004 of the Director of the Customs Department under the Ministry of Finance of the Republic of Lithuania approving the rules for the control of the customs valuation of imported goods¹⁶⁵, the main method for determining the customs value of goods entering the country is to compare transactions of identical or similar goods declared by importers. A number of factors (e.g. the nature of the goods, the characteristics of the industry, the time of the year, the manner of sale, the significance of the difference in value from a commercial point of view, etc.) must be taken into account when determining that one value is almost indistinct from the other. Even a small difference in value may not be acceptable and a large difference in value is acceptable if the transaction value is very close to comparable values. As the assessment factors differ from case to case, a uniform comparison criterion cannot be applied.

Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 establishing the European Union Customs Code determines the rules and procedures for determining the customs value of goods entering the customs territory of the EU (Articles 70 to 74 of Chapter 3 of that Regulation)¹⁶⁶, which defines the rules and procedures for determining the customs value of goods entering the customs territory of the EU. In accordance with the provisions of Article 70 of this Regulation, the customs value of the goods transported

¹⁶³ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

¹⁶⁴ Lietuvos Aukščiausiojo Teismo senato nutarimas Nr. 43. „Dėl teismų praktikos kontrabandos byloje“. 2003 m. gruodžio 29 d. Vilnius. Available at: <http://www.teisesgidas.lt/modules/paieska/lat.php?id=26465>.

¹⁶⁵ Muitinės departamento prie LR finansų ministerijos direktoriaus įsakymas „Dėl importuojamų prekių muitinio įvertinimo kontrolės taisyklių patvirtinimo“, 2004 m. balandžio 28 d. Nr. 1B-431. Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.232426?jfwid=rivwzvpyvg>

¹⁶⁶ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast), OJ L 269, 10.10.2013, p. 1–101. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0952>.

shall be based, in particular, on the transaction value of the price actually paid or payable for the goods transported (this price may be adjusted if necessary). This method of customs valuation of the value of the transaction is applied if the sale of the goods or their price is not affected by any condition or circumstances whose impact on the goods being valued cannot be estimated, no revenue from further resale and disposal of the goods is directly or indirectly due to the seller, provided that the relationship between the buyer and the seller has no effect on the price, etc.

In accordance with Article 71 of that regulation, the main elements of the value of the transaction are:

- the price actually paid or payable for the imported goods (if the price actually paid or payable did not include additional commissions and brokerage fees, container costs, packing costs, apportionment of the value of services related to the production of the goods, patent and licence fees, etc.);
- additional amounts of money (these amounts are added to the price actually paid or payable only on the basis of objective and quantifiable data).

In accordance with Article 72 of that Regulation, the customs value of goods does not include elements such as:

- transport costs of imported goods incurred after the goods have been brought into the customs territory of the EU;
- construction, installation, assembly, technical assistance costs incurred after the goods have been brought into the customs territory of the EU;
- interest paid under a financing agreement concluded with the purchase of imported goods;
- payments for the right to reproduce imported goods in the EU;
- purchase commissions;
- import duties or other charges in the EU.

Where specific knowledge is required to determine the value of the subject matter of the smuggling, this shall be assigned to a specialist and, where appropriate, expert examinations shall be provided. With regard to the illegal transportation of cultural goods across the state border, since cultural goods and antiques have not only material but also cultural value, criminal liability for the illegal transportation of movable cultural goods and antiques across the state

border (i.e. smuggling of such objects) arises regardless of the material (monetary) value of those goods¹⁶⁷.

In accordance with Article 199 of the Criminal Code and Law No XIII-1836 amending Articles 199, 199¹, 199² and 200 of the Criminal Code of 20 December 2018¹⁶⁸, criminal liability for smuggling arises when the goods required to be presented to customs during transport across the Lithuanian State border have not been presented for customs control or otherwise avoided.

The estimated levels of penalties for smuggling under Article 199 of the CC are summarised in Table 4 of Appendix 1.

Table 4 shows that the penalties for the criminal offence of smuggling depend both on the value of the items not presented to the customs authorities (the transport of items in the value of 150-250 MLS is punishable by a fine or a deprivation of liberty for up to 4 years, whereas the transport of items above 250 MLS is punishable by a fine or imprisonment of up to 8 years) as well as from the type of such items (a distinction is made between the materials specified in the Lithuanian Law on the Control of Certain Doping Materials; the carriage of which without authorisation is punishable by a fine, arrest or imprisonment of up to 6 years, movable cultural goods or antiques, the carriage of which without authorisation is punishable by a fine or imprisonment of up to 8 years, and firearms, ammunition, explosives, explosives, radioactive substances or other strategic goods, poisonous, potent, narcotic, psychotropic or narcotic or psychotropic precursors, the carriage of which without authorisation shall be punishable by a term of imprisonment of between 3 and 10 years). It should be noted that these penalties apply to both natural and legal persons. According to Vasiliauskas, the penalties provided for in the Republic of Lithuania for the offence of smuggling should be considered to be particularly severe, and such strict criminal liability is aimed at both organised groups and individuals¹⁶⁹.

It should be noted that the opinions of legislators and legal analysts on the liability for smuggling provided for in the laws of the Republic of Lithuania often differ. For example, in *the Explanatory Note to the Ministry of the Government of the Republic of Lithuania amending Articles 199, 199¹, 199² and 200 of the Lithuanian Criminal Code amending Articles 26, 163², 177, 177², 210 and 269 of the Lithuanian Code of Administrative Infringements and amending Article 8 of the Law on Criminal Intelligence (13-0335-02-I, 13-0336-02-I, 13-0337-02-I, 13-*

¹⁶⁷ Žygytė L. Baudžiamoji atsakomybė už kontrabandą. Master Thesis. Vilnius, VU, 2017.

¹⁶⁸ Lietuvos Respublikos baudžiamojo kodekso 199, 199¹, 199² ir 200 straipsnių pakeitimo įstatymas, 2018 m. gruodžio 20 d., Nr. XIII-1836. Retrieved from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/84f43832052411e98a758703636ea610>

¹⁶⁹ Vasiliauskas K. Kontrabandos ir muitinės prižiūrimų prekių ar produkcijos gabenimo nusikaltimai: kai kurie baudžiamojo įstatymo trūkumai ir tobulinimo galimybės. *Jurisprudencija*, 24(1), 2017, 190–204.

0337-02-I)¹⁷⁰ it is noted that such a distribution of responsibility creates a disproportion of legal responsibilities both in terms of proportionality and systematicity and practical aspects. Examples are given that some smugglers deliberately calculate the value of the batches of the smugglers being trafficked, forming batches in such a way that one party does not exceed the value that would result in them being prosecuted in case of identification of the smuggling activity. The general principles formulated by the Supreme Administrative Court of Lithuania and the Supreme Court of Lithuania are also criticised on the basis of the current practice of applying administrative penalties regarding the confiscation of an item which was an instrument or direct object of an administrative offence and the proceeds of an administrative offence. The criticism is based on the fact that entities often use not personal means of transport but vehicles belonging to legal persons (undertakings) with which they have an employment relationship. According to the courts, these vehicles are confiscated, although if the act was committed by an individual person without the instruction or authorisation of the head of a legal person (which does not entail liability to the legal person) and without the latter's knowledge, the confiscation of the vehicle is unjustified, since the head of the legal person or other responsible persons could not foresee that the vehicle was intended to be used for the transport of smuggled items, thus they could not prevent this act. Such confiscation is said to be in breach of the principle of proportionality and because the value of the goods to be confiscated is several or a dozen times lower than the value of the confiscated vehicle. In addition, it is argued that the mandatory requirements of Article 603 of the Code of Administrative Offences (formerly Article 269 of the Code of Administrative Offences) require vehicles to be transported and kept until the issue of the administrative liability of the entities has been definitively resolved, which, in turn, may infringe the rights of owners of the vehicles transported to dispose of their property in the event that they are not infringers of the law. In view of the above, the Explanatory Note proposes to reduce administrative and criminal liability for smuggling, although it is acknowledged that this may prolong the investigation process for part of the smuggling cases and increase the workload of the relevant law enforcement authorities.

¹⁷⁰ Lietuvos Respublikos Vyriausybės kanceliarijos ekonominių pažeidimų ir korupcijos prevencijos skyriaus pažyma „Dėl Lietuvos Respublikos baudžiamojo kodekso 199, 199¹, 199² ir 200 straipsnių pakeitimo ir papildymo, Lietuvos Respublikos administracinių teisės pažeidimų kodekso 26, 163², 177, 177², 210 ir 269 straipsnių pakeitimo ir Lietuvos Respublikos kriminalinės žvalgybos įstatymo 8 straipsnio pakeitimo įstatymų projektų (13-0335-02-I, 13-0336-02-I, 13-0337-02. Available at: https://lrv.lt/uploads/main/Posed_medz/2014/140219/15.pdf [online 18/02/2023]).

According to Bikel et al the position of the Lithuanian legislator, expressed in the Criminal Code, is contradictory¹⁷¹. The legislature laid down liability for the smuggling of both tobacco products and other narcotic drugs and psychotropic substances in the same article (Article 199 CC)¹⁷². In assessing the nature and health effects of these substances, such a step must be considered to be consistent. On the other hand, this article is in the chapter “Criminal offences and misdemeanour on the economy and business order”, in which the main object of the offences envisaged should be the values set out in the title of the chapter. Smuggling of narcotic drugs and psychotropic substances is primarily a threat to human health, public security, and its damage to the economy is only a derivative. The crime scene was not very successful. The turnover of tobacco products harms similar values as the turnover of narcotic drugs, so the criticism about the criminalisation of the crime in the CC also applies in part to the smuggling of tobacco products. On the other hand, the tobacco industry, unlike other drug industries, is not banned and has a closer link with the economy and business order. As a result, cigarette smuggling, unlike smuggling of narcotic drugs and psychotropic substances, harms the business interests of some legal tobacco producers and distributors, while at the same time damaging the budget of the State and of the European Union.

According to Bikelis, when assessing the real severity of the smuggling sentence and the severity and proportionality of the penalties imposed for it, one particular feature of which Lithuania (together with Latvia) stands out in Europe should be noted. The material damage to the State caused by smuggling (smuggling of goods with unlimited circulation) consists of unpaid excise duties, customs duties and VAT taxes on smuggled goods¹⁷³. It is based on the amount of tax evaded that the value of smuggling is calculated throughout Europe, except for Lithuania and Latvia. In Lithuania, the value of smuggled goods (goods) is calculated on the basis of their customs value, including the taxes due (Article 212(2) CC)¹⁷⁴. The difference between the total value of imported goods and the taxes to be paid can vary widely depending on the imported goods, ranging from negligible (around 90 % of the total value of imported low-cost cigarettes) to less than 40 % of the value of the goods, and in some cases the imported goods are generally exempt.

¹⁷¹ Bikelis S., Giedrytė-Mačiulienė R., Mickėnienė I., Venckevičienė J. Cigarečių neteisėta apyvarta: kompleksinė reiškinių ir kontrolės priemonių analizė. Vilnius, Lietuvos teisės institutas, 2017. Available at: http://teise.org/wp-content/uploads/2017/04/Cigareciu_apyvarta.pdf.

¹⁷² Criminal Code Law, Article 199 // Lietuvos Respublikos baudžiamasis kodeksas. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

¹⁷³ Bikelis S. Permaštant sankcijas už kontrabandą. Proporcingumo problema (I). Proporcingumo principas ir baudmės už kontrabandą. *Teisės problemos*, 4(78), 2012, 5–24.

¹⁷⁴ Criminal Code Law, Article 212, Part 2 // Lietuvos Respublikos baudžiamasis kodeksas. Available at: <https://www.e-tar.lt/portal/lt/legalAct/TAR.2B866DFF7D43/asr>.

Bikelis¹⁷⁵ and Vasiliauskas¹⁷⁶ also criticise the penalties provided for in the laws of the Republic of Lithuania for excessive rigour. The authors argue that in most of the smuggling cases brought in the Lithuanian case law in 2009-2011, the defendants are not the organisers of the smuggling activity and the recipients of the main part of the profits, but the ordinary perpetrators (vehicle drivers, boatmen, carriers, swimmers, etc.) tempted by the earnings offered by “persons not identified during the pre-trial investigation”, which is far from the profit of the organisers of the smuggling activity who gave instructions to ordinary operators. In many cases, however, it is the latter, rather than the first, that bears the burden of penalties imposed by the State for illegal smuggling.¹⁷⁷ According to Bikelis, while courts try to impose proportionately low administrative and criminal penalties on ordinary smugglers, the limits of the statutory sanctions themselves are extremely high¹⁷⁸. Vasiliauskas also notes that the current legal regulation of smuggling offences is not systematic, and the gap between criminal and administrative liability does not reflect the degree of danger of these offences. In addition, given that Articles 199, 199 and 200 of the Criminal Code provide for criminal liability for serious crimes, there is a gap between the classification of these serious crimes and administrative offences between three categories of offences — minor, minor and misdemeanour¹⁷⁹.

In 2015, the State Labour Inspectorate¹⁸⁰, improving the application of criminal and administrative liability and sanctions measures, extended the scope of criminal liability to cover criminal liability from 250 to 150 MLS and made the following proposals:

- 1) harmonise penalties for similar offences provided for in Articles 199, 199¹, 199² and 200 of the Criminal Code;
- 2) consider the acts provided for in Articles 199¹, 199², 199 and 200 of the Criminal Code as a minor offence when the value of the goods exceeds 150 MLS and does not exceed 250 MLS;
- 3) after recognising the acts provided for in Articles 199, 199¹, 199² and 200 of the Criminal Code, where the value of the goods exceeds 150 MLS, but does not exceed 250 MLS, a minor crime, and, in order to improve the effectiveness of the fight against smuggling and

¹⁷⁵ Bikelis S. Permaštant sankcijas už kontrabandą. Proporcingumo problema (I). Proporcingumo principas ir bausmės už kontrabandą. *Teisės problemos*, 4(78), 2012, 5–24.

¹⁷⁶ Vasiliauskas K. Kontrabandos ir muitinės prižiūrimų prekių ar produkcijos gabenimo nusikaltimai: kai kurie baudžiamojo įstatymo trūkumai ir tobulinimo galimybės. *Jurisprudencija*, 24(1), 2017, 190–204.

¹⁷⁷ Bikelis S., *supra note 175*; Vasiliauskas K., *supra note 176*.

¹⁷⁸ Bikelis S. Permaštant sankcijas už kontrabandą. Proporcingumo problema (I). Proporcingumo principas ir bausmės už kontrabandą. *Teisės problemos*, 4(78), 2012, 5–24.

¹⁷⁹ *Ibid.*

¹⁸⁰ Šešėlinė ekonomika. Kontrolės rezultatai ir tendencijos 2009-2014 m. Vilnius, 2015. Available at: https://www.vdi.lt/PdfUploads/ND_SeselineEkonomika.pdf.

illegal circulation, it is proposed to supplement Article 8(1) of the Criminal Intelligence Act by providing that criminal intelligence investigations may also be carried out in the case of minor offences established by Articles 199(1), 199¹(1), 199²(1) and 200(1) and 201(2) of the Criminal Code.

The first and second proposals are implemented in a complete sample and are enshrined in Article 199 of the CC. The third proposal has not been realised so far, since, according to the provisions of the Criminal Code, a minor offence constitutes a deliberate crime for which the maximum penalty provided in the criminal law exceeds three years' imprisonment but does not exceed six years' imprisonment. The penalties provided for in Article 199 of the CC may amount to 10 years' imprisonment. It follows that the fourth proposal has not been implemented either.

To sum up, it can be said that legal smuggling is usually defined according to a number of its most important features: a crime or a legal offence that violates customs procedures and procedures, national financial regulations, the transport of goods, valuables and/or people across the border of a particular country, where the said goods, values and/or people are concealed from customs controls, unreported, misleading documents and/or means of identification are used to declare them, and this crime or misconduct causes damage to established farming practices, economic, financial, business systems, general social welfare of the country. The distinguishing threshold for the application of the type of legal liability — administrative or criminal — is the value of the seized items (determined according to the size of the MLS in force at the time, the exchange rate and the value of the items determined at the time of the crime), as well as the types of items transported without authorisation. The opinions of legislators and legal analysts on the liability for smuggling provided for in the laws of the Republic of Lithuania differ: The penalties for smuggling provided for in the laws of the Republic of Lithuania have been criticised for excessive rigour, inconsistency in legal regulation and a significant gap between criminal and administrative liability, which does not reflect the degree of seriousness of these offences.

1.2.6. Institutional Control System and Its Role

Today's shadow economy and its components — smuggling, illegal circulation of goods in the internal market, crimes and violations of an economic-financial and fiscal nature — are complex phenomena. Excise duties on some smuggled goods account for up to 68 % of the final price, while another 17 % is VAT, which means that the price of the goods on the illegal market can account for 14-15 % of the official retail price. This gap creates opportunities for lucrative shadow activity.

The coordinated activities of control and law enforcement authorities are crucial for the control of the shadow economy, and the identification and prevention of crime fall within the remit of a number of control authorities. In Lithuania, these phenomena are controlled by:

- The Customs Department under the Ministry of Finance of the Republic of Lithuania (hereinafter the Customs Department);
- The State Tax Inspectorate (hereinafter referred to as the State Tax Inspectorate);
- State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter the State Border Guard Service);
- Police Department under the Ministry of the Interior of the Republic of Lithuania;
- Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter the Financial Crime Investigation Service) etc.

The *Department of Drugs, Tobacco and Alcohol Control (DDTAC)* can also be mentioned. The main area of this body is the control, monitoring and prevention of alcohol, tobacco and drugs. The main strategic objective of the *DDTAC* is to stop and reduce the supply and demand of alcohol, tobacco and illicit drug and psychotropic substances and precursors.

The most important institution in Lithuania, which fights against the introduction of smuggled goods into the country — the customs of the Republic of Lithuania — the state authority supervising international trade. By Resolution No 1044 of the Government of the Republic of Lithuania of 14 July 2010 amending Resolution No 829 of the Government of the Republic of Lithuania of 6 June 2002 on the establishment and approval of the provisions of the Commission for the Coordination of State Economic and Financial Control and Law Enforcement Cooperation (State Labour Inspectorate, 2015¹⁸¹). The Customs Department has been designated as the coordinating authority for combating the unlawful disposal and smuggling of excise goods. As one of the customs administrations of the Member States of the European Union, the customs authorities of the Republic of Lithuania contribute to the promotion of fair and open trade, the functioning of the EU internal market, the implementation of the common commercial policy and other trade-related common EU policies, as well as the security of the entire supply chain of goods. One of the strategic objectives of Lithuanian Customs is to strengthen the fight against unfair and illegal international trade, crime and threats to national and international security (Customs of the Republic of Lithuania, 2020)¹⁸².

¹⁸¹ Šešėlinė ekonomika. Kontrolės rezultatai ir tendencijos 2009-2014 m. Vilnius, 2015. Available at: https://www.vdi.lt/PdfUploads/ND_SeselineEkonomika.pdf.

¹⁸² Lietuvos Respublikos muitinės 2020 metų veiklos ataskaita. Available at: https://irmuitine.lt/mport/failai/veikla/veiklos_kryptys/2020_metine_ataskaita.pdf.

Thus, the customs authorities of the Republic of Lithuania are the main authority for the control and coordination of the unlawful disposal, smuggling and control of excise goods. Among other institutions working in this area are the State Border Guard Service, the police and the State Tax Inspectorate. In summary, the distribution of the areas of activity of these institutions could be described as follows: police activities in this area mainly include control of the retail trade of illegal cigarettes, State Border Guard Service — control of the movement of cigarettes across the state border outside customs posts (through the “green zone”), and the State Tax Inspectorate cooperates with law enforcement authorities when infringements of the activities of legal excise goods importers are suspected. The customs organisation structure distinguishes between the Customs Criminal Service and the territorial customs offices to which customs posts and mobile customs groups (mobile group posts) are assigned¹⁸³.

The Customs Criminal Service (‘CCS’) was established on 1 January 2002 following the reorganisation of the Infringement Prevention and Investigation Service of the Customs Department into a separate customs office. The main task of the CCS is to investigate and investigate crimes and other offences related to customs activities. The Office also carries out international, inter-agency cooperation in the investigation of smuggling, organises and implements the prevention of infringements of legislation for the implementation of which the customs authorities are responsible. Statistics on the number of smuggled cigarettes and drugs and precursors detained by the Lithuanian customs authorities, as well as the number of pre-trial investigations initiated during the first half of 2002-2019, are presented in Table 5 of Appendix 1.

During the first half of 2021, CCS officials launched 216 pre-trial investigations, the vast majority of which (130 cases) were launched for narcotic smuggling (most often found in postal consignments) as in the previous year. 55 investigations were launched against cigarette smuggling, involving 8.8 million packet smokers (a total value of 31.8 million euros in taxes). 75 % of cigarettes detained are Belarusian cigarettes. Almost the rest (23 %) are illegally imported smokers from the Kaliningrad region of Russia without stamps. In pre-trial investigations in 2020, CCS officials detained 16.6 million packets of cigarette smuggling worth around 60 million euros. This doubled the number of illegal smokers detained in 2019. Heets has remained marginal, accounting for less than 1 % of the total quantity of tobacco products seized in 2019 or 2020. However, the illegal flow of these tobacco products tends to increase: In 2019,

¹⁸³ Bikelis S., Giedrytė-Mačiulienė R., Mickėnienė I., Venckevičienė J. Cigarečių neteisėta apyvarta: kompleksinė reiškinių ir kontrolės priemonių analizė. Vilnius, Lietuvos teisės institutas, 2017. Available at: http://teise.org/wp-content/uploads/2017/04/Cigareciu_apyvarta.pdf.

1 pre-trial investigation was launched for heating tobacco smuggling and 3 pre-trial investigations were launched in 2020. The ban on menthol cigarettes, which came into force in the EU since May 2020, has affected cigarette smuggling flows. There has been an increase in the number of menthol cigarettes intercepted by customs authorities: if they accounted for 3 % of all cigarettes in 2019, then 9 % in 2020.

According to the report on the activities of the Lithuanian Public Prosecutor's Office in 2020¹⁸⁴, 398 smuggling-related offences were recorded in 2020 (399 in 2019), 268 such offences were investigated (297 in 2019), or 67.3 % of the total number of offences recorded in this category (74.4 % in 2019). The changes in the criminal law led to a noticeable increase in the number of pre-trial investigations for smuggling-related offences in 2019 (+ 91 %) and this trend has so far been observed. In the context of the grounds set out in Article 72 of the Criminal Code, this category of proceedings was subject to confiscation of assets. The courts confiscated vehicles and other objects used in the commission of the offence as instruments or instruments of crime or recovered a sum of money corresponding to the value of the property to be confiscated. Given that the most common subject of these crimes — cigarettes without stamps of the Republic of Lithuania — cannot be released into civil circulation, decisions were taken to confiscate and destroy cigarettes.

In the pre-trial investigations launched in 2020, the total amount of material damage prevented amounted to almost EUR 74.5 million (2019: EUR 38.5 million):

- according to Article 199(1) of the Criminal Code — almost EUR 120 thousand.
- according to Article 199(3) of the Criminal Code, more than EUR 52 million 300 thousand.
- according to Art. 1991 of the Criminal Code — EUR 0
- according to Art. 1992 — almost EUR 22 million
- under Article 200 of the CC — EUR 0.

According to the Government, in order for all parts of the system to function effectively and to cooperate with each other, it is necessary to ensure the effective dissemination of timely, aggregated and analytical information between the authorities carrying out controls. It is also necessary to ensure that these authorities coordinate and coordinate their actions to control and eliminate adverse events. By Resolution No 829 of the Government of the Republic of Lithuania of 6 June 2002 on the coordination of state economic and financial control and law enforcement

¹⁸⁴ Lietuvos Respublikos Prokuratūros veiklos 2020 m. ataskaita. 2021-03-01 Nr. 17.9.-1921. Available at: https://www.prokuraturos.lt/data/public/uploads/2021/03/2_prokuraturos-veiklos-2020-m.-ataskaita-2021-03-01-nr.-17.9.-1921-03-30.pdf

cooperation, a Government Commission (hereinafter referred to as the Commission) was set up to coordinate cooperation between state economic and financial control and law enforcement institutions¹⁸⁵.

The following are regularly involved in the Commission's activities: Representatives of the Prime Minister's Office, Public Prosecutor's Office, State Audit Office, Finance, Justice and Interior Ministries, Heads of the State Labour Inspectorate, State Social Insurance Fund Board, Tax Inspectorate, Customs Department, Financial Crime Investigation Service, Police Department, State Border Guard Service. The tasks of the Commission are to coordinate cooperation between control authorities, to ensure timely and systematic exchange of specific, aggregated and analytical information between control authorities, to ensure coordinated actions of control authorities in identifying and eliminating negative manifestations of economic and financial activities, and to ensure coordinated activities of control authorities in the field of drafting legal acts in relation to the protection of the State's financial and economic interests (Article 5 of Part II of Government Resolution No 829 of 6 June 2002 on the coordination of State economic and financial control and law enforcement cooperation)¹⁸⁶.

In order to smoothly organise joint actions of the responsible institutions, the Government Commission shall prepare a rolling plan for measures to strengthen the unaccounted economy and coordinate its implementation. It includes several groups of measures to combat smuggling:

1. Risk management:

- rapid identification of trends;
- providing for optimal measures to control the illegal introduction of excise goods across the state border.

2. Control of the illegal circulation of excise goods in the internal market:

- coordinated, complex border area re-monitoring (supplementary inspection of means of transport);
- rotation of officials at the most risky border inspection posts;
- To whom the use of forces to strengthen the protection of the external borders of Lithuania
- wider use of X-ray devices;

¹⁸⁵ LR Vyriausybės 2002 m. birželio 6 d. nutarimas Nr. 829 „Dėl valstybės ekonominės bei finansinės kontrolės ir teisėsaugos institucijų bendradarbiavimo koordinavimo“. Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.168208/mHwfnzPKjw>.

¹⁸⁶ *Ibid.*

- strengthening the control of tractors, which often import fuel in non-standard fuel tanks.

3. Legal and administrative measures:

- provide for legal measures to ensure adequate liability for the damage caused;
- to provide for infringements leading to the loss of licences for carriers;
- to strengthen the legal regulation of the introduction of denatured alcohol into Lithuania by tightening the declaration of the relevant officials' income and assets;
- ensure effective application of tax liability.

4. Rapid exchange of information:

- provide for measures to ensure the timely exchange of relevant information between the authorities;
- ensure that tax measures are implemented in a timely and effective manner.

One of the components of the above-mentioned plan of measures is the Plan of Measures to strengthen the control against smuggling and illegal circulation of goods (2010 — Plan of measures to combat the smuggling and illegal circulation of excise goods) (National Audit Office of the Republic of Lithuania, 2010)¹⁸⁷. The plan of measures is implemented by coordinating the actions of the Customs Department, the State Border Guard Service, the Police Department, Financial Crime Investigation Service, the State Tax Inspectorate and other institutions. The Facility Plans for the year concerned shall be approved by the minutes of the Commission's meetings.

In 2015, the Lithuanian state and business launched a social initiative aimed at reducing public tolerance for illegal tobacco products¹⁸⁸. The aim of this initiative is to show that smuggling leads to a significant increase in the number of crimes, and that sellers of illegal goods do not care at all about the age of the buyer, so smuggled cigarettes can easily be purchased by minors, who are often involved in illegal activities. Residents are encouraged to report criminal cases to the police or to flag “points” of illegal trafficking on the website www.beseselio.lt. Social initiative partners — Government of the Republic of Lithuania, Ministry of Finance, State Border Guard Service, Lithuanian Customs, Lithuanian Police, State

¹⁸⁷ Lietuvos Respublikos Valstybės kontrolė. Valstybinio audito ataskaita. Akcizo mokesčio administravimas. 2010 m. rugsėjo 20 d. Nr. VA-P-60-5-15 Vilnius, 2010. Available at: <https://strata.gov.lt/wp-content/uploads/2021/12/492.pdf>.

¹⁸⁸ My government. Public assistance is particularly important in the fight against smuggling, 2015 09 17. Available at: <https://ecitizen.lrv.lt/en/news/fight-contraband-smuggling-public-help-special-important>

Tax Inspectorate, Public Institution “Lithuania Without Shadow”. The initiative is carried out in Lithuania, Latvia and Estonia in all major media and outdoor advertising and continues until the end of the year. It is supported by Philip Morris Baltic UAB. The main result of the above-mentioned initiative was the development of public attitudes towards smuggling, raising awareness of the harm of passive tolerance of illegal activities, increasing people’s involvement on the website www.beseselio.lt by informing about the places of purchase of illegal products. Although it is practically impossible to measure the results of the initiative statistically, they are significant, since while strengthening the protection of children, the more effective work of law enforcement agencies can and certainly influences the decline in the phenomenon of smuggling, long-term positive changes can only be expected in the context of growing public awareness¹⁸⁹.

In the field of international cooperation, the Agreement between the Government of the Republic of Lithuania and the Government of the United States of America on Improving International Tax Compliance and Implementation of FATCA (U.S. Foreign Account Tax Compliance Act) was signed in Vilnius on 26 August 2014 (the Agreement entered into force on 7 October 2014). The Multilateral Competent Authority Agreement on the automatic exchange of financial account information was signed in Berlin on 29 October 2014. The cooperation mechanism provided for in these agreements is based on the OECD Standard for Automatic Exchange of Financial Account Information, which expands the global network of bilateral and multilateral agreements to facilitate the fight against tax fraud and tax evasion by all states (State Tax Inspectorate, 2015¹⁹⁰). The EU Directive on administrative cooperation in the field of taxation (DAC) became applicable on 1 January 2013¹⁹¹. Automatic exchange of information means the mandatory exchange of predefined tax and financial statements data on predefined forms at a predetermined time. As the DAC rules are gradually tightened, financial account information on interest received by entities, dividends, other income from financial accounts, proceeds from the sale of financial assets and account balances are automatically exchanged as of 2016. Since 2017, additional automatic exchange of information on cross-border tax rulings, advance pricing arrangements and information related to the reporting of multinationals (income, profits, taxes paid/accumulated, accrued profits, number of employees, asset disclosures). Since

¹⁸⁹ *Ibid.*

¹⁹⁰ Šešėlinė ekonomika. Kontrolės rezultatai ir tendencijos 2009-2014 m. Vilnius, 2015. Available at: https://www.vdi.lt/PdfUploads/ND_SeselineEkonomika.pdf.

¹⁹¹ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, p. 1–12. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0016>.

2018, tax administrations' access to real estate information collected under anti-money laundering rules has been automatically exchanged and, as of 2020, mandatory disclosures on cross-border tax planning arrangements (European Court of Auditors, 2021)¹⁹².

The European Anti-Fraud Office (OLAF) was set up in 1999 by the European Commission to investigate fraud, corruption and any other financial irregularities affecting the interests of the European Community. The founding regulation of the Office (Decision of the European Commission of 28 April 1999 establishing the European Anti-Fraud Office (OLAF) (notified under document number SEC(1999) 802))¹⁹³ defines the procedures for the opening, conduct and closure of such investigations and the flow of information coming to and from OLAF. One of the frauds being investigated by OLAF is cigarette smuggling by organised crime groups¹⁹⁴. In 2011, OLAF organised Operation Barrel, which seized and destroyed 1.2 million pieces of smuggled cigarettes.

The fight against tobacco smuggling remains a top priority. Success in fighting crime is impossible without modern and effective criminal proceedings, and one of the most effective ways is to deny access to funding or make the activities in question "financially"¹⁹⁵. According to the European Commission, at the EU's eastern borders, there is often a lack of exchange of information between authorities on ongoing operations, corruption is widespread and infrastructure and equipment are often old or inadequate due to insufficient funding¹⁹⁶. Smugglers take advantage of all these shortcomings. OLAF is very active in combating tobacco smuggling using all available means. It carried out investigations, led coordinated cases and provided technical assistance, including co-financing of equipment and other support to Member State authorities. Operation Barrel was co-organised by the Polish customs authorities together with OLAF. Twenty-four Member States worked together with Norway, Switzerland, Croatia and Türkiye to check goods by rail across the EU's eastern borders.

In order to better combat fraud affecting the EU budget outside the EU, OLAF is also negotiating the inclusion of anti-fraud provisions in the EU's international agreements, such as

¹⁹² Exchanging tax information in the EU: solid foundation, cracks in the implementation. Special report. European Court of Auditors, 2020. Available at: https://www.eca.europa.eu/lists/ecadocuments/sr21_03/sr_exchange_tax_inform_en.pdf

¹⁹³ 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (notified under document number SEC(1999) 802). OJ L 136, 31.5.1999, p. 20–22. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31999D0352>

¹⁹⁴ Europos Komisija. ES kova su sukčiavimu ir korupcija. Žvilgsnis į OLAF – Europos Sąjungos kovos su sukčiavimu tarnybą. Liuksemburgas, Europos Sąjungos leidinių biuras, 2014. Available at: http://publications.europa.eu/resource/cellar/97b8abfd-fc38-4567-be95-3741b6a8084c.0020.02/DOC_1.

¹⁹⁵ Meikališa Ā., Strada-Rozenberga K. Kriminālprocess. Raksti, 2015-2020. Rīga: LU Akadēmiskais apgāds, 2021.

¹⁹⁶ *Ibid.*

Association Agreements and Partnership Agreements. Anti-fraud provisions were included in the EU-Armenia Comprehensive and Enhanced Partnership Agreement in 2016. Negotiations on the inclusion of anti-fraud provisions in the EU-Cuba Political Dialogue and Cooperation Agreement initialled on 11 March 2016 (European Commission, 2017) were also concluded¹⁹⁷.

Due to both the small size of the market and the relatively low level of taxation of cigarettes (and consequently profit margins) as a market for smuggled cigarettes, Lithuania is interesting only for less well-organised and capable small offenders (in terms of communication, finance, etc.). Thus, in Lithuania, only local smuggling is deposited (i.e., realised), which is transported in relatively small quantities and which has a lower level of organisation and resources. However, due to its geographical and political situation (neighbourhood with the Grodno tobacco factory, the external customs border of the European Union), Lithuania also finds itself on the path of major international cigarettes for illegal sale as a transit country. Transit can be carried out in two ways, i.e., by illegally importing (e.g., by concealing) cigarettes, i.e., smuggling and so-called “white smuggling”, which, according to the cargo documents, appears to be a completely legal ordinary transit of cigarettes (in criminal law terms, this is the illegal non-export of goods provided for in Article 200 of the CC).

Officials of the Customs Criminal Service drew attention to the phenomenon of “white smuggling” of cigarettes in 2012-2013. The objective of white smuggling is the same as in all illegal cigarette shipments — from a factory producing cheap cigarettes outside the EU (e.g., Belarus) to bring cigarettes to a country with the highest possible taxation and a relatively large number of consumers and to do so by concealing state taxes, i.e. in order to allow cigarettes to enter the country without the knowledge of customs and other authorities. In short, when travelling, cigarettes must disappear from the perspective of the customs authorities¹⁹⁸.

In 2004, the European Commission launched the Hercule programme to protect the financial interests of the European Union by supporting actions to combat irregularities, fraud and corruption affecting the EU budget. It is managed by the European Anti-Fraud Office. The Hercule I programme was launched in 2004 (Decision 804/2004/EC) and was extended under the Financial Perspectives 2007-2013 (Decision 878/2007/EC). This led to the Hercule II programme (2007-2013). The ongoing Hercule III programme (2014-2020) was established by

¹⁹⁷ Report from the Commission to the European Parliament and the Council. Protection of the European Union’s financial interests — Fight against fraud 2016 Annual Report COM(2017)383. 20-07-2017. Available at: <https://www.eumonitor.eu/9353000/1/j9vvik7mlc3gyxp/vkg2pg1gkvyf>

¹⁹⁸ Bikelis S., Giedrytė-Mačiulienė R., Mickėnienė I., Venckevičienė J. Cigarečių neteisėta apyvarta: kompleksinė reiškinio ir kontrolės priemonių analizė. Vilnius, Lietuvos teisės institutas, 2017. Available at: http://teise.org/wp-content/uploads/2017/04/Cigareciu_apyvarta.pdf.

Regulation (EU) No 250/2014 (European Commission, 2020)¹⁹⁹. The aim of the Hercule III programme is to ensure a standardised level of protection in the Member States and in the institutions, bodies and agencies of the European Union. The Hercule III programme covered the period from 1 January 2014 to 31 December 2020. Activities under the programme included the provision of technical and operational support to Member States' law enforcement authorities in the fight against cross-border crime and the upskilling of officials. According to data from the Customs Department under the Ministry of Finance of the Republic of Lithuania (2021)²⁰⁰, Lithuania participated as a partner in the Hercule III programme "Training and Conference" project "Fighting cigarette smuggling at the external border of the EU: official Exchange Program (786245 — ACSSEP)". The project partners are the customs administrations of Bulgaria, Estonia, Lithuania, Poland, Romania, and Slovakia.

Following the Hercule III programme, the European Commission adopted a proposal for a new EU anti-fraud programme (2021-2027). The programme is designed to support the following efforts by the Commission and EU Member States:

- combating fraud and other illegal activities affecting the EU budget;
- mutual administrative assistance in customs matters;
- Reporting by EU Member States of irregularities affecting EU funds.

The Commission's proposal is to substantially replicate and improve the Hercule III programme and merge it with two OLAF actions:

- the Anti-Fraud Information System (AFIS), which supports criminal intelligence activities related to mutual administrative assistance between customs authorities of the Member States;
- the Irregularity Management System (IMS) is an IT system that allows Member States to report any irregularities affecting EU funds they can detect and support the management and analysis of such irregularities.

B. Šmite-Rože, Deputy Director of the National Tax Board of the State Revenue Service (SRS), emphasizes that cooperation between authorities is important in restricting shadow economy and smuggling. Over the past five to seven years, the cooperation between the SRS, the customs, State Border Guard and the police has improved considerably, resulting in restricted smuggling of tobacco products. In the case of cigarettes, which pose the greatest challenge and

¹⁹⁹ European Anti-Fraud Office. (2020). *About the Hercule Programmes*. Available at: https://ec.europa.eu/anti-fraud/policy/hercule_en.

²⁰⁰ Muitinės departamentas prie LR finansų ministerijos. Programos ir projektai. Available at: <https://lrmuitine.lt/web/guest/bendradarbiavimas/projektai;jsessionid=A39DE70779DC891E8DA532C3BC2CEB3B>

form a part of the informal sector, international studies show that in the third quarter of 2022, 17.8% of the total volume of cigarettes in Latvia were illegal, most of them smuggled, which is by 2% more than a year earlier. As recently as 2010, 44% of cigarettes were illegal. Over the past ten years, the work of the authorities has been successful and the number of confiscated cigarettes has increased significantly. At the same time, Russia's war in Ukraine and sanctions have led to a threefold decrease in the volume of smuggled goods in 2022.

It should, however, be noted that smuggling will never fully cease to exist. International experts estimate that the illegal tobacco trade is almost as profitable as the drug trade. At the same time, the number of illegal cigarette factories in Latvia has increased, with three or four discovered each year, but law enforcement agencies are successfully working to detect and stop these shady businesses. The focus is on e cigarettes and tobacco patches, which have entered the market in recent years. All countries are currently just figuring out how to regulate, control or restrict this, so there is virtually no accurate data on the illegal market share. The industry itself puts the shadow market share at around 40%, including both smuggled and intra-EU goods. One issue is taxes, which is a concern for the SRS, and the other is quality—whether illegal products are dangerous to health. E cigarettes and e liquids on the legal market are registered in a single database, certified accordingly and their quality is controlled. The illegal market, on the other hand, is a place where products of unknown origin may appear. The Lithuanian press has already reported that schoolchildren are smoking from devices where the liquid has been laced with rat poison. The question of how to act becomes topical. A statutory ban does not automatically remove these goods from the market, as the experience of our neighbours shows. Thus, through legislation the government can in fact force people who are used to these products to go to the illegal market and buy products of unknown origin, possibly very harmful. So, if the illegal share now is 40%, it is clear that if the law came into force, it would be 100%²⁰¹.

For 2017, Lithuania increased the minimum excise duty on cigarettes to EUR 90 per 1000 cigarettes (EUR 1.80 en route), thus reaching the minimum level of excise duty on cigarettes required by Article 10 of Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco²⁰². Between 2018 and 2021, the excise duty rate on cigarettes increased on average by 5.6 % annually. By increasing excise duty on cigarettes, it

²⁰¹ Pilnīgs aizliegums sekmēs nelegālu pieaugumu. Par pārdomātu e-cigarešu tirgus regulēšanu Gundars Gūte sarunājas ar Valsts ieņēmumu dienesta (VID) Nodokļu pārvaldes direktora vietnieci Baibi Šmiti-Roķi. *Diena*, 26.01.2023.

²⁰² Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (codification). OJ L 176, 5.7.2011, p. 24–36. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32011L0064>.

was expected that this increase could affect individuals' incentives to attempt to import tobacco products illegally from third countries where their prices are lower than in Lithuania. The above risks had to be mitigated both by the targeted activities of the individual controlling state institutions and by coordinating the actions of the institutions in the Commission for Coordination of the Sixth Economic Reduction²⁰³ established by Resolution No 697 of the Government of the Republic of Lithuania of 18 July 2018 on the establishment of a Sixth Commission for the Coordination of Reduction of the Economy, the main function of which is to coordinate the implementation of measures to reduce the shadow economy²⁰⁴. However, it should be noted that even in the exercise of their functions by the controlling authorities in a particularly efficient manner (doubling the detentions of smuggled traditional cigarettes), the smuggling of traditional cigarettes has been steadily increasing between 2019 and 2021. During 2020, the Customs Department under the Ministry of Finance of the Republic of Lithuania detained as many as 16.6 million packets of cigarette smuggling. This is twice as many as in 2019 (6.8 million packages). The value of cigarettes detained is 60 million euros. It should be noted that the flows of smuggling of traditional cigarettes and thus detentions are not decreasing this year, with 8.8 million packets of smuggled cigarettes and 46 tonnes of smuggled tobacco detained in the first half of 2021 (see Table 5 of Appendix 1)²⁰⁵.

1.3. Peculiarities of tobacco smuggling

Smuggling is one of the forms of illegal concealment of income, when taxes levied on income are not paid to the state budget. It is mostly associated with illegal transportation of certain objects or items across state borders and escape of customs control²⁰⁶. Joossens and Raw²⁰⁷ define smuggling as illegal trade in particular goods or services cross national borders. Smuggling occurs when traders seek to illegally meet the demand for particular goods or services, usually those that are prohibited (e.g. drugs, psychotropic substances) or heavily taxed (e.g. tobacco, alcohol products).

²⁰³ Lietuvos Respublikos Vyriausybės nutarimas „Dėl šešėlinės ekonomikos mažinimo koordinavimo komisijos sudarymo“ 2018 m. liepos 18 d. Nr. 697, Vilnius. Available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/afe891b68beb11e8aa33fe8f0fea665f/asr>

²⁰⁴ Nacionalinė tabako gamintojų asociacija. Pasiūlymai „Dėl Akeizų įstatymo Nr. IX-569 1, 3, 23, 24, 25, 26, 30, 31, 65 ir 74 straipsnių pakeitimo įstatymo projekto“. 2021 m. birželio 10 d., Vilnius. Available at: https://lrv.lt/uploads/main/meetings/docs/2114001_imp_4e3d5b0e59812a081df2365c73bb7824.pdf.

²⁰⁵ Lietuvos Respublikos Muitinė. 2002–2020 m. MKT atskleistų pažeidimų apžvalga Available at: <https://lrmuitine.lt/web/guest/280>.

²⁰⁶ Čolaković, E. Smuggling as a Form of Illegal Evasion of Public Revenue (September 8, 2016). 2016 ENTRENOVA Conference Proceedings, Available at SSRN: <https://ssrn.com/abstract=3282451>.

²⁰⁷ Joossens L., Raw M. From cigarette smuggling to illicit tobacco trade. *Strategic Directions and Emerging Issues in Tobacco Control*, 21(2), 2012, 230–234. doi: 10.1136 / tobaccocontrol-2011-050205.

Literature indicates many different types of smuggling, which can be grouped as follows:

- smuggling by volume;
- smuggling by transported items;
- smuggling by the type of offence.

The above-presented grouping is based on the studies by Burke²⁰⁸, Thursby and Thursby²⁰⁹, Cohen et al.²¹⁰, Goel²¹¹, LaFaive and Nesbit²¹², Benson and Decker²¹³, Čolaković²¹⁴ and other researchers. It should be noted that this grouping is not exhaustive, but it considers obviousness of the essential criteria of smuggling (volume, transported items and the type of offense) in practice. The major groups and types of smuggling are depicted in Table 1 of Appendix 1.

Smuggling by volume covers ordinary or irregular smuggling, commercial smuggling and international smuggling. Ordinary smuggling means that subjects cross national or regional borders to enter low-tax areas and illegally purchase small quantities of certain goods to transport them back to the smugglers' country or region²¹⁵. For instance, this principle is followed by the U.S. cigarette consumers who buy cigarettes on Indian reservations or military bases where taxes are not levied, or by ordering tax-free products through websites²¹⁶. Commercial smuggling can cover a variety of methods, but it is usually associated with transportation of large quantities of goods. Goods are usually purchased from manufacturers and shipped from low-tax to high-tax countries²¹⁷. International smuggling refers to the movement of smuggled items cross international borders. According to Benson and Decker²¹⁸, international smuggling is characterized by a rational, high-level organisational structure, which helps to efficiently generate smuggling proceeds, but it can also be carried out by separate groups that

²⁰⁸ Burke T. The Effect of Excise Taxes on Cigarette Smuggling: An Instrumental Variable Approach. CMC Senior Theses, 2013. Available at: https://scholarship.claremont.edu/cmc_theses/764.

²⁰⁹ Thursby J. G., Thursby, M. C. Interstate cigarette bootlegging: extent, revenue losses, and effects of federal intervention. *National Tax Journal*, 53(1), 2000, 59–78.

²¹⁰ Cohen J. E., Sarabia V., Ashley, M. J. Tobacco commerce on the internet: a threat to comprehensive tobacco control. *Tobacco Control* 2001;10:364-367. Retrieved from: <https://tobaccocontrol.bmj.com/content/10/4/364>

²¹¹ Goel R. K. Cigarette smuggling: price vs. nonprice incentives. *Applied Economics Letters*, 15(8), 2008, 587–592. doi: <https://doi.org/10.1080/13504850600721981>

²¹² LaFaive M. D., Nesbit T. Cigarette smuggling remains high in Michigan, elsewhere. *Viewpoint on public issues*, Feb. 4, 2013 No. 2013-05 ISSN 1093-2240. Retrieved from mackinac.org/v2013-05.

²¹³ Benson J. S., Decker S. H. The organisational structure of international drug smuggling. *Journal of Criminal Justice*, 38(2), 2010, 130–138.

²¹⁴ Čolaković E., *supra note 206*.

²¹⁵ Burke T., *supra note 208*.

²¹⁶ Thursby J. G., Thursby, M. C., *supra note 209*; Cohen J. E., Sarabia V., Ashley, M. J., *supra note 210*.

²¹⁷ Goel R. K., *supra note 211*; LaFaive M. D., Nesbit T., *supra note 212*.

²¹⁸ Benson J. S., Decker S. H., *supra note 213*.

have no formal ties to each other. Since smugglers face the risk of administrative or criminal sanctions in the case of failure, the major principle they follow is risk minimisation.

Smuggling by transported items covers many types of smuggling: the items to be smuggled can include goods, people, weapons, medicines, drugs, information and data, works of art, plants, animals, software, copyrights, etc.²¹⁹

When it comes to human smuggling, two types of this smuggling – migrant smuggling and human trafficking – can be distinguished. Migrant smuggling refers to illegal migration, when the smuggling service is provided to persons who want to illegally leave a country or enter a certain country; it is a voluntary process, and migrants pay smugglers for transportation (Friebel and Guriev²²⁰; Triandafyllidou and Maroukis²²¹, Shelley²²², etc.). Human trafficking refers to involuntary (forced) transporting of persons for the purposes of forced labour, prostitution and other exploitation (Shelley²²³; Wheaton et al.²²⁴; Bello and Olutola²²⁵, etc.). The United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000²²⁶, defines the latter type of smuggling as recruitment, transportation, transfer, harbouring or reception of persons by threats, force or the means of coercion, kidnapping, fraud, deception, isolation, abuse of power or a position, a person's vulnerability, or when consent of a person is obtained by offering or giving particular payment or other benefits, when the aforementioned actions are undertaken to control the persons for the purpose of exploitation. In the case of illegal migration, the entry of a person into or departure from a country (economic migrants tend to move from low-wage to high-wage countries) is facilitated for a certain fee, and a person is free after the transaction is completed, while in the second case, the persons are not free, so this crime is considered a particularly serious violation of fundamental human rights.

²¹⁹ Čolaković E., *supra note 206*.

²²⁰ Friebel G., Guriev S. Smuggling humans: a theory of debt-financed migration. *Journal of the European Economic Association*, 4(6), 2006, 1085–1111. doi: <https://doi.org/10.1162/JEEA.2006.4.6.1085>

²²¹ Triandafyllidou A., Maroukis T. Migrant smuggling - irregular migration from Asia and Africa to Europe. London: Palgrave Macmillan, 2012. DOI: <https://doi.org/10.1057/9780230369917>

²²² Shelley L. Human smuggling and trafficking into Europe: a comparative perspective. Washington, DC: Migration Policy Institute, 2014. Available at: <https://www.refworld.org/pdfid/52f3438d4.pdf>

²²³ Shelley L. Human trafficking – a global perspective. Cambridge University Press, 2010

²²⁴ Wheaton E. M., Schauer E. J., Galli, T. V. Economics of human trafficking. *International Migration*, 48(4), 2010, 114–141. doi: <https://doi.org/10.1111/j.1468-2435.2009.00592.x>

²²⁵ Bello P O., Olutola A. A. The Conundrum of Human Trafficking in Africa [Internet]. Modern Slavery and Human Trafficking. IntechOpen, 2021. Available at: <http://dx.doi.org/10.5772/intechopen.83820>.

²²⁶ United Nations Convention against Transnational Organized Crime and the Protocols Thereto. Adopted by the UN General Assembly: 15 November 2000, by resolution 55/25. Available at: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

Smuggling of wildlife - plants and animals - is driven by the demand for exotic plant and animal species, which generates high profits from this activity²²⁷. Ferrier²²⁸ notes that notes that this type of smuggling is also stimulated by the bans imposed on the import of certain types of agricultural products, such as those that may contain pathogens and disease-causing bacteria, and the harvest of which may threaten wildlife or endangered species.

Information and data smuggling is carried out through computer networks and special computer interfaces (e.g. protocol converters, open systems) capable of adapting data processing systems and transferring data to peripheral devices²²⁹. Later, these data are used for profit, system breach and other purposes.

Art and cultural property smuggling is caused by restrictions on the export of various categories of cultural values and antiquities, starting with archaeological finds and ending with works of art. Fisman and Wei²³⁰ note that smuggling of art and cultural values differs from other types of smuggling by a higher degree of illegality because transported items are not only hidden from customs control, but also must not be transported without a special permit. Demand is the major driving force behind this type of smuggling.

According to Kramer²³¹, the largest part of arms smuggling involves smuggling of small arms and light weapons that are often linked to drug smuggling and human trafficking across national borders. Dahari et al.²³² state that arms smuggling is stimulated by the spread of national and religious conflicts, conflicts over limited resources, globalisation of organized crime, and migration of people for political and economic asylum (the refugee problem).

According to Boivin²³³, drug smuggling comprises the multilateral exchange of illegal goods among producers, distributors and consumers. Naylor²³⁴ makes a distinction between two

²²⁷ Reuter P., O'Regan D. Smuggling wildlife in the Americas: scale, methods, and links to other organised crimes. *Global Crime*, 18(2), 2017, 77–99. doi: <https://doi.org/10.1080/17440572.2016.1179633>

²²⁸ Ferrier P. M. The economics of agricultural and wildlife smuggling. Economic Research Report Number 81, United States. Dept. of Agriculture Economic Research Service, September 2009. Available at: <https://naldc.nal.usda.gov/download/41695/PDF>

²²⁹ Kimball K. E. Smuggling and recovery of non-packet information. US Patent 8,306,023 B2, Nov. 6, 2012. Available at: <https://patentimages.storage.googleapis.com/c9/bb/f8/726fe931f67b47/US8306023.pdf>

²³⁰ Fisman R., Wei S. J. The smuggling of art, and the art of smuggling: uncovering the illicit trade in cultural property and antiques. *American Economic Journal: Applied Economics*, 1(3), 2009, 82–96. Available at <https://www.aeaweb.org/articles?id=10.1257/app.1.3.82>

²³¹ Kramer K. Legal controls on small arms and light weapons in Southeast Asia. Small Arms Survey. Occasional Paper No. 3, 2001. Available at: https://www.files.ethz.ch/isn/87858/2001-08-OP3_legal%20control%20small%20arms%20Southeast%20Asia.pdf

²³² Dahari R., Idris N. A., Othman, Z. Influencing external factors for small arms light weapon smuggling at Malaysia-Thailand border. *Asian Social Science*, 15(3), 2019, 14–26. doi: [10.5539/ass.v15n3p14](https://doi.org/10.5539/ass.v15n3p14)

²³³ Boivin, R. Drug trafficking networks in the world-economy. *Crime and Networks*. DOI:10.4324/9781315885018, 2013. Available at: https://www.researchgate.net/publication/265069568_Drug_trafficking_networks_in_the_world-economy

²³⁴ Naylor R. T. Towards a general theory of profit-driven crimes. *British Journal of Criminology*, 43, 2003, 81–101.

major elements of drug smuggling: movement of illegal goods through intermediaries from a source to a user (the economic element) and the exchange taking place in a certain social and geopolitical context (the contextual element). The driving force behind this type of smuggling is the relatively small cost of a product compared to its price and the high payoff for the risk assumed (Caulkins and Reuter, 2010)²³⁵.

Smuggling by the type of offence includes smuggling that entails administrative liability and smuggling that entails criminal liability. This separation of liability is grounded on the value of smuggled items: if the value of smuggled items does not exceed the value indicated in the relevant law, administrative liability (fines) is entailed, but if the value of smuggled items exceeds the value indicated in the relevant law, criminal liability (arrest, imprisonment) is entailed.

Article 208 of the Code of Administrative Offenses of the Republic of Lithuania (hereinafter – CAO) and Article 199 of the Criminal Code²³⁶ stipulate that criminal liability is entailed when the value of smuggled items exceeds the amount of 150 base fines.

²³⁵ Caulkins J. P., Reuter P. How drug enforcement affects drug prices. *Crime and justice: an annual review of research*, 39, 2010, 213–271.

²³⁶ Lietuvos Respublikos baudžiamojo kodekso 199. *Valstybės žinios*, Nr. 123-5573, 2003.

2. METHODOLOGY FOR ASSESSING THE IMPACT OF TOBACCO SMUGGLING IN SOME EUROPEAN COUNTRIES

The object of the empirical study is the influence of tobacco smuggling on the economies of developing countries and other criminal acts, as well as the legal regulation of tobacco smuggling in selected countries.

The indicators that could be used to assess the impact of cigarette smuggling in Moldova, Serbia and Sakartvelo were those that could be provided by the state institutions of the selected countries. Methods such as correlation and regression analysis, PEST analysis and analysis of legal acts were chosen to study the impact of tobacco smuggling on the economies of developing countries.

2.1. Reasons for the development of smuggling of tobacco products in Lithuania and Latvia

According to the authors of "Shadow economy. Changes over a decade" (2016)²³⁷, most of the researchers writing on this topic briefly list the reasons for the emergence of smuggling, but do not provide a more in-depth analysis of them, so that it is possible to move more smoothly to the explanation of the calculation methods and the obtained numbers of the "shadow" size. Such studies help to draw a general picture of the spread of the "shadow", but the analysis of the causes of the phenomenon, their control and prevention remains outside the scope of attention. A parallel situation is typical of Lithuania's practical fight against the shadow economy, when basically it is only about the scale and control of the phenomenon, but not about the causes and their control. Such circumstances presuppose the need to review the main factors that determine smuggling and corruption identified by science.

According to Z. Lydeka and V. Bradauskas (2016)²³⁸, having information about the causes of corruption and smuggling and their interrelationship is important for making effective political, economic, legal and other decisions. Such information should primarily be relevant for politicians who form strategies for the elimination (minimization) of corruption and the shadow economy. Therefore, the following is a detailed overview of the main factors of tobacco smuggling and corruption, which are usually presented by various authors.

²³⁷ Šešėlinė ekonomika. Pokyčiai per dešimtmetį. Lietuvos Respublikos Vyriausybės kanceliarija, 2016. Available at: <https://www.vdi.lt/PdfUploads/seselinEkonomika2016.pdf>

²³⁸ Lydeka Z., Bradauskas V. Korupcijos lygio poveikio šešėlinės ekonomikos paplitimo mastui vertinimas. *Applied Economics: Systematic Research*. 10, 2016, 13-30. DOI:10.7220/AESR.2335.8742.2016.10.2.1.

Large price differences between countries. According to S. Bikelis²³⁹, the average retail price of a pack of cigarettes in Lithuania is EUR 2.60, while in the neighboring countries of Belarus and Russia it is EUR 0.58 and EUR 0.83 per pack of cigarettes, respectively. These are 3-4 times lower prices than in Lithuania. For example, in Norway, a pack of cigarettes costs EUR 10.75 on average, in the United Kingdom - EUR 10.10, and in Ireland - EUR 9.28. Comparing the price differences between these third countries and the countries of the European Union, the price differences for cigarettes increase as much as 18 times. Figure 1 illustrates the differences of one pack of cigarettes in Lithuania, neighboring countries and other European countries are shown (see Appendix 1, Figure 1).

According to S. Bikelis, about 1000 boxes of cigarettes (50,000 blocks, 500,000 packets, 10 million cigarettes) can fit in one semi-trailer or 20-foot sea container. In the tobacco factory "Neman" located in Belarus, this amount (10 million) of cigarettes "Minsk" according to the approved prices December 1, 2016 cost 340 thousand Belarusian rubles, or 166 thousand Eur. When exporting cigarettes, tobacco taxes are free in Belarus. The market value of such cargo in the United Kingdom can be 5 million Eur, but of course it is lower in the black market. After successfully creating a cigarette transportation system, limiting yourself to one container truck is obviously not very profitable. Especially since the possible risk - the cargo with cigarettes and the detention of the vehicle - is compensated by the profit from other cargoes successfully delivered to the destination. In fact, the manager of this "business" only risks the loss of cargo, because the cigarette transportation system is organized in such a way that the risk of being exposed and prosecuted for its managers is the lowest. As for fuel price differences, there is also a big difference between Lithuania and neighboring countries. According to the Lithuanian Free Market Institute²⁴⁰, 1 liter of diesel fuel costs ~0.97 EUR in the retail market in Lithuania, 0.56 EUR in Belarus, and 0.54 EUR in Russia. According to research conducted by the Lithuanian Free Market Institute, illegal fuel now accounts for about 15 % in fuel markets. The Seimas of the Republic of Lithuania adopted amendments to the Excise Law and from January 1, 2018 diesel fuel has become even more expensive and now costs around 1.10 EUR. Therefore, the price differences between Lithuania, Belarus and Russia became even bigger.

²³⁹ Bikelis S., Giedrytė-Mačiulienė R., Mickėnienė I., Venckevičienė J. Cigarečių neteisėta apyvarta: kompleksinė reiškinių ir kontrolės priemonių analizė. Vilnius, Lietuvos teisės institutas, 2017. Available at: http://teise.org/wp-content/uploads/2017/04/Cigareciu_apyvarta.pdf

²⁴⁰ Lietuvos laisvosios rinkos institutas. Ekspertizė. Didelis dyzelino akcizas didintų paskatas jį įsigyti nelegaliai. 2017-09-11. Available at: <https://www.lfri.lt/naujienos/ekonomine-politika/29358/irinka>

Excise tax. According to Bilelis, et. al.²⁴¹ Lithuania increased the minimum excise duty on cigarettes for 2017 to EUR 90 per 1,000 cigarettes (EUR 1.80 a packet) and thus reached the minimum excise duty on cigarettes set by the EU. In the last seven years, the excise duty in Lithuania has been increased by 40%, and in the last 17 years - more than six times, but we are still one of the countries with the lowest taxes on cigarettes in the European Union. On the other hand, the difference in taxation between one of the least taxing countries in the European Union and its Eastern neighbors is very large (not even calculated as a percentage, but times) and it is not very realistic to expect it to decrease. The minimum excise duty stipulated by the Russian law is about 2.7 times lower, and the excise duty stipulated by the Belarusian law is 4-11 times lower than in Lithuania. The increase in excise duty rates encourages consumers not to refuse goods or services that have become more expensive due to taxation, but to look for opportunities to purchase them at a lower price. With such demand, there will always be supply. According to the economists of the Lithuanian Free Market Institute, the amount of taxes included in the price of a product - VAT, excise duties and customs duties - shows what part of the price directly depends on state regulation and allows us to assess what costs can be avoided by smuggling these goods. Avoiding taxes, which make up most of the retail price of a good, is therefore a big incentive to avoid government control and regulation.

Geographical position of the country. The geographical position of the country is cited as one of the most important reasons for the emergence and prosperity of smuggling of tobacco products. According to the data provided by VSAT, the state border of the Republic of Lithuania with the Russian Federation in the west is 274 km, and the Republic of Belarus borders for 678 km in the east. In addition, the section of the EU's external border in Lithuania accounts for 61% of the entire length of the state border. All these factors lead to smuggling flows from neighboring countries both to Lithuania and to Western Europe, using Lithuania as a transit country.

Obtained profits and the tolerance of the population for the smuggling of tobacco products. Based on population surveys²⁴² conducted by the Lithuanian Free Market Institute, the population's tolerance for smuggling in 2013 was 62 percent, and in 2016 there were 21% of such persons. This only shows that the population's tolerance for smuggling has decreased, but still remains high. This especially hinders the disclosure of the facts of smuggling in the border

²⁴¹ Bikelis S., Giedrytė-Mačiulienė R., Mickėnienė I., Venckevičienė J., *supra note 238*.

²⁴² Lietuvos laisvosios rinkos institutas. Pozicija. „Kaip stabdyti kontrabandą bei nelegalių prekių apyvartą“. 2010-09-10. Available at: <https://www.lfri.lt/naujienos/ekonomine-politika/mokesciai-budzetas/pozicija-kaip-stabdyti-kontrabanda-bei-nelegaliu-prekiu-apyvarta/lrinka>

areas, when local residents see the crimes being committed, but believe that smuggling is not a crime, but "doing good to others". Justification creates more favorable conditions for the consumption of these goods, and it also makes it more difficult for law enforcement agencies to fight smuggling. The organizers of smuggling are businessmen who primarily seek to make the greatest possible profit, taking advantage of the high prices of excise goods and the resulting lower affordability of such goods, the indifference of the country's population to the damage caused by smuggling, and the goal of saving money. Residents of less developed regions of the country and border areas fall into the extremely high risk zone. All this adds up to the fact that smuggling is still thriving. It is extremely difficult for state institutions to solve this problem without the support of the public, and until the public understands the harm caused by smuggling to the state and to society as a whole, it is difficult to expect tangible results.

According to Z. Wajid²⁴³, corruption is one of the main reasons for smuggling in general. Very often the officers themselves have an interest in engaging in illegal activities with the smugglers, as this can bring huge financial benefits to both the smugglers and the officers. Next, I will take a little more detailed look at the reasons that encourage corruption in the customs and state border guard services - i.e., in those institutions that are supposed to curb the scale of smuggling to Lithuania.

Low salaries of officials. According to B. Begović and other authors²⁴⁴, low salaries of customs and other officials are the main factor influencing corruption among officials. It is not difficult to understand that low, even insufficient salaries of officials are an important factor or at least an excuse for corruption. Although the amount of wages is, of course, an important factor in the prevalence of corruption, the difference in wages between officials and the public sector is of great importance for corruption. According to the author, if salaries in the public sector are higher than those received in the service, then officials often face a dilemma: official status for a lower salary (with possible additional income from corruption) or in the private sector (for a higher salary without additional income). It is obvious that for the reduction of the scale of corruption it is very important to study the functioning of the labor market and in the formulation of salary policy in the public sector and various services. It is precisely because of insufficient wages that customs officers often supplement their income through corruption, and over time, customs has acquired the name of the most corrupt institution. This widespread view makes it

²⁴³ Wajid Z., Aziz B., Iqbal Z. Smuggling around the World: An Empirical Investigation of Causes and Indicators. *Forman Journal of Economic Studies*, 10, 2014, 105-133. DOI:10.32368/FJES.20141005.

²⁴⁴ Begović B., Mijatović B. (ed.) CORRUPTION at the Customs: combating corruption at the customs administration. Belgrade: Center for Liberal-Democratic Studies, 2002. Available at: http://pdc.ceu.hu/archive/00001436/01/Combating_corruption_at_the_customs.pdf

almost impossible to improve the salaries of officials, which were partly the root cause of corruption.

A corrupt organization. According to B. Begović, corruption is greatly influenced by the institution itself, where a new official comes to work. According to him, a new employee who came to work, e.g. to customs, he usually does not start his career by taking bribes. However, the most important question is how long or under what conditions that person will be able to maintain his good qualities and not succumb to the influence of others. Then the spirit of the team and the whole organization is revealed. If the team or organization is already damaged, then a new, non-standard official has little chance to resist temptations. It is the uncorrupted official who poses a threat to other corrupt officials because he has information that can be very dangerous to them. For this reason, an officer who is not yet corrupt is under great pressure not to inform others about the corruption in his team. The safest way is to lure such a person into the traps of corruption so that he becomes part of a corrupt team. Thus, corrupt officials have very strong motives to involve as many colleagues as possible in the chain of corruption, which leads to even deeper corruption.

Legal factors. According to A. Adomėnas (2018), the corruption of officials is very often promoted by loopholes in legal acts and the impunity of officials. It is meant that it is extremely difficult to prove that it is the official who is connected with the contraband that entered Lithuania illegally. Very often this is disguised as simple carelessness, negligence or simply optional behavior, e.g. by not directing the car to the x-ray hangar. Also, in this age of technology, conspiratorial means are used between smugglers and corrupt officials, which only makes it more difficult to collect evidence and in general to expose all illegal activities.

Factors influencing smuggling of tobacco products in Latvia.

The main reason for the smuggling of tobacco products in Latvia is high taxes, which are not in line with the standard of living, which creates price differences with neighboring countries and creates incentives for illegal consumption or trade. According to Latvian residents, the scale of smuggling increased during the research period (2009 - 2012), and "envelopes" are the most common form of corruption among Latvians.

Such results were shown by a representative survey of the opinion of residents in the three Baltic countries initiated by the Lithuanian Free Market Institute (LLRI) for the first time,

which was carried out in February by the company "Spinter tirimai", which surveyed 3,056 permanent residents of Lithuania, Latvia and Estonia²⁴⁵.

According to the survey, the residents of all three Baltic countries equally value smuggling as the cause of the phenomenon. They believe that the main reason for smuggling is the opportunity to make money from the price difference between the Baltic countries and neighboring countries, which do not have high excise duties on fuel, alcohol products and cigarettes, which are mandatory in the EU. In Latvia, price differences were cited as the reason for the prevalence of smuggling - 54% of those interviewed. The list of the main reasons for smuggling also includes the ever-increasing prices of excise goods, low people's incomes and the diminishing ability to purchase excise goods legally - 60% in Latvia.

As the survey shows, in all the Baltic countries, there are far more people who believe that the consumption of illegal goods increased during the research period than those who think the opposite. Almost two-thirds of respondents (54%) in Latvia think so. A similar proportion of respondents said that the consumption of contraband fuel was growing up to 32% in Latvia.

Residents of the three Baltic states say that the most effective way to fight smuggling is to lower taxes so that the price of legal production could be lowered, and to regulate business more freely. Most of the time, as the most effective way to reduce the consumption and trade of contraband goods, the respondents indicated the reduction of taxes (excise duties) - 84% in Latvia. Respondents in Latvia (66%) indicated the reduction of government regulations that hinder legal activities as the second most effective means of combating the smuggling of tobacco products.

Summarizing the results of the study, people think consistently and intelligently: the most effective way to combat smuggling is to eliminate the cause of this phenomenon, i.e. to reduce excise taxes. According to the survey data, the share of people who fully justify smuggling in Latvia is similar. Smuggling and illegal consumption in Latvia are fully justified by 18% of those interviewed.

The share of respondents who fully or partially justify smuggling is quite high in all Baltic States, and this complicates the work of state institutions. Fighting the phenomenon, when it is justified by the majority of the population, is very difficult, especially when only administrative and punitive measures are used.

²⁴⁵ Lietuvos laisvosios rinkos institutas. Gyventojų apklausa: kontrabandos priežastys Baltijos šalyse tokios pačios – aukšti mokesčiai ir žemas gyvenimo lygis. 2012-04-12. Available at: <https://www.lri.lt/naujienos/ekonomine-politika/seseline-ekonomika/gyventoju-apklausa-kontrabandos-priezastys-baltijos-salyse-tokios-pacios-auksti-mokesciai-ir-zemas-gyvenimo-lygis/lrinka>

The survey also asked respondents whether "envelope" payments and other tax avoidance methods are common in their country. The survey revealed that the salary for work in "envelopes" is the most common in Latvia out of the three Baltic states, 43% of respondents in Latvia said that they know people from their environment who in 2011 received at least part of their income in "envelopes" or hid part of their taxes in other ways.

The fact that the level of the shadow economy is the highest in Latvia is shown not only by this survey, but also by other international studies of the shadow economy, for example, in 2011 when a shadow study was conducted by the Stockholm School of Economics in Riga. It should also be taken into account that the standard of living in Latvia is the lowest of all three Baltic states, but this does not mean that the situation in Lithuania and Estonia is radically opposite. A quarter of the respondents in Lithuania admitted that there are people in their close environment who receive illegal income, which is really a lot. The main reason is the high taxation of labor relations, which in Lithuania reaches 40%

Other recent studies (Sauka, 2022)²⁴⁶ show that the tolerance of Latvian citizens towards the purchase of contraband goods has not changed substantially over the past year: every third, or 30% of surveyed Latvian citizens, do not consider the purchase of contraband goods to be reprehensible. This number has decreased significantly in recent years. In 2019, 26% did not consider the purchase of contraband goods to be reprehensible, and last year it reached 32% of Latvian population. At the same time, the number of residents admitting that they have not bought contraband goods continues to grow up to 78% of respondents, when, for example, in 2013 only 41% of the respondents did not buy contraband cigarettes. The number of people who know where to buy contraband tobacco products has also significantly decreased, although in 2021 36% of the respondents had such information, that is, in 2022 only 28% of the population knew where they could purchase contraband tobacco products if necessary. The main motivation of citizens to buy contraband goods is always the significantly lower price of these goods.

Following IV National Forum²⁴⁷ dedicated to the problem of smuggling, the factors influencing smuggling can be reduced by implementing a strategic and sustainable state policy (balancing public health goals with the state's fiscal capabilities), creating a well-thought-out, analysis-based tax policy, taking into account internal and external factors, allocating balanced resources for supervision institutions, as well as promoting a change in public attitudes and progress towards well-being.

²⁴⁶ SSE Riga. Forum: Fight Against Smuggling, 30 June 2022. Available at: <https://www.sseriga.edu/forum-fight-against-smuggling>

²⁴⁷ SSE Riga, *supra note 245*.

On the other hand, the analysts of the Economic Forum point out that, taking into account the geopolitical processes, significant challenges await Latvia in the near future - rapid growth of inflation, when prices grow faster than the income of the population, the cost of energy resources - these factors will have a significant impact on the purchasing power of the population, which in turn, the population's tolerance for smuggling and willingness to purchase illegal goods may increase. Therefore, producers of excise goods, traders, and law enforcement authorities must be prepared for the increase in smuggling.

At the Lithuanian-Latvian border, where there is a risk of smuggling, it is necessary to increase the excise tax very carefully. By increasing the excise tax on cigarettes to about 10% of GDP, the budget revenue increases by about 5-7 million euros, but smuggling is not increasing. When excise taxes are raised to 15% of GDP, smuggling increases so much that income disappears and money needs to be invested to fight smuggling²⁴⁸.

In summary, it can be said that the main factors influencing the smuggling of tobacco products and corruption are high excise taxes, which lead to large price differences in the states, and then the smugglers get huge profits from the smuggling of tobacco products. The factors that cause corruption in this case run parallel to the smuggling of tobacco products - the huge profits obtained encourage bribery of officials so that the risk of being caught is as low as possible, and the low salary received by officials is like an excuse to engage in corruption. Current economic conditions (high inflation, rising electricity prices, rising interest rates) and uncertainty over the Ukraine-Russia war are curbing consumption, which may lead to a greater tolerance for smuggling among the population.

2.2. The role of law enforcement agencies in controlling the smuggling of tobacco products

According to S. Bikelis, et. al.²⁴⁹ the control of the smuggling of tobacco products into the European Union through the external border and their movement within the state, the identification of persons engaged in the illegal circulation of cigarettes, and their prosecution are and, presumably, will always be one of the main means of controlling this social phenomenon. The Lithuanian Customs is the main institution that controls and coordinates the control of

²⁴⁸ Eng.LSM.lv (Latvian Public Broadcasting). Economist: excise duty must be raised carefully in Latvia, september 28, 2020. Available at: <https://eng.lsm.lv/article/economy/economy/economist-excise-duty-must-be-raised-carefully-in-latvia.a375958/>

²⁴⁹ Bikelis S., Giedrytė-Mačiulienė R., Mickėnienė I., Venckėvičienė J. Cigarečių neteisėta apyvarta: kompleksinė reiškinių ir kontrolės priemonių analizė. Vilnius, Lietuvos teisės institutas, 2017. Available at: http://teise.org/wp-content/uploads/2017/04/Cigareciu_apyvarta.pdf

illegal possession of excise goods and smuggling. Other institutions working in this area include the State Border Guard Service (VSAT), the police and the State Tax Inspectorate (VMI). In a very general way, the distribution of the areas of activity of these institutions could be described as follows: police activities in this area mainly include control of retail trade in illegal cigarettes, VSAT takes control of the movement of cigarettes across the state border outside of customs posts (through the "green zone"), VMI cooperates with law enforcement institutions, when violations of the activities of legal importers of excise goods are suspected, the rest of the area of control of the circulation of illegal cigarettes is covered, and in general, as mentioned, the control of illegal cigarette imports is coordinated by the customs. In the organizational structure of the Customs, the Criminal Service of the Customs and the territorial customs offices, which are assigned customs posts and mobile customs groups (mobile group posts), are unique. There are estimates that at least 80 percent of illegal cigarette import (according to the value and quantity of cigarettes) to Lithuania is transitive, its real purpose being Western European countries, where illegal cigarette circulation allows to expect a much higher profit than in Lithuania. Generally, large quantities of transit cigarettes are transported, the main means of transport being semi-trailer trucks or sea containers (with a capacity of up to 1,000 cartons of cigarettes), which move by road and usually through customs posts. Accordingly, such cargoes fall within the scope of customs control.

The contraband norm (Article 199 of the Criminal Code) primarily (to the extent that it is not related to the transportation of specially specified items, e.g. narcotics, weapons, etc.) criminalizes the illegal transportation of mandatorily declared goods and any other method of transfer across the state border of the Republic of Lithuania to third countries and from such countries. Such goods are subject to customs inspection linked to the place and time of entry into or exit from the EU customs territory ("external" EU customs supervision). The basis for applying criminal liability for smuggling is non-presentation of transported goods or other evasion of customs control, i.e. an attempt in one way or another to avoid or deceive the customs inspection (by hiding goods, falsely declaring them or transporting them outside the customs posts) applied to goods entering and leaving the EU customs territory.

The composition of the criminal offense of customs fraud (Article 199-1 CC), the emergence of which was caused by Lithuania becoming a part of the EU customs territory, includes violations of "internal" EU customs supervision. The subject of this crime is goods under customs supervision, which were legally, according to the transit, export, re-export procedure, or illegally imported into the Republic of Lithuania from an EU member state. The

essence of the crime of customs fraud consists of an attempt to avoid or deceive the customs supervision applicable to such goods²⁵⁰.

The norm of illegal non-export of goods or production from the Republic of Lithuania (Article 200 of the Criminal Code) criminalizes the non-fulfilment of the obligation to export goods that must be exported according to the duly formalized export or transit procedure. The criminal offense of failure to export can be established by the fact that the goods were not only exported on time, but also that they were not intended to be exported as required by the documents of the transit or export procedure. Usually, this circumstance is indicated by the fact of selling goods in the territory of the Republic of Lithuania, fictitious formalization of their export, simulation of kidnapping or loss, etc²⁵¹. By the way, the crime of non-exportation of goods is the only one of the three that is formally separated from evasion of customs supervision and signs of fraud; on the other hand, the actual commission of this crime is simply impossible without evading or misleading customs supervision applied to transit and exported goods²⁵².

In all three norms, a quantitatively clear criterion for applying criminal liability, although separated from the "principle of damage", is established, i.e. exceeding the customs value of illegally transported goods, including taxes, by 150 MGL (aggravated crime). Violation related to goods with a value of more than 250 MGL is classified as a serious crime and entails stricter liability according to separate parts of the considered articles. Smuggling of goods worth less than 150 MGL entails administrative responsibility according to the relevant norm of the Code of Administrative Offenses of the Republic of Lithuania (hereinafter - ANK) (Articles 208-217).

The fact that all the above-mentioned criminal acts are intentional is a positive thing; criminal liability can be applied to both natural and legal persons; the criminality of complicity, preparation and attempt stages is ensured, property confiscation is mandatory; the sanctions of

²⁵⁰ Fedosiuk O. Muitų teisės pažeidimas kaip nusikalstama veika: kokį kriminalizavimo modelį turime? *Jurisprudencija*, 25(2), 2018, 333–356.

²⁵¹ Lietuvos Aukščiausiasis Teismas. Byla Nr. 2K-7-30-788/2017. Available at: <https://eteismai.lt/byla/103072789565227/2K-7-30-788/2017>

²⁵² It should be noted that the norms of customs fraud and non-exportation of goods may compete for certain acts. This happens when goods are brought from an EU country to Lithuania, which according to the export or transit procedure must be taken out of the EU customs territory, but in fact they are not taken out, for example, their departure through the customs post is simulated. Such an act formally corresponds to the signs of both customs fraud (Article 199-1 of the Civil Code) and non-exportation of goods (Article 200 of the Civil Code). Arguably, in this competition of norms, the non-export norm "wins", which can be treated as *lex specialis*. The norm of non-exportation of goods can also be applied as an overlap with smuggling, for example, when goods other than those belonging to the export declaration are actually exported.

all norms provide for the possibility of applying a fine as an alternative to deprivation of liberty²⁵³.

In order to make customs control more efficient, investments are made in the equipment of customs inspection. At the beginning of 2012, the Lithuanian Customs purchased a new mobile X-ray control system manufactured by the British company Rapiscan Systems, which was partially financed by the European Anti-Fraud Office. Currently, it is the most modern system among the mobile X-ray control systems used in the customs offices of the Baltic States. This system is used at all customs road posts located at the external borders of the European Union.

The protection of the state border of the Republic of Lithuania, the control of persons and vehicles crossing the state border is carried out by five units of the State Border Guard Service (VSAT). The border with the Republic of Belarus is protected by the VSAT Ignalina, Vilnius and Varėna national teams, while with the Kaliningrad region of the Russian Federation - by the Pagėgii and Coast Guard national teams. These stretches are also the external borders of the European Union and the Schengen area. The sea border and territorial waters of the Republic of Lithuania are protected by the VSAT Coast Guard.

According to VSAT's 2017 activity report, the most popular smuggled goods are tobacco products, which account for almost 96 percent of the cases of smuggling recorded by VSAT. 93.5 percent of all tobacco products intercepted by VSAT was intended for the domestic market, 6.5 percent for Central and Western European market. Since VSAT is responsible for the protection of the state border between the border checkpoints in the performance of its functions, it is natural that in order to avoid checks when crossing the state border, individuals move their criminal acts to places where they think no one can see them. According to various authors, the amount of smuggling through the so-called "green border" is smaller than that transported through border checkpoints, but knowing the differences in the prices of excise goods between countries, the profit for smugglers is huge. After analyzing the routes of smuggling of tobacco products to Lithuania, it was found that the largest part was brought from Belarus. 85 percent (2016 - 93%) of the tobacco products seized by VSAT officers last year were labeled Belarusian, 1% (in 2016 - 0.7 percent) - with Russian excise marks. From 6 to 14 percent, the share of seized cigarettes not marked with excise marks has increased. According to brands, the most popular cigarettes among the seized cigarettes were NZ produced in Belarus (33 percent of all smokers

²⁵³ Fedosiuk O. Muitų teisės pažeidimas kaip nusikalstama veika: kokį kriminalizavimo modelį turime? *Jurisprudencija*, 25(2), 2018, 333–356.

seized), Minsk (30 percent) and Fest (23 percent). In 2015, border guards detained more than 2 million 277 thousand packs of contraband cigarettes in total, in 2016 - 1 million 166 thousand and in 2017 more than 1 million 222 thousand packs of contraband cigarettes. Compared to 2016 it is almost 5% more. The size of the damage caused to the state (the amount of taxes that must be paid) was 3.1 million EUR last year, in 2017 - 3.6 million Eur. So we can see that the scale of smuggling for the Lithuanian market remains high.

Due to its geographical and economic situation (different price levels), Lithuania is a country of transit, transshipment, temporary storage or preparation for onward transportation of illegal tobacco products to Western European countries. Cigarettes marked with stamps of the model established by the Republic of Belarus, in 2014 accounted for 58% of the amount of cigarettes seized by the customs of the Republic of Lithuania. Premier, Minsk, Fest, and NZ cigarettes manufactured at the Gardin tobacco factory "Neman" predominated among the intercepted smuggled Belarusian cigarettes. Compared to 2018, Cigarettes of Belarusian origin accounted for 61 percent. The amount of cigarettes seized by the customs of the Republic of Lithuania, i.e. an insignificant (3%) growth can be seen. Among the intercepted smuggled Belarusian cigarettes, the same production of cigarettes (Premier, Minsk, Fest and NZ) manufactured at the Gardin tobacco factory "Neman" prevailed. In 2018, The Customs of the Republic of Lithuania started 49 pre-trial investigations into the smuggling and/or illegal possession of tobacco products, i.e. 9 percent less than in 2017 (54%). Most (34%) of tobacco products were seized inside the country (66.7% in 2017). 29% were detained at the border with Belarus (in 2017 – 18.5%), near the border with Latvia – 12% (in 2017 – 0.8%), near the border with Poland – 14% (in 2017 – 12.8%), near the border with the Kaliningrad region of the Russian Federation - 11 percent in 2018 (in 2017 - 1.2%) of tobacco products. A new trend is being observed when cigarettes produced at the Neman Gardino tobacco factory in Belarus regularly and legally arrive in Lithuania via transit and after customs storage are resold to companies registered in Moldova (Transnistria), where they leave the EU territory again after formalizing the transit procedures. The further route of cigarette transportation is unknown, but the possibility cannot be ruled out that cigarettes from Transnistria are smuggled into the EU, where the prices of tobacco products are much higher than in Russia, Belarus, Ukraine or Transnistria. Such transportation of cigarettes from Belarus to Transnistria through the territories of Lithuania, Belarus, Ukraine and Moldova by land roads is illogical and economically unjustified. The same scheme has been used for cigarettes produced in the Kaliningrad region of the Russian Federation (Baltijos Tobacco Factory). Shipments of cigarettes are delivered to companies registered in Moldova (Transnistria). In the Kaliningrad region of the Russian Federation, since 2010, there operates a cigarette manufacturer - the company "Zevs and Ko",

which started the production of cigarettes under the new name "New Line". In 2010, Polish customs officials detained a car driven by a Lithuanian citizen at the Lithuanian-Polish border, in which more than 1 million euros worth L&M cigarettes with Russian labels and New Line without labels were found. The aforementioned "New Line" cigarettes were first seized in Lithuania in 2014 (12 cases were identified, more than 4 million cigarettes were seized).

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In 2019, the officers of the Customs Criminal Service (MKT) started 306 pre-trial investigations, 173 of them related to drug smuggling. 8.25 million packs of cigarettes were detained in pre-trial investigations last year (their value is almost 27 million euros). This is a quarter more than in 2018 and 2017, when approximately 6 million packs of contraband

cigarettes were detained each year. In 2020, in pre-trial investigations, MKT officials detained 16.6 million cases of smuggling of packs of cigarettes (its value is about 60 million euros). This doubles the total amount of illegal cigarettes arrested last year (8 million packs). The absolute majority (93%) of cigarettes seized in 2020 were Belarusian, with mint cigarettes accounting for about 9%. In 2021, MKT officers opened 391 pre-trial investigations, of which 202 were opened for the smuggling of narcotic substances (mostly found in mail).

136 investigations have been initiated due to cigarette smuggling, during which 21.64 million packs of cigarettes and 60 tons of tobacco were detained, the total value of which is 81.56 million euros. After the customs analysts evaluated the results of the fight against smuggling, it can be seen that in 2021, the trends of recent years continued to strengthen and become evident: the overall scale and intensity of smuggling flows increased, the variety of ways of hiding cigarettes, and new routes for transporting illegal cigarettes were tried. Seizures of contraband in railway transport have tripled, and the majority of illegal smokers are detained at the border with Belarus, as before. The most common place of detention is the border with Belarus, where officers caught 76% of all cigarettes seized last year. (at the same time last year, 64 percent of illegal smokers were caught by the authorities here). About 21% more contraband cigarettes were detained inside the country. The smuggled tobacco products themselves are also almost all made at the Neman factory in Gardin, so Belarusian cigarettes make up 82 percent of all smokers in total (almost all remaining cigarettes - 17%- without stickers). In 2021, the number of arrests of cigarette smuggling in railway transport has increased significantly. By the end of September, 24 pre-trial investigations into contraband carried by trains were initiated at the Lithuanian customs office alone (8 of these were initiated last year). A total of 835,000 cigarette packs were detained on trains in nine months (worth 2.9 million euros), compared to 210,000 packets during the same period last year (value – 747 thousand euros). Usually, in such cases, cigarettes are hidden in hard-to-check bulk cargo - potassium chloride fertilizer, crushed stone or coal. However, most of the intercepted contraband continued to be transported by trucks, especially in large quantities: 500-1200 boxes (i.e. 250-600 thousand packages) at a time. During the first half of 2022, MKT officers initiated 148 pre-trial investigations, the majority of them (84) were initiated due to drug smuggling. About 11 tons of illegal tobacco and 3.8 million packs of cigarettes were seized, the total value of which is almost 14.5 million euros. Almost all seized illegal cigarettes were made in Belarus - they account for 82 percent of total amount of

contraband. The greater half (55%) of cigarette smuggling was intercepted at the border of Belarus, and 45% - already inside the country²⁵⁴.

According to S. Bikelis (2017), monitoring of the state border with modern electronic border monitoring technologies is extremely important in the operation of VSAT. These technologies are seen as an extremely effective means of controlling the illegal circulation of cigarettes. For example, after implementing such systems on the border with the Russian Federation, violations of the state border in this section in 2013, compared to 2010, decreased by 78 percent. According to VSAT officials, it is obvious that in those places where the state border is being monitored with such technologies, persons who commit violations of smuggling and illegal possession of cigarettes or other goods begin to avoid these sections, choosing for their illegal activities those places that are not yet monitored by modern border monitoring tools. Based on VSAT 2017 activity report, 49.3 percent are controlled by the systems in question (i.e. 525 km) Lithuania's external borders of the European Union. In 2015, such a system accounted for 32% (i.e. 345 km). The stationary border monitoring system has been installed in separate sections of the land border with the Russian Federation (133 km) and the Republic of Belarus (272 km), at the approaches of some border checkpoints and in the territorial sea monitoring section (119.6 km). The state's long-term goal is to monitor the entire external border of the European Union (part of the Republic of Lithuania) with these modern border monitoring systems.

In conclusion, it can be said that the section of the state border with Belarus remains the most affected by smuggling, but it is very effectively combated by using the customs X-ray control system, which perfectly detects illegal goods transported secretly. With the help of such a system, huge quantities of contraband goods are intercepted. Also, as the border guards install border monitoring systems, apply more effective border protection tactics, criminal intelligence measures, and use the forces of other institutions, the resistance of this border section to violations increases. In the author's opinion, although the X-ray control systems used by the customs and the border monitoring tools of the border guards are effective, but after evaluating the profitability of smuggling, taking into account the geographical position of Lithuania and other largely unchanged factors determining smuggling, it can be said that the scale of smuggling of tobacco products will not change significantly in the future.

²⁵⁴ Muitinės kriminalinė tarnyba. 2002 – 2022 m. MKT atskleistų pažeidimų apžvalga. Available at: <https://lrmuitine.lt/web/guest/280>

There is not one specific institution in Latvia that deals only with combating the smuggling of tobacco products. At least following subjects are involved in the fight against tobacco smuggling in Latvia: General Prosecutor's Office of the Republic of Latvia; Internal Security Bureau; Corruption Prevention and Combating Bureau; Anti-Money Laundering Service; Office for the Protection of the Constitution; State Revenue Service; State Police; State Border Guard.

Accordingly, the activities of these institutions are regulated by the following laws. Office of the Prosecutor and its Task are described in the **Office of the Prosecutor Law**²⁵⁵: The Office of the Prosecutor shall be a judicial power authority which independently exercises supervision over the compliance with law within the scope of the competence specified in this Law. The task of the Office of the Prosecutor shall be to respond to a violation of law and to ensure the deciding of the case relating to such in accordance with the procedures laid down in law.

Functions of the Office of the Prosecutor have been presented at Law's Section 2: The Office of the Prosecutor shall: 1) supervise the conformity with laws of pre-trial investigation and operational activities, the intelligence and counterintelligence processes of State security institutions, and the system for the protection of official secret; 2) conduct a pre-trial investigation; 3) initiate and conduct criminal prosecution; 4) maintain the State prosecution; 5) supervise the execution of punishments; 6) protect the rights and lawful interests of persons and the State in accordance with the procedures laid down in law; 7) submit a statement of claim or a submission to a court in the cases provided for by law; 8) take part in court hearings in the cases provided for by law.

Internal Security Bureau Law prescribes the legal status, functions of the Internal Security Bureau (hereinafter – the Bureau) and the competence of the officials of the Bureau. The main functions of the Bureau is described in the Section 4.²⁵⁶ The functions of the Bureau are to detect, investigate, and prevent criminal offences which have been committed by: 1) the officials and employees of the institutions under subordination of the Ministry of the Interior, except for the officials and employees of the Security Police; 2) the officials with special service ranks of the Prison Administration, when fulfilling their service duties in prisons if they are related to violence; 3) the employees of the Port Police, when fulfilling their service duties if

²⁵⁵ Office of the Prosecutor Law. Adoption: 19.05.1994. Entry into force: 01.07.1994. Latest amendment: 30 September 2021. Available at: <https://likumi.lv/ta/en/en/id/57276>

²⁵⁶ Internal Security Bureau Law. Adoption: 17.12.2014. Entry into force: 01.11.2015. Available at: <https://likumi.lv/ta/en/en/id/271327>

they are related to violence; 4) the employees of the local government police, when fulfilling their service duties if they are related to violence.

The purpose of **Law on Corruption Prevention and Combating Bureau** is to prescribe the legal status and functioning of the Corruption Prevention and Combating Bureau in order to pursue corruption prevention and combating with a complex approach, as well as to control fulfilment of the financing provisions of political organisations (parties) and associations thereof. The main functions of the Bureau to Prevent Corruption is presented in the Chapter 3, Section 7 of this Law²⁵⁷: 1) develop a corruption prevention and combating strategy and draw up a national programme, which is approved by the Cabinet; 2) co-ordinate co-operation among the institutions referred to in the national programme in order to ensure implementation of the programme; 3) control implementation of the law On Prevention of Conflict of Interest in Actions of Public Officials, and also compliance with additional limitations laid down for public officials in other laws and regulations; 4) prepare and co-ordinate projects of financial assistance by foreign countries and international authorities; 5) review complaints and submissions in accordance with the competence thereof, as well as carry out inspections proposed by the President of Latvia, the Saeima, the Cabinet and the Prosecutor General; 6) compile and analyse the information about the inspections made, declarations submitted by public officials, any violations detected in the submission thereof and failure to observe the restrictions provided by law; 7) analyse the practice of State authorities in preventing corruption and the resolved cases of corruption, submit recommendations to the relevant Ministry and the State Chancellery for the rectification of discrepancies found; 8) develop a methodology for corruption prevention and combating in the State and local government institutions and in the private sector; 9) compile and analyse the experience of other countries in corruption prevention and combating; 10) analyse laws and regulations and draft laws and regulations, and also initiate to make amendments thereto, submit proposals for drafting new laws and regulations; 11) carry out public opinion surveys and analysis; 12) educate the public in the area of the law and ethics; 13) inform the public of the corruption development tendencies and resolved cases of corruption, as well as the measures taken in corruption prevention and combating; 14) develop and introduce a public relations strategy; 15) in accordance with the competence thereof evaluate the content and results of inspections performed by other institutions; and 16) examine the declarations of public

²⁵⁷ Law on Corruption Prevention and Combating Bureau. Adoption: 18.04.2002. Entry into force: 01.05.2002. Latest amendment: 29 October 2020. Available at: <https://likumi.lv/ta/en/en/id/61679>

officials within the scope laid down by the law On Prevention of Conflict of Interest in Actions of Public Officials.

Functions of the Bureau in Combating Corruption as well are presented in the Chapter 3, Section 8 of this Law²⁵⁸: 1) hold public officials administratively liable and apply sanctions for administrative violations in the field of corruption prevention in the cases provided by the law; 2) carry out investigative and operational actions to discover criminal offences provided in the Criminal Law in the service of State authorities, if they are related to corruption.

The purpose of **Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing** is to prevent money laundering and terrorism and proliferation financing.

Money laundering is closely related to the activities of smuggling tobacco products (due to the nature of financing); it is necessary to review when, according to the law of the Republic of Latvia on the Prevention of Money Laundering and Terrorism and Proliferation Financing, the income received from criminal activities is recognized as illegal. According to Section 4 of this law,²⁵⁹ funds shall be considered as the proceeds of crime: 1) if they have come into the ownership or possession of a person as a direct or indirect result of a criminal offence; 2) in other cases laid down in the Criminal Law. (The term “proceeds of crime” shall be used in the meaning of the term “criminally acquired property” used in the Criminal Law).

Law on the Constitution Protection Bureau prescribes the legal status of the Constitution Protection Bureau. The main tasks of the Constitution Protection Bureau shall be²⁶⁰: obtaining, receipt, compilation, accumulation, storage, analysis, and use of the information related to the national security, protection, economic sovereignty, and ecological threats in accordance with the procedures laid down in law; forecast of threats to national security, prevention or neutralisation thereof in conformity with its competence; development of proposals and programmes in the issues of national security in conformity with its competence; timely and complete informing the authorities implementing State authority and administration and their responsible officials of threats to national security; protection of official secret within the competence laid down in this Law and law On Official Secret; provision of information and materials to the prosecutor’s office or the relevant investigating institution on criminal offences

²⁵⁸ Law on Corruption Prevention and Combating Bureau. Adoption: 18.04.2002. Entry into force: 01.05.2002. Latest amendment: 29 October 2020. Available at: <https://likumi.lv/ta/en/en/id/61679>

²⁵⁹ Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing. Adoption: 17.07.2008. Entry into force: 13.08.2008. Latest amendment: 23 September 2021. Available at: <https://likumi.lv/ta/en/en/id/178987>

²⁶⁰ Law on the Constitution Protection Bureau. Adoption: 05.05.1994. Entry into force: 19.05.1994. Latest amendment: 4 October 2018. Available at: <https://likumi.lv/ta/en/en/id/57257>

and persons who may be accused for committing thereof; performance or organising of performance of certain tasks given by the Cabinet in writing within the scope of its competence; preparation of the Analysis of the National Threat in cooperation with the Security Police and the Military Intelligence and Security Service.

The State Revenue Service is an institution of direct administration under the supervision of the Minister for Finance, which ensures the accounting of tax payments and taxpayers, the collection of State taxes, duties, and other mandatory payments determined by the State in the territory of the Republic of Latvia, and also collects taxes, duties, and other mandatory payments for the budget of the European Union, implements the customs policy and organises customs matters²⁶¹.

According to **Law "On the State Revenue Service"** (Section 2), the principal tasks of the State Revenue Service²⁶² are: to ensure the collection of State taxes, duties, and other State mandatory payments administered by the State Revenue Service in the territory of the Republic of Latvia and on the customs border, and also the collection of taxes, duties, and other mandatory payments for the budget of the European Union; to participate in the development of policy of customs matters, tax and duty administration and disclosure of violations of the law in the field of State revenue and to implement such policy. To develop draft development planning documents, draft informative reports, and draft legal acts in the relevant field; to prevent and detect criminal offences in the field of State taxes, duties, and other mandatory payments determined by the State and in customs matters; to provide civil servants (employees) of the State Revenue Service with training, to inform the public of the importance of the payment of taxes by organising informative activities and competitions, and also to advise taxpayers, in accordance with the procedures laid down in this Law, on the issues regarding application of tax laws and regulations; in accordance with the procedures laid down in laws and Cabinet regulations, to register and record taxpayers and to control the conformity of registration documents with the requirements of the law and actual circumstances; to ensure the fulfilment of the laws and regulations governing the movement of goods subject to excise duty; to decide to grant the status of a public benefit organisation and to ensure supervision of such organisations in accordance with the procedures laid down in the Public Benefit Organisation Law; to provide the necessary information (also without previous request) and to co-ordinate exchange thereof in

²⁶¹ On the State Revenue Service. Adoption: 28.10.1993. Entry into force: 25.11.1993. Latest amendment: 23 September 2021. Available at: <https://likumi.lv/ta/en/en/id/59902>

²⁶² *ibid.*

order to ensure mutual assistance in recovery of tax claims, and also to maintain contact with tax administrations (competent authorities) of the European Union Member States.

The police are an armed, militarised State or local government authority the duty of which is to protect the life, health, rights and freedoms, and property of persons, interests of the society and the State from criminal and other illegal threats. The police have the following tasks (Section 3 of **Law "On Police"**²⁶³) are: to guarantee the safety of persons and the society; to prevent criminal offences and other violations of law; to detect criminal offences and search for persons who have committed criminal offences; in accordance with the procedures specified in law, to provide assistance to institutions, private individuals and associations of persons in the protection of their rights and performance of the tasks specified by law; within the scope of its competence, to carry out administrative and criminal punishments.

The State Revenue Service is an institution of direct administration under the supervision of the Minister for Finance, which ensures the accounting of tax payments and taxpayers, the collection of State taxes, duties, and other mandatory payments determined by the State in the territory of the Republic of Latvia, and also collects taxes, duties, and other mandatory payments for the budget of the European Union, implements the customs policy and organises customs matters. The principal tasks of the State Revenue Service are (Section 2²⁶⁴ of **State Border Guard Law**): to ensure the collection of State taxes, duties, and other State mandatory payments administered by the State Revenue Service in the territory of the Republic of Latvia and on the customs border, and also the collection of taxes, duties, and other mandatory payments for the budget of the European Union; to participate in the development of policy of customs matters, tax and duty administration and disclosure of violations of the law in the field of State revenue and to implement such policy. To develop draft development planning documents, draft informative reports, and draft legal acts in the relevant field; to prevent and detect criminal offences in the field of State taxes, duties, and other mandatory payments determined by the State and in customs matters; to provide civil servants (employees) of the State Revenue Service with training, to inform the public of the importance of the payment of taxes by organising informative activities and competitions, and also to advise taxpayers, in accordance with the procedures laid down in this Law, on the issues regarding application of tax laws and regulations; in accordance with the procedures laid down in laws and Cabinet regulations, to

²⁶³ On Police. Adoption: 04.06.1991. Entry into force: 04.06.1991. Latest amendment: 20 January 2022. Available at: <https://likumi.lv/ta/en/en/id/67957-on-police>

²⁶⁴ On the State Revenue Service. Adoption: 28.10.1993. Entry into force: 25.11.1993. Latest amendment: 23 September 2021. Available at: <https://likumi.lv/ta/en/en/id/59902>

register and record taxpayers and to control the conformity of registration documents with the requirements of the law and actual circumstances; to ensure the fulfilment of the laws and regulations governing the movement of goods subject to excise duty; to decide to grant the status of a public benefit organisation and to ensure supervision of such organisations in accordance with the procedures laid down in the Public Benefit Organisation Law; to provide the necessary information (also without previous request) and to co-ordinate exchange thereof in order to ensure mutual assistance in recovery of tax claims, and also to maintain contact with tax administrations (competent authorities) of the European Union Member States.

In summary, it can be stated that Latvian institutions (General Prosecutor's Office of the Republic of Latvia, Internal Security Bureau, Corruption Prevention and Combating Bureau, Anti-Money Laundering Service, Office for the Protection of the Constitution, State Revenue Service, State Police, State Border Guard) comprehensively fight the smuggling of tobacco products, including the meanings related to the smuggling of tobacco products, such as corruption, money laundering, terrorism.

2.3. Correlation and regression analysis

Correlation and regression analysis models were chosen because they help determine the relationship and strength of relationship between variables. To determine correlations, Pearson's correlation coefficient, which measures linearity, and Spearman's correlation coefficient, which measures non-linearity were used. The resulting nonlinear dependencies were smoothed by logarithmic transformations.

The Pearson correlation coefficient estimates the strength of the linear relationship. A coefficient can be used when the values of the random variables X and Y are measured on an interval or ratio scale and their binomial distribution is normal.

The Pearson correlation coefficient is calculated according to the formula:

$$\hat{\rho} = r = \frac{\overline{xy} - \bar{x} \cdot \bar{y}}{\sqrt{\overline{x^2} - (\bar{x})^2} \sqrt{\overline{y^2} - (\bar{y})^2}} \quad (1)$$

A multiple regression model refers to the generalization of a single variable linear regression model with more than one independent variable in an interval.

$$Y = \hat{a}_0 + \hat{a}_1 X_1 + \hat{a}_2 X_2 + \dots + \hat{a}_k X_k + \hat{\epsilon} \quad (2)$$

Predicting the values of the dependent variable is one of the goals of regression analysis. Assume that the data consists of n variables in a data sequence: (y₁, x₁₁, x₂₁, ... x_{k1}), (y₂, x₁₂, x₂₂, ... x_{k2}), . . . , (y_n, x_{1n}, x_{2n}, ... x_{kn}). The goal is to find the values a₀, a₁, a₂, ..., a_k for the parameters $\hat{a}_0, \hat{a}_1, \hat{a}_2, \dots, \hat{a}_k$, so the written function $\hat{y}(\bar{x}) = \hat{y}(x_1, x_2, \dots, x_k) = a_0 + a_1 x_1 + a_2 x_2 + \dots + a_k x_k$ computes

points $(x_{1i}, x_{2i}, \dots, x_{ki})$ that vary from y_i , $i=1, 2, \dots, n$. The listed values are chosen by applying the least squares method, i.e. those values whose residual errors $\hat{e}_i = y_i - \hat{y}(i) = y_i - (a_0 + a_1x_{1i} + a_2x_{2i} + \dots + a_kx_{ki})$ will reflect the smallest sum of squares $SSE = \sum_{i=1}^n \hat{e}_i^2$. This is how the function $\hat{y}(\bar{x})$ is written, called the regression function.

The predicted value Y is obtained by completing the function $\hat{y}(\bar{x})$ with meanings x_1, x_2, \dots, x_k , which fall within the scope of the data under consideration, i.e.

$$x_i \in (\min_j x_{ij}, \max_j x_{ij})$$

When time series data are used for regression analysis, often the error is not independent over the time period considered. Instead, the errors are serially correlated (autocorrelation). If the error is autocorrelated, the estimation of the ordinary least squares parameters works in the opposite or opposite direction, and the estimation of the standard errors is biased. In this case, a regression model with autoregressive errors is used for autocorrelation.

The empirical study faced certain limitations:

1. Some European countries (e.g. Serbia) do not collect annual data related to smuggling or other illegal phenomena at all.
2. Moldova and Sakartvela recommended other additional indicators to assess mutual relations instead of the proposed ones.

The following variables were included in the analysis, taking into account the specificity of the dissertation goal: y_1 (dependent variable) – the amount of tobacco sold, i.e. legal turnover of tobacco products, cigarette units per year; y_2 – average excise duty on cigarettes in percent per year;

$y_{2.1}$ – VAT for cigarettes in percent. per year; $y_{2.2}$ – specific excise tax; $y_{2.3}$ – value (ad valorem) tax %; y_3 – share of unpaid taxes for seized contraband cigarettes, i.e. i.e. how much tax is lost per year due to contraband cigarettes; y_4 – illegal sale of tobacco products in cigarettes during the year; y_5 – amount of intercepted contraband cigarettes in units per year; y_6 – cases of intercepted contraband cigarettes in units per year; x_1 (independent variable) – corruption perception index; x_2 – money laundering index; x_3 – declared cases of cash transfers across the border in one year; x_4 – declared amounts of cash transfers across the border in one year at the prices of that time; x_5 – identified cases of corruption in state institutions; x_6 – identified cases of money laundering in state institutions; x_7 – identified cases of organized crime in state institutions; x_8 – taxes collected from the trade in tobacco products, in the overall tax structure as a percentage; x_9 - population in thousand persons; x_{10} - the number of officially registered unemployed in thousands persons; x_{11} – employment rate %; x_{12} - average income

per capita, in dollars at current prices; x13 - recipients of social benefits per 100 thousand recipients; x14 – the ratio of the number of bankrupt companies to operating companies in percent; x15 – number of self-employed persons in thousand persons per year; x16 - paid fines in dollars per year at the prices of that time, per 100 thousand population; x17 - cases of reports/complaints about smuggling and corruption per 100,000 population; x18 – direct foreign investments per inhabitant thousand. dollars at the prices of the time; x19 – budget income per capita in thousand dollars; x20 - fines paid for smuggling in dollars at the prices of the time, per 1 million population; x21 - % of all taxes collected from excise goods from GDP; x22 – export of tobacco products per capita in dollars per year; x23 - Imports of tobacco products per capita in dollars per year.

2.4. PEST analysis

PEST analysis is usually carried out in preparation for finding out the specificity of foreign countries and in order to determine the country's macro environment. This analysis is also a useful tool for strategic planning, which allows understanding of the country's markets through a comprehensive assessment of key factors. The acronym PEST stands for Political, Economical, Social and Technological.

P - political factors can have a significant impact on the processes of smuggling regulation and effective control of this phenomenon. When examining political factors, it is worth considering whether the situation in the country is stable, what is the level of taxation and, finally, what is the government's attitude towards the economy.

E - analysis of the economic situation, which should analyze the unemployment rate, GDP growth prospects, per capita spending in the country, etc.

S - in different countries, social and cultural factors affect the scale of smuggling in different ways, so it is worthwhile to study the attitude of consumers towards the government, the attitude towards corruption, and the level of tolerance for illegal phenomena.

T - technological development is necessary in order to fight smuggling more effectively, so in this environment it is appropriate to study the state of the technological infrastructure and its development trends.

3. EVALUATION OF THE EFFECTS OF CIGARETTE SMUGGLING ON THE MOLDOVAN, SAKARTVELIAN AND SERBIAN ECONOMIES

3.1. Reasons for choosing the research base

The research base was chosen in order to conduct an interdisciplinary study combining mathematical – statistical (correlation and regression analysis were applied to identify the determinants of cigarette smuggling in the European countries selected for the research), qualitative (expert interview) and legal regulatory base document analysis methods.

The empirical aim of the dissertation is to assess the impact of cigarette smuggling on the economies of Moldova, Sakartvelo and Serbia. The mentioned countries were chosen because it is from them that the largest flows of contraband cigarettes travel through Lithuania and Latvia to Western Europe. To achieve the empirical goal, the tasks specified in the table are set and a logical sequence of empirical research is created (see Table 6 of Appendix 1).

In the first stage of the research, requests were sent to experts from Sakartvelo, Moldova and Serbia to collect statistical data from 2009 to 2019. Experts from Serbia confirmed that the Serbian Statistics Department does not collect the officially requested data. Experts from Sakartvelo, instead of certain requested data (excise tax on cigarettes, VAT, declared cash transfers (cases) across the border, declared amounts of cash transfers across the border) suggested such indicators as cigarette export, cigarette import, excise tax paid for cigarettes, excise tax paid for import, excise tax paid for tobacco import, excise tax paid for production, excise tax paid for tobacco production, corruption cases recorded in state institutions. Experts from Moldova, instead of certain requested indicators (legal turnover of sold tobacco, excise taxes on cigarettes, cases of corruption in state institutions, cases of money laundering in state institutions, cases of smuggling and corruption in state institutions) suggested using cigars and cigarettes billion pcs., fermented tobacco thousand tons, the specific tax in Moldovan lei per 1,000 cigarettes, the number of persons holding managerial positions in government institutions, the number of active corruption cases and the number of passive corruption cases, the number of tax evasion cases, the number of economic crimes, the number of smuggling cases and the number of customs evasion, counterfeit the number of cases of

After obtaining statistical data, correlation and regression relationships were used to assess the interaction between the amount of fermented tobacco products sold, the specific tax and independent variables, such as the corruption perception index, the number of active corruption cases, the ratio of the number of bankrupt companies to the number of operating companies in Moldova.

After obtaining statistical data by analogy, correlation and regression relationships were used to evaluate the interrelationship between tobacco production, legal trade in tobacco products, excise tax paid for tobacco import and the corruption control index, taxes collected from tobacco trade, in the overall tax structure as a percentage, employment rate, average income per capita in dollars at current prices, exports of tobacco products per capita in dollars per year.

In the second stage, a PEST analysis of the macroeconomic situation of Sakartvelo, Moldova and Serbia was carried out with the help of various statistical databases, evaluating it from the perspective of smuggling of tobacco products.

In the third stage, by sending an email to the experts representing this field to submit an analysis of the legal documents regulating the smuggling of tobacco products, a detailed explanation of the laws was obtained. Experts represent such state institutions as Tbilisi University (Sakartvelo), Belgrade University (Serbia), Academy of Economic Studies in Moldova.

In the fourth stage, based on the conducted empirical research, conclusions and recommendations are presented.

3.2. The results of the correlation and regression analysis

3.2.1. The case of Moldova

Since not all data were available for all the countries in the research sample, the factors for the analysis were selected for each country individually. The following factors (out of all the Y factors described in Section 3.1) were selected for the analysis of the situation in Moldova:

Y1 – not available. The Moldovan experts suggested including Y1_1 (cigars and cigarettes in billion units) and Y1_2 (fermented tobacco in thousand tons) instead. The data on Y1_1 were available for 1998-2003 only, so they were insufficient for the analysis.

Y1_2 – quantity of tobacco products sold, thousand tons, in 2009-19.

Y 2 – not available.

Y2.1 – a fixed 20% VAT tax on cigarettes for 2007-17. The factor was insufficient for the analysis.

The experts suggested including Y2_1 (a specific tax, MDL per 1000 cigarettes) instead of Y 2.

Y2_3 – *ad valorem* tax, percent. The experts also suggested including a new indicator – a specific tax, MDL per 1000 cigarettes (Y2_3_2).

Y3 – not available.

Y4 – not available.

Y5 – available for two years (2015-16) only, so insufficient for the analysis.

Y6 – not available.

Values X3, X4, X8, X20 were not available or substitutes were offered instead.

X5 – three following substitutes were offered: X5M1 – number of offenses (including the cases of corruption and related cases) committed by persons with positions in governmental institutions; X5M2 – number of active corruption cases; X5M3 – number of passive corruption cases.

X6 – the indicator X6M1, representing the number of cases of tax evasion in 2009-17, was offered instead.

X17 – the following indicators were offered instead: X17M1, representing the number of economic crimes; X17M2, representing the number of smuggling and customs duty evasion cases; and X17M3, representing the number counterfeit money producing or putting in circulation.

Unavailability of particular indicators can be explained considering the following arguments: the National Bureau of Statistics does not collect the data on certain categories; other structures, such as the Ministry of Finance, the Customs Service, the Ministry of Economy etc., confront the turbulent periods and are directly affected by the powerful political forces. The political instability leaves its mark on the country's macroeconomic strategies, the policies initiated by the former government, and the economic indicators. At the republican level, there is no organisation that collects and analyses the tobacco industry indicators and provides proposals in this area. Different institutions collect particular data, provide specific proposals, but the situation in the country is not assessed as an aggregate. The Republic of Moldova is a country with 28 years of the experience of independence, but its macro-economic reforms are relatively slow.

Moldova does not have any methodologies to calculate the quantities of the cigarettes which are smuggled out of the country. In some cases, the quantities of smuggled cigarettes are calculated taking into account the quantities of the cigarettes intercepted and confiscated at the border or the quantities of smuggled cigarettes reported to Moldovan officers by the Romanian border police. In the latter case, some indirect calculations could be made, but the data on the successful cases of smuggling are not available. The interviews with the individuals, who possess this type of information, revealed that only about 10% of smuggled tobacco products are detected and intercepted at the Moldovan or Romanian borders, while the remaining 90% of the cases are successful, and the products are smuggled out of the country (they even reach Great Britain) following the pre-arranged schemes.

It should be noted that Moldova recognises the problem of smuggling, as well as the lack of the measures to solve it. The analysis of the available indicators and statistics allows to provide several recommendations at the regional level.

Having analysed the mathematical calculations, the experts from Moldova presented some critical conclusions. The author of this dissertation participated in the international project "Interdependence between Illegal Turnover in Tobacco and Corruption, Money Laundering and Organised Crime", funded by the 'PMI Impact'. Some experts from Moldova and Serbia, who were interviewed during the Project, wished to remain anonymous. Moldova was represented by Prof. Dr. Liliana Condratchi; Serbia - by Assoc. Prof. Dr. Alexandra Fedayev; Sakartvelo – by Prof. Giorgi Gaganidze and Teimuraz Beridze, Tbilisi Ivan Javakishvili State University, Lia Dzebisauri, Deputy Head of the Sarkatvelo National Statistics Office, Prof. Zurab Garakanidze, experts Rati Noselidze and Paata Khintibidze, prosecutor Davit Chkhatarashvili, the Criminal Prosecution Department of Sarkatvelo General Prosecutor's Office, Otar Khvedelidze, Chief Analyst of the Individual Risk Management Department of the Sarkatvelo Tax Inspectorate, Guantsa Meunargia, Head of the Branch for Strategic Development of the Analytical Department under the Ministry of Justice, Levan Gadelia, Chief Specialist of the Branch for Administrative Offenses Detection of the Tax Supervision Department under the Sarkatvelo Tax Inspectorate, and Elguja Loliashvili, Head of the Taxpayer Service Department under the Sarkatvelo Tax Inspectorate.

Article 18 of the Law on Tobacco, which was adopted in 2001 (19 July 2001, No. 386-XV), regulated the support for tobacco cultivation and stipulated that 10-15% of the tobacco excise revenue should be used by the Tobacco Industry Development Agency under the Ministry of Economy and Food Industry of the Republic of Moldova. The funds were intended for the research of the tobacco industry. These provisions were repealed by the Law on Tobacco of 2007 (14 December 2007, No. 278-XVI), but they nevertheless helped to slow down the decline of the tobacco industry between 2002 and 2008. In 2009-10, the production of raw tobacco was stimulated by the growing volumes of the cigarette production, but then declined again²⁶⁵.

Currently, tobacco cultivation in the Republic of Moldova has almost no prospects. This is also observed in other European regions. In the last decade, the volumes of tobacco cultivation have decreased in almost all European countries, since the international tobacco industry prefers importing raw tobacco from other regions. Currently, tobacco is grown in 12 EU member states.

²⁶⁵ Interdependence between illegal trade in tobacco and corruption, money laundering and organized crime. Vilnius, 2020. Available at: <https://repository.mruni.eu/bitstream/handle/007/16540/PMI%20Impact.pdf?sequence=1&isAllowed=y>

The main producers are Italy, Spain, Poland, Greece, Croatia, France, Hungary and Bulgaria, which provide 99% of the tobacco production in the EU. There is a tendency to reduce cultivation areas, mainly due to the decreasing consumption of tobacco products. The EU produces less than 2% of the global annual supply of raw tobacco. In 2018, the EU imported about 420,000 tons (showing an increasing trend) and 120,000 tons (showing a decreasing trend) of raw tobacco (European Commission, 2021).²⁶⁶. Thus, the economic sector, which was one of the most profitable sectors in the Soviet Union, is currently undergoing a deep crisis.

The sector of tobacco production in the Republic of Moldova is also in crisis and is likely to disappear in the long run. In 2014, this perspective was confirmed by Serafim Terenti, the leader of the Association of Tobacco Producers. Serafim Terenti also mentioned that the crisis started back in 2000, when the largest tobacco company, ‘*Tobacco CTC*’, stopped buying tobacco from local growers. In 2014, the leader of the Association of Tobacco Producers stated that there were about 70-80 companies operating in the sector, and more than 500 tobacco factories had closed since 2000. Currently, the largest tobacco production company does not have any contracts with local tobacco growers, raw materials for production are imported from China and other countries since the production delivered by local growers is not of high quality. However, the export to countries, such as Poland, Russia, etc., is continued.

Given that the Moldovan authorities do not control part of the country's territory, the Transnistrian region can act as a source of counterfeit products and a transit area for cigarette smuggling.

The phenomenon of product counterfeiting in the domestic market has been observed since 2012, when the Customs Service, the Border Police, and the Ministry of Internal Affairs recorded many cases of product counterfeiting. The latest market studies show that currently about 6% of tobacco products sold on the Moldovan market are counterfeit. Due to the various bans and restrictions applied to tobacco products at retail outlets, this phenomenon is likely to expand. It is a fact that what is prohibited in the official markets quickly appears in the black markets.

According to Article 123-1 of the Tax Code of the Republic of Moldova²⁶⁷, since 1 January 2008, the excise tax on filter cigarettes consists of two structural components: a specific tax (determined as the monetary value of 1,000 cigarettes) and an *ad valorem* excise tax

²⁶⁶ European Commission. Tobacco: Detailed information related to producers and production of EU tobacco, legal bases and relevant committees. Available at: https://ec.europa.eu/info/food-farming-fisheries/plants-and-plant-products/plant-products/tobacco_en

²⁶⁷ Tax Code of the Republic of Moldova (as amended on 03-03-2023). Available at: <https://cis-legislation.com/document.fwx?rgn=3834>

(determined as a percentage of the minimum retail price). The minimum retail price is set by cigarette manufacturers and importers, so retail representatives may be fined if they sell cigarettes at prices exceeding the minimum retail price (as specified in Article 262-1 of the Tax Code of the Republic of Moldova²⁶⁸). The specific tax applies only to cigarettes without filters.

The Moldovan tobacco excise tax policy consisted of three major stages:

- in 2007-09, the excise rates were very low and hardly increased;
- between 2010 and July 2013, all excise rates increased sharply. In the three-year period, the specific tax increased fourfold, and the *ad valorem* tax rate increased tenfold (from 3 to 30%).
- between July 2013 and 2016, the specific tax rate levied on filter cigarettes increased tenfold (from MDL 30 to 300 per 1,000 cigarettes), while the *ad valorem* tax rate decreased by more than half (from 30 to 12%).

In 2007, the floor of the minimum specific part of the tax was introduced (MDL 8.5 per 1000 cigarettes). It was later abolished, but in July 2016 returned again, and amounted to MDL 400 per 1000 cigarettes (i.e. the tax increased 47 times in 9 years).

In 2014, only the specific part of the tax slightly increased (MDL 0.6 per packet). On 25 March 2014, the Constitutional Court of the Republic of Moldova issued an order stating that the increase in the excise tax on filter cigarettes, introduced by the Parliament of the Republic Moldova in January 2014, contradicts the provisions of the Constitution, and returned the previous excise tax rates. These lower excise tax rates were, however, applied for a short time, and in April 2014, the Parliament the Republic Moldova re-introduced the same tariffs.

Later, the Government of the Republic of Moldova proposed an increase in both the specific and the *ad valorem* part of the tax, and the new rates were to take effect from 2016. The new tariffs were supposed to increase the tax burden levied on cheap cigarettes by MDL 0.5 per packet, while the tax tariff levied on expensive cigarettes could exceed MDL 2 per packet. The international tobacco corporations, which mainly sell expensive cigarettes, tried to prevent this tax increase and started so-called price wars, which led to a decrease in the prices of many international brands by MDL 7 per packet in early 2015. Since the *ad valorem* tax rate was already high, these price wars resulted in the government losing part of its budget revenue. Therefore, the attempts were made to reach an agreement with the tobacco companies, and the new tax rates were introduced on 1 May 2015.

²⁶⁸ *Ibid.*

The specific tax rate was significantly increased, but the *ad valorem* tax rate was reduced. Taken together, the burden of the excise tax levied on filtered cigarettes increased: the excise tax levied on expensive cigarettes increased by MDL 1, and the excise tax levied on cheap cigarettes increased by MDL 2. Compared to the Government's initial proposal, the new tax rates levied on cheap cigarettes were higher, but the tax rates levied on the cigarettes priced above MDL 17 per packet were lower. In March 2016, the Government proposed an increase in the specific tax rate from MDL 200 to 220 per 1,000 filtered cigarettes; they also proposed a reduction in the *ad valorem* tax rate from 18 to 17 percent. Nevertheless, the Parliament of the Republic of Moldova approved different tariffs in June 2016: the specific tax rate was increased by 50 percent (up to MDL 300 for 1,000 filtered cigarettes), and the *ad valorem* tax rate was reduced by 6 percentage points (from 18 to 12 percent). In addition, a new minimum amount of the specific excise tax rate (MDL 400) was introduced. The minimum specific excise tax rate was levied when the amount of the specific tax rate after adding the *ad valorem* rate was lower than the minimum specific excise tax rate.

The average excise tax rate per 1000 cigarettes (calculated as revenue/sales) increased from MDL 13 in 2008 to MDL 260 (i.e. 20 times) in 2015. This tendency was partly due to the substitution of cheap domestic cigarettes with more expensive brands. Since until 2015 the *ad valorem* tax rate was much higher than the specific rate, the increase in the average prices meant that the average excise tax rate also grew (although the excise tax rates themselves were not changed). This generated more revenue for the state budget.

In 2014, the Anti-Tobacco Law was adopted. It provided extremely strict rules for manufacturers and importers of tobacco products, completely prohibited tobacco advertising and smoking in public places, and specified that the information on the harm of smoking had to occupy at least 75% of the information on cigarette packets. Heavy fines were provided for violating the provisions of the law.

Another factor that significantly affected the Moldovan tobacco industry was the sale of the company '*Tobacco CTC*'. Previously, 90.8 percent of the company's shares had been held by the state, but on 11 January 2019, the company was sold. The buyer, '*Le Bridge Corporation*', owner of several duty-free shops, was the major market competitor to the company '*Dufremol*', owned by Ilan Şor, the mayor of Orhei city (who is currently wanted internationally for the involvement in the so-called "Billion Theft" crime).

According to the information provided on the website deschide.md, the final purchase price of the aforementioned shares is not yet known; the only thing known for sure is that the state had previously set the price of MDL 235.57 million for the '*Tobacco CTC*'.

Since cigarette smuggling is stimulated by the differences in cigarette prices in different countries and limited by anti-smuggling measures, the changes in cigarette prices are a significant factor that could have affected and can affect cigarette smuggling both in the Republic of Moldova and its neighbours.

The further analysis considers only the data with dynamic series of at least 10 years (2009-19) (see Figure 2 of Appendix 2).

Figure 2 indicates that the sales of fermented tobacco products have been falling dramatically since 2012. It can have been caused by the significant growth of the specific tax rate, especially since 2016 (from 75 thousand t per 1000 cigarettes to 200 thousand t per 1000 cigarettes in 2017) (see Figure 2 of Appendix 2).

The statistically significant dependencies also revealed the strong relationships between the sales of tobacco products ($Y1_2$) and the specific excise tax rate ($Y2_1$) ($r = -0.859$, $p = 0.0007$), i.e. when the specific tax rate was growing, the sales of tobacco products were decreasing. Since the specific tax rate had an effect on the decline of the sales of fermented tobacco, the dependence of $Y2_1$ on X was evaluated. Table 7 of Appendix 1 presents only the statistically significant relationships.

The moderately strong negative relationship exists between the specific tax rate and the corruption perception index ($r=-0.730$), i.e. when the specific tax rate is increasing, the corruption perception index tends to decrease (thus, corruption tends to increase). Thus far, Moldova has not been successful in controlling and reducing corruption (this is especially true of 2012-16, when deterioration of the corruption control indicator was recorded). Literature sources unequivocally state that corruption is one of the major challenges faced by Moldova. This is also revealed by the mathematical calculations reflecting the relationships between the specific tax rate levied on cigarettes and independent variables (see Figure 3 of Appendix 2). There is a strong positive relationship between the specific tax rate and the number of active corruption cases ($r=0.857$) (i.e. an increase in the specific tax rate levied on cigarettes leads to a greater number of active corruption cases) and between the specific tax rate and the ratio of the number of bankrupt companies to operating companies ($r = 0.785$) (i.e. an increase in the specific tax rate levied on cigarettes leads to a greater ratio of the number of bankrupt companies to operating companies).

The correlations between the additional indicators, proposed by the experts, revealed that the indicators $X1$ and $X5_M2$ have the same effects as the specific tax rate in the period under consideration (see Table 8 of Appendix 1). Further in the research, the regression model for the specific tax rate was developed (see Table 9 of Appendix 1). The interpretation of the equation is as follows: variable $X5_M2$ has a statistically significant effect on $Y2_3_2$ ($p<0.05$), i.e. in the

period under consideration (2007–17), an increase in X5_M2 by 1 unit leads to an average increase in Y2_3_2 by 1.4 units (per 1000 cigarettes).

Summarising, it can be stated that a more active fight against corruption (measured as the number of the active cases of corruption) has a significant impact on cigarette taxes. The correlations revealed that Y2_1 and Y2_3_2 affect corruption.

3.2.2. The case of Sakartvelo

To solve the problem of unavailability of the data to represent Y1, the experts from Sakartvelo suggested including additional indicators to represent their country: Y1_1 (production of cigarettes (million units) and Y1_2 (legal turnover of tobacco products, million USD per year). The following indicators were proposed to replace Y2: YS_1 - excise tax levied on cigarettes (million USD); YS_2 - excise tax levied on import (million USD); YS_3 - excise tax levied on import of tobacco (million USD); YS_4 - excise tax levied on production (on the sales of domestic production) (million USD); YS_5 - excise tax levied on production of tobacco (on the sales of domestic production) (million USD).

Here are some reasons why certain indicators were unavailable:

Y2 – there is no VAT levied on products. Sakartvelo has only 18% VAT for taxable turnover or taxable imports;

Y2.2 – not available;

Y2.3 – not available;

Y3 – not available;

Y4 – not available;

X5 – not available;

X6 – not available;

X7 – the number of cases of corruption and smuggling was offered instead;

X14 – not available.

Further in the report, only the strong relationships between Y and X are presented.

The calculations revealed that cigarette production (Y1_1) has the strongest statistically significant negative relationships with corruption control index (X1), taxes collected from the trade in tobacco products as a percentage of the total tax structure (X8), employment rate (X11), and budget revenue per capita in thousand USD (X19) (see Figure 3 of Appendix 2).

The legal circulation of tobacco products (Y1_2) was found to have the strong statistically significant correlations with corruption control index (X1), employment rate (X11), average income per capita in USD at current prices (X12), budget revenue per capita in thousand

USD (X19), and imports of tobacco products per capita in USD per year (X23) (see Figure 4 of Appendix 2).

The excise tax levied on cigarettes (YS_1) was found to have the strong statistically significant correlations with corruption control index (X1), taxes collected from the trade in tobacco products as a percentage of the total tax structure (X8), employment rate (X11), and average income per capita in USD at the current prices (X12) (see Figure 4 of Annex 2).

The excise tax levied on tobacco imports (YS_3) was found to have strong statistically significant correlations with corruption control index (X1), taxes collected from the trade in tobacco products as a percentage of the total tax structure (X8), all taxes collected from excise goods as a percentage of GDP (X21), exports of tobacco products per capita in USD per year (X22) (see Figure 5 of Annex 2).

Variables Y5 (the quantity of smuggled cigarettes seized, in units per year) and Y6 (the cases of smuggled cigarette seizures per year) were represented by a very short data period (2013-17), so the mathematical calculations did not apply to them.

Further in the research, the dependences of Y1_1 and Y1_2 on X are analysed. Table 10 of Appendix 1 presents only statistically significant dependences represented by Pearson and Spearman correlation coefficients.

Since the cigarette production had a downward trend over the 11 years, the other Xs in Table 10 were inversely correlated, i.e. the corruption control indicator tended to grow (which indicates that corruption in the governmental institutions tended to decrease) ($r=-0.718$), the share of the taxes collected from the trade in tobacco products as a percentage of the total tax structure tended to grow ($r=-0.722$), the unemployment rate tended to decrease ($r=0.88$), while the total employment rate tended to increase ($r=-0.916$).

Budget revenue per capita, all taxes collected from excise goods as a percentage of GDP, and exports and imports of tobacco products per capita tended to increase. Meanwhile, the legal turnover of the trade in tobacco products, which demonstrated a growing trend in the period under consideration, had the strong positive relationships with X1, X11, X12, X19, and X23 (see Table 10 of Appendix 1).

The excise taxes levied on cigarettes tended to increase, which positively affected the corruption control indicator (corruption was decreasing) and the share of the taxes collected from the trade in tobacco products as a percentage of the total tax structure (see Table 11 of Appendix 1). A non-linear positive relationship was also found between the excise tax levied on cigarettes and the budget revenue per capita in thousand USD, all taxes levied on excise goods as percentage of GDP, and exports and imports of tobacco products per capita.

The excise duties levied on the import of tobacco products, as well as the excise taxes

levied on cigarettes, had positive strong and moderately strong relationships with indicators X (see Table 12 of Appendix 1). The excise taxes levied on tobacco production had a tendency to decrease during the period under consideration, which determined the statistically significant negative relationships.

The results of the correlation analysis, which indicates the strength and direction (an increase or a decrease) of the pairwise relationship, lead to the following conclusions:

1) there exist the statistically significant positive and strong relationships between the legal production of tobacco products (Y1_2), the excise taxes levied on cigarettes (YS_1), the excise taxes levied on the import of tobacco products (YS_3), and the corruption control indicator, which means that values Y tend to improve with the growth of this indicator. The higher are values Y, the lower is the level of corruption in governmental institutions. To ensure the stable level or the growth of values Y, the authorities should focus on improving the values of the corruption control indicator.

2) the strong positive correlations between YS_1 and YS_3 with X8 and X19 reveal that an increase in excise taxes is likely to lead to an increase in the share of the taxes collected from tobacco products, thus supplementing the budget of the state with revenue per capita.

3) there exist the strong positive correlations between Y1_2, YS_1 and YS_3 with X22 and X23 (tobacco exports and imports), which indicates that the legal production of tobacco products (Y1_2), the excise taxes levied on cigarettes (YS_1) and the excise taxes levied on the import of tobacco products (YS_3) promote international trade in tobacco products.

In addition, the classical linear regression models, which satisfy the assumptions below, were developed (see Tables 23-25 of Appendix 1):

$$Y1_1 = 7223 - 1848 \cdot X1 - 659.43 \cdot X8, R^2 = 0,71, MAPE = 20,02, AIC 196 \quad (4)$$

Interpretation: variables X1 and X8 statistically significantly affect Y1_1 ($p < 0.05$).

In the period under consideration (2009–19), an increase in X1 by 0.01 units leads to an average decrease in Y1_1 by 18.48 units (million units). An increase in X8 by 0.1 units (percent) leads to an average decrease in Y1_1 by 65.94 units (million units).

$$YS_1 = -62,8514 + 45.6 \cdot X8, R^2 = 0,70, MAPE = 29.98, AIC 97,6. \quad (5)$$

Interpretation: variable X8 statistically significantly affects YS_1 ($p < 0.05$).

In the period under consideration (2009–19), an increase in X8 by 0.01 units (percent) leads to an average increase in YS_1 by 45.6 units (million units).

$$YS_3 = -455,9 + 127,88 \cdot X8, R^2 = 0,87, MAPE = 41,15, AIC 129,75. \quad (6)$$

Interpretation: variable X8 statistically significantly affects YS_1 ($p < 0,05$).

In the period under consideration (2009–19), an increase in X8 by 0.01 units (percent) leads to an average increase in YS_3 by 127.88 units (million units).

The models of the regression analysis reveal that the share of the taxes collected from the trade in tobacco products mainly depends on the fluctuations in the excise taxes levied on cigarettes and imported tobacco (X8). In the period under consideration (2009–19), the excise taxes levied on cigarettes and imported tobacco products increased, which positively affected the taxes collected from cigarettes. From the statistical-mathematical perspective, other independent variables have no effect on YS_1 and YS_3.

3.2.3. The case of Serbia

The relevant calculations could not be performed for Serbia since the country does not have the official statistical database.

3.3. The results of the PEST analysis

3.3.1. The case of Moldova

Having become part of the Soviet Union at the end of the Second World War, Moldova regained the status of an independent republic in 1991, after the collapse of the Soviet Union. Moldova is a landlocked European country, located between Ukraine and Romania in the region formerly known as Bessarabia. Although Moldova is not an EU country, it is located on the borders of the EU.

The population of Moldova is about 3.5 million; the area of the country is nearly 33,850 km². The national language is Moldovan (the same as Romanian); other recognised regional languages are Ukrainian, Russian, and Turkish.

By the level of its development, Moldova is considered one of the poorest countries in Europe. The country's economy is highly dependent on low-productive agricultural activities.

Although Moldova has been an independent state since 1991, Russian forces still control the territory east of the Dniester River (Transnistria) and support the Slavic part of the population. The Moldovan government seeks the EU integration and carries out the political, free trade, and free market oriented reforms²⁶⁹. Nevertheless, due to the confrontation between pro-Russian and pro-Western forces, the political and economic situation in the country remains unstable.

Since smuggling as a phenomenon is greatly affected by the political, economic, social and technical environment, it is relevant to conduct Moldova's PEST analysis and identify which

²⁶⁹ The World Bank. Country Context: Moldova. Last Updated: Apr 07, 2023. Available at: <https://www.worldbank.org/en/country/moldova/overview>

factors stimulate, and which help to fight smuggling in Moldova. The results of Moldova's PEST analysis are reviewed in Table 17 of Appendix 1, while the detailed description of Moldova's political, economic, social and technical factors that affect the extent of smuggling in the country is provided below.

Summarising, it can be stated that smuggling in Moldova is stimulated by the political, economic, social, and technical environment. In the political environment, smuggling is stimulated by the country's political instability, slow and ineffective (often theoretical) progress of the structural reforms, legal liberalisation of money laundering, and the existence of the uncontrolled separatist territories. However, the political steps are being taken in the fight against oligarchy, the new public administration strategies and laws are being adapted, and the legal anti-smuggling framework is being improved.

In the economic environment, smuggling in Moldova is stimulated by the underdeveloped economy, which is dependent on remittances, the size of the shadow economy, the economic dependence on the low-productive agricultural sector, insufficient activeness of the labour force, high inflation rate, which reduces the real income of the population, high interest rates, which lead to high borrowing costs, a large international trade deficit, instability of the financial market, which facilitates illicit money flows, the underdeveloped private business sector, and high taxes levied on tobacco products. The economic factors which can contribute to reducing the extent of smuggling are the growing wages, the relatively stable exchange rate of the national currency against the euro, and the trade and investment partnership with the EU.

In the social environment, smuggling in Moldova is stimulated by insufficient activeness of the educated labour force, low public trust in the authorities, weakening family values, the decreasing population, and the open niches for smuggling at the Moldovan-Ukrainian border. The social factors which can contribute to reducing the extent of smuggling are the reduction in income inequality, international cooperation in the area of border protection, promotion of re-emigration, and the EU support for Moldovan civil society.

In the technical environment, smuggling in Moldova is stimulated by the ineffective border control, and the low level of technology implementation in public and financial institutions, which leads to the ineffective work and vulnerability of these institutions. The positive factors of the technical environment are the international cooperation with the EU and Ukraine, the implementation of the EU standards, the development of IT, manifested as the expansion of 3G and 4G networks, the promotion of the use of mobile electronic signatures, access to the INTETE resources, the development of the R&D, management and control systems, the integration of the revenue management information systems, and the development of the e-government system.

3.3.2. The case of Sakartvelo

Sakartvelo (formerly Georgia) became an independent republic after the collapse of the Soviet Union in 1991. Located in the South Caucasus, among Russia, Azerbaijan, Armenia and Turkey, the country occupies a favourable geographical position between Western Asia and Europe, and between the Black and Caspian seas. The population of Sakartvelo is about 3.9 million; the area of the country is 69,700 sq. km. The capital of Sakartvelo is Tbilisi. The official language of the country is Kartvelian; it is spoken by more than 86 percent of the population. The minorities speak Russian, English, Assyrian.

Although Sakartvelo is an independent state, Russian forces still exert a significant influence on the country's politics and territorial integrity by supporting the separatist territories of Abkhazia and South Ossetia (Samchablo).

Sakartvelo is not a member state of the EU, but its territory is near the borders of the EU. In 2000, Sakartvelo signed the Association Agreement with the EU, thus declaring the priority to seek the EU membership. The pursuit of the EU integration has led to pro-Western political reforms and the development of the market-oriented economy, but the standard of living in the country is not high. According to the World Bank, the level of economic development in Sakartvelo is below average.

The analysis of the political, economic, social, and technical environment (PEST) in the context of smuggling helped to identify which factors stimulate, and which restrain smuggling activities in Sakartvelo. The summary of the results is presented in Table 18 of Appendix 1. The detailed description of the country's political, economic, social, and technical environment is provided below.

Summarising, it can be stated that smuggling in Sakartvelo is stimulated by the political, social and technical environment, while the economic environment is favourable for restraining illegal activities. In the political environment, smuggling is stimulated by the separatist regions, the vulnerability of the banking sector, and the absence of a national security plan. The positive trends, however, can be noticed in the country's international integration, the effective fight against corruption, the political and economic reforms, and the development of the legal framework.

In the economic environment, the favourable conditions for smuggling are formed by the sensitivity of the national economy to external markets, high unemployment rate, low and volatile wages, high inflation rate which reduces the purchasing power of consumers, the large

foreign trade deficit, and an increase in the excise tax on tobacco products. Nevertheless, smuggling can be restrained by the environment favourable to economic and business development, the expanding foreign trade, the reduced energy dependence, an increase in the exchange rate of the national currency against the euro, the reduced interest rate, and the tax reforms manifested in the reduction of tax rates, simplification of taxation and regulation.

In the social environment, smuggling is stimulated by the population decline, high income inequality, human rights issues, especially marriages of underage girls and child labour, the negative physical and psychological impact of armed conflicts, the decline of public trust in the government, and the lack of the operational and judicial experience, as well as the niches for smuggling in the separatist regions. The positive social factor, which can restrain smuggling, is high literacy of the population.

In the technical environment, smuggling is stimulated by the lack of modern technologies and funds for R&D activities, as well as the low level of IT modernisation in business enterprises. The positive factors in Sakartvelo's technical environment are the performance of the border security functions, the protection of intellectual property rights, and the implementation of IT in the public sector.

3.3.3. The case of Serbia

Serbia is a landlocked country at the crossroads of the Central and South-eastern Europe, situated in the central Balkan region. Serbia's state border with Albania and part of the border with Macedonia and Montenegro are controlled by the province of Kosovo, which unilaterally declared independence from Serbia on 17 February 2008.

The population of Serbia, excluding the province of Kosovo, is about 7 million. The capital of the country is Belgrade, the official language is Serbian, which is the native language to 88 percent of the population.

In recent years, Serbia has deviated somewhat from the course of democracy, which is why the country's rating has dropped from "free" to "partly free", according to the "Freedom House", the US non-governmental organization²⁷⁰. The ratings of the Serbian democracy have dropped due to the violations of political and civil rights, the pressure on mass media, and the political opposition to civil society organisations, exerted by the country's ruling Progressive Party. It is believed that the violations of this nature lead to corruption, which has increased

²⁷⁰ Freedom House. Freedom in the World 2020: Serbia. Available at: <https://freedomhouse.org/country/serbia/freedom-world/2020>

significantly. In some cases, the institutions, capable of successfully fighting corruption, are disbanded.

Since 2007, Serbia has formally followed the policy of military neutrality. Serbia's economy is considered to have reached a higher than the average level of development²⁷¹, and is dominated by the service sector. The country's Human Development Index is fairly high (Serbia is ranked 63rd in the report by the United Nations)²⁷².

The analysis of the political, economic, social and technical environment (PEST) helped to identify which factors stimulate, and which restrain smuggling in Serbia. The results of the analysis are summarised in Table 19 of Appendix 1. The detailed descriptions of the Serbian political, economic, social and technical environment is presented below.

Summarising, it can be stated that smuggling in Serbia is mostly stimulated by the factors of the political, social and technical environment, while the factors of the country's economic environment are favourable for restraining smuggling. In the political environment, smuggling is stimulated by the incomplete and inconsistent legal reforms, poor institutional environment, and insufficient operational efficiency. The efforts are, however, being made to reform the country's legal and institutional frameworks; the country seeks the international integration and is developing the legal and institutional measures to prevent illegal activities.

In the economic environment, smuggling is stimulated by the large scale of migration, the growth of the shadow economy, the large budget deficit and public debt, the large imbalance in international trade, and the regular increases in the taxes levied on tobacco products. Smuggling can be restrained by such economic factors as the gradual growth of the national economy, the decrease in the unemployment rate, the increase in real wages, the policy of reducing inflation, the stability of the national currency rate, the low interest rate which reduces borrowing costs, the reduced VAT rates for consumer goods and services, the reduced personal income tax which increases the real income of the population, and the measures undertaken to combat the shadow economy.

The major determinants of smuggling in the social environment are the declining population, the existence of outdated societal values, high income inequality, the spread of distorted Western values, corruption in the education sector (especially higher education), and the low level of public trust in the national government. The positive factors of the social

²⁷¹ The World Bank. Serbia: on the way to EU accession. April 8, 2013. Available at: <https://www.worldbank.org/en/results/2013/04/08/serbia-on-the-way-to-eu-accession>

²⁷² United Nations. Human development reports: Serbia. Data updates as of September 8th, 2022. Available at: <https://hdr.undp.org/data-center/specific-country-data#/countries/SRB>

environment that can restrain smuggling are the high level of the population's literacy, the cultivation of family values, and the positive public opinion about the EU integration.

In the technical environment of Serbia, smuggling is stimulated by the lack of the clear border demarcation and the poor condition of the border infrastructure. The positive factors, which can restrain smuggling in the technical environment, are the development of the institutional infrastructure of the border protection and control, the development of the technical equipment operated by the Customs Administration, the implementation of the EU legal and technical standards, and the use of IT in the public sector.

4. ANALYSIS OF LEGISLATION ON TOBACCO SMUGGLING

4.1. The tobacco control legal framework in Moldova

Interpol data show that illicit trade in tobacco products is a catalyst for drug, arms, and human trafficking and even terrorist activities.

Cigarette manufacturers are concerned about the sharp increase in smuggling from the Republic of Moldova in the fourth quarter of 2019 (cigarette smuggling is rapidly approaching one-third of all smuggling).

“There is clear evidence of the political influence of the black market. Current decision-makers in Chisinau are returning to the measures used by the previous government to reduce smuggling to EU countries – the closure of duty-free shops on the so-called Transnistrian border,” said Gilda Lazar, director of corporate affairs and communication at Japan Tobacco International (JTI) in Romania, Moldova and Bulgaria.

In the Republic of Moldova, the illicit trade in tobacco products and the smuggling of tobacco products are not the subjects of any separate law. The acts and elements of smuggling are described in the Criminal Code, the Customs Code and the Code of Offences. In addition, the Republic of Moldova has not adopted a National Strategy to Combat Illicit Trade, a strategy to develop an integrated action plan for all responsible state structures.

In recent years, the number of registered smuggling cases in the Republic of Moldova has been as follows: 163 in 2012, 151 in 2013, 216 in 2014, 229 in 2015, 240 in 2016, 130 in 2018, 81 in 2019 (in the northern region)²⁷³.

The number of smuggling cases increased significantly between 2013 and 2016. The situation is dangerous because with such a large number of cases of smuggling of alcohol, cigarettes, anabolics, amber and other goods, complete elimination of smuggling is hardly possible. However, the laws are tightening, and the attitude of law enforcement agencies is also tightening.

The fight against smuggling is becoming a necessary imperative, which at the same time is a guarantee of customs and discipline, and also entails the protection of citizens' fundamental rights and freedoms.

²⁷³ Interdependence between illegal trade in tobacco and corruption, money laundering and organized crime. Vilnius, 2020. Available at: <https://repository.mruni.eu/bitstream/handle/007/16540/PMI%20Impact.pdf?sequence=1&isAllowed=y>.

Currently, in the Republic of Moldova, the offence of smuggling is described in Chapter X, Article 248, of the Criminal Code, in addition to economic crimes. The term “contraband act” means either an offence under criminal law or an offending violation of the law, depending on the social risk posed by the act in question.

In accordance with Article 224 of the Criminal Code of the Republic of Moldova No 1149/2000 (Official Gazette of the Government of the Republic of Moldova, 2000, No 160, 1160), smuggling is defined as follows:

“The cross-border movement of goods, by avoiding or circumventing customs controls, which:

- is carried out or has been carried out in large or extremely large quantities, or repeatedly,

- is carried out or has been carried out by a group of persons who organised the smuggling activity,

- is carried out or has been carried out by a responsible person who has exercised his or her working position,

- is carried out or has been carried out through the use of customs and other documents,

- is accompanied by a declaration of circumvention or false declaration of goods by customs and other documents,

- includes the transport of narcotics, psychotropic substances with a strong, poisonous, radioactive and explosive effect, harmful waste, weapons, explosives, firearms and ammunition other than smooth-bore hunting weapons and their ammunition, cultural goods as well as cultural goods that are not returned to customs territory, which are removed from the country, although their return is compulsory, shall be considered as smuggling and punishable by law.”

Article 248 of the Criminal Code is divided into paragraphs setting out what penalties are imposed for a violation of the law committed by a natural and legal person and defining the value of smuggled goods. In addition to the above conditions, goods with a value of more than 100 average monthly wages in the economy are considered smuggled. This specification of value in criminal law facilitates the classification of the offence of smuggling: it helps to distinguish crimes from offences and gives rise to appropriate liability.

The above-mentioned distinctions (responsibility of natural and legal persons, value of smuggled goods) will not be found in the provisions of the Customs Code of the Republic of Moldova, which criminalise the offence of smuggling. In this situation, it is therefore concluded that the provisions relating to the offence of smuggling apply to both natural and legal persons and that it is only possible to penalise offenders under the Criminal Code.

To sum up, the state needs a clear legal framework in line with EU standards in order to classify acts and attempts to commit an act as a crime under the elements of a crime.

The Law on Amendments to Certain Legal Acts, initiated on 27 May 2020, resulted in amendments to Articles 248 and 264² of the Criminal Code and Article 287 of the Code of Offences.

Legal interventions and amendments to the existing provisions of the Criminal Code and the Code of Offences are necessary in order to stop the highly lucrative smuggling activity.

It is proposed to strengthen the penalties provided for in Article 248 [Smuggling] of the Criminal Code for acts containing components of the crime. In many cases, the reason for the crimes described in Article 248 of the Criminal Code is material gain. Therefore, in the first place, legal interventions should be proposed in respect of the substantive penalties provided for by law.

In the latter case, according to the general rules, Article 64 [Fines] of the Criminal Code defines that the amount of the fine for natural persons may range from 500 to 3000 units of account, and the amount of fines for offences committed for material gain may reach up to 20,000 units of account, depending on the amount of the unit of account applicable at the time of the commission of the offence. The amount of the fine shall be determined taking into account the seriousness of the offence, the material situation of the offender and his family [...], and where the offence was committed by a legal person, account shall also be taken of the economic and financial situation of that legal person.

According to Article 248(1) of the Criminal Code, goods that have been smuggled across the border of the Republic of Moldova and whose value exceeds 100 average monthly wages in the national economy are considered smuggled goods. According to the estimates of the executive, the average monthly wage in 2020 is projected to reach MDL 7,953. Thus, the material damage caused by the criminal offence of smuggling is equal to at least 795,300 MDL (100 average monthly wages x 7,953 lei = 795,300 MDL \approx 15,906 pcs). The penalty for the offence of smuggling is a fine of 1,500 to 2,000 units of account, either free public works lasting 180–240 hours, or imprisonment of up to 2 years for a natural person. A legal person shall be punished with a fine of 2,000–4,000 units of account by depriving a legal person of the right to carry out certain activities.

It should be noted that the legal harm of the offence of smuggling (which in terms of units of account is equal to 15,906 units) is approximately 8 times greater than the maximum material penalty that can be imposed on a person. It is therefore proposed to replace the current fines of 1,500 to 2,000 units of account with fines of 2,000–3,000 units of account. At the same time, it is proposed to increase the penalties provided for in Article 248 of the Criminal Code (in

accordance with the standard and aggravating components) by introducing imprisonment up to 12 years as the maximum penalty for the offence of smuggling, thus making smuggling a serious crime.

Accordingly, when considering the offence of smuggling as an offence of law, it is appropriate to propose to increase the material penalties provided for in Article 287(10) of the Code of Offences for the offence of smuggling from the current 60–90 units of account to 90–200 units of account²⁷⁴.

4.2. The tobacco control legal framework in Sakartvelo

In 2017, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia (hereinafter - the Ministry), in close cooperation with the National Centre for Disease Control and Public Health (NCDC) and other government agencies, the United Nations Development Program, the agencies implementing the WHO Framework Convention on Tobacco Control, and the World Health Organization conducted the first economic study related to the tobacco control policies – the co-called Investment Case research, which revealed the detrimental effects of tobacco on the population’s health and the economy, allowed to assess the objectives of the tobacco control intervention for sustainable development in the context of saving the state budget funds and preventing tobacco-caused diseases and premature mortality, and estimated the costs of inaction in the area under consideration. The research revealed that about 11,400 people in Sakartvelo die every year from tobacco-related diseases; every fifth person is a passive smoker. The annual economic costs related to tobacco in Sakartvelo amount to GEL 824.9 million, i.e. 2.43 percent of the country’s GDP.

The four priority areas of the tobacco control intervention within the WHO Framework Convention on Tobacco Control are as follows:

1. Taxation on tobacco products.
2. Smokin bans in public places.
3. Complete prohibition of advertising, promoting and sponsoring the sale of tobacco products.
4. Requirements for tobacco packaging and labelling.

²⁷⁴ Chancellery of the Government of the Republic of Moldova. LEGE pentru modificarea unor acte legislative (art. 248, 2642 Cod penal, art. 287 Cod Contravențional). Available at: [https://cancelaria.gov.md/sites/default/files/document/ attachments/proiectul_384.pdf](https://cancelaria.gov.md/sites/default/files/document/attachments/proiectul_384.pdf)

The above-mentioned interventions are estimated to prevent 53,100 deaths over 15 years and reduce the total tobacco-related economic costs to GEL 3.6 billion by 2033.

On 1 May 2018, Sakartvelo started the campaign ‘Against smoking’ which helped to achieve almost all main strategic goals and objectives, defined in the 2013-2018 State Tobacco Control Strategy. Sakartvelo successfully applies international measures, especially as it relates to the articles and recommendations provided in the WHO Framework Convention on Tobacco Control.

The so-called "New Generation Law" for tobacco control was passed in 2017, and anti-smoking policies have been in place since 1 May 2018, when all tobacco advertising and trade promotion measures were banned, and the special rules for the sale of tobacco products were established. On 1 September of the same year, drive tobacco was banned, and the new tobacco packaging and design rules were introduced, including the use of large-format medical warnings about the harm of tobacco to health, and the use of the relevant pictograms on tobacco packaging.

In 2017, the amendments to the laws on tobacco control, advertising, broadcasting, lotteries, profit-making and gambling were adopted. The amendments to the Code of Administrative Offenses and the Tax Code entered into force in 2018. Also, in 2018 the following ordinances were adopted:

1. On 15 January 2018 - Government Resolution No. N14 "On the rules regulating the maximum norms of active substances (nicotine, tar, carbon gas) in cigarettes with filters and without filters, measuring and regulating the amount of the active substances and providing medical warnings at the points of cigarette sales, on the boxes/blocks and packages".
2. On 1 May 2018 – Order of Sakartvelo Minister of Labour, Health and Social Affairs No. N01–20/N "On the approval of the forms of information reporting documents about the standard-based measurement of the amount of active substances (nicotine, tar, carbon gas) in cigarettes with filters and without filters, submitted in a mandatory manner by a manufacturer and/or importer of tobacco products".
3. On 1 May 2018 – Order of Sakartvelo Minister of Labour, Health and Social Affairs No. N01-19N "On the approval of broadcasting and the use of radio icons to indicate the harm of smoking in the cases of the use of tobacco products, tobacco accessories and/or tobacco while demonstrating a video or other creative product". In addition, based on Article 5.3 of the WHO Framework Convention on Tobacco Control, a draft resolution of the Government of Sakartvelo "On the protection of tobacco control state

policy in public institutions and the approval of state relations with stakeholders of the tobacco industry" was prepared.

The developments in the implementation of the major articles of the WHO Framework Convention on Tobacco Control in Sakartvelo:

- 1) Article 8 of the WHO Framework Convention on Tobacco Control - Protection against exposure to tobacco smoke – implementation:
 - Laws prohibiting the use of tobacco in public/workplaces;
 - About 96 percent of the laws will be implemented, but their full implementation requires strengthening and promoting the civil society activism and obedience to the tobacco control laws.
- 2) Article 9 of the WHO Framework Convention on Tobacco Control - Regulation of the constituents of tobacco products – implementation:
 - Regulation of the permitted norms of nicotine, tar and carbon gas in tobacco products;
 - On 15 January 2018, Government resolution No. N14, which established the maximum permitted norms of the constituents of tobacco products and introduced the requirement to provide information about the constituents of the tobacco products; however, full implementation of the resolution requires systemic strengthening of activation mechanisms and inter-institutional cooperation.
- 3) Article 11 of the WHO Framework Convention on Tobacco Control - Packaging and labelling of tobacco products – implementation:
 - Medical warnings on tobacco products;
 - Sakartvelo Tobacco Control Law and Resolution No. N14 of 15 January 2018 indicate which percentage of the surface area of a packaging (a package/block/box) of tobacco products must be occupied by medical (basic and additional) information (icons). Medical information must take up at least 30 percent of the surface area of inhalable tobacco and at least 65 percent of the surface area of all other types of tobacco product packaging. Information rotation is allowed. Provision of false, misleading or incorrect information about the composition of tobacco products, harmful effects, etc. is also prohibited. Based on the National Tobacco Control Act, a standardized cigarette packaging is mandatory from January 2021.

The environment prohibiting tobacco advertisement. On 30 May 2017, the Parliament of Sakartvelo adopted a package of legislative amendments. It establishes the legal basis of the

new generation of tobacco control, which fully reflects compliance with the obligations under the Association Agreement between Sakartvelo and the EU and the WHO Framework Convention on Tobacco Control. It should be noted that the new laws prohibit any advertising, sales promotion and sponsorship of tobacco products, tobacco accessories and smoking equipment. The aforementioned amendments to the Sakartvelo's legal framework *inter alia* include tobacco control; they are related to the regulation of advertising, broadcasting, lotteries, gambling and profit-making games, administrative violations and the relevant amendments to the Tax Code. Tobacco Control ordinances, including the Order of Sakartvelo Minister of Labour, Health and Social Affairs No. N01-19N of 1 May 2018, stipulate that if television, radio and other mass media broadcast material, the content of which includes tobacco products or their use, then the mass media shall provide a pre-broadcast warning/notification and post-broadcast warning/notification about the harm caused by tobacco.

Tobacco product sales and their regulation – newly emerging products. The laws adopted on 30 May 2017 brought the legal framework regulating the sale of tobacco products in Sakartvelo closer to the EU and international standards. The EU Directive No. 2014/40/ determined the following changes in the Sakartvelo's legal framework:

- the control of toxic substances in tobacco products was introduced;
- the obligation to provide information about the constituents of tobacco products was introduced;
- the so-called "plain packaging" standard was adopted;
- tobacco advertising, sales promotion and sponsorship were prohibited;
- storing tobacco products in visible places at points of sale was prohibited;
- the surface area occupied by medical warnings (icons) about the harm caused by tobacco products (both basic and additional information) on tobacco product packages was increased to at least 65 percent of a package (block/box);
- regulation of electronic cigarettes and smokeless tobacco was introduced;
- retail sale of tobacco products by using mechanical and electronic devices, the Internet and mail was prohibited
- the quantity of 20 cigarettes in one packet is allowed; the sale of unrolled cigarettes is prohibited.

Sakartvelo has been using a tobacco product labelling and identification system which meets the requirements of the EU directive No. 2014/40/. However, there are also problematic areas that have not yet been covered by the country's legal framework. These are:

- combined medical warnings about the harm of tobacco, placement of information in small print pages, elimination of other technical differences;

- strengthening the composition and safety control of electronic cigarettes and other devices;
- control of additives in tobacco products;
- prohibition of the use of flavour enhancers;
- prohibition of chewing tobacco;
- unification of some differences in terminology not to weaken the content of the adopted legal norms.

The minimum age of persons to whom tobacco can be sold is 18 years of age. The sale of tobacco products by mechanical or electronic means is prohibited. Presenting tobacco products in a way that they are visible from the outdoors is prohibited (clear visibility of tobacco products indoors has been prohibited since 2021). Distance selling of tobacco products, including online sales and mail order sales, is prohibited. It is prohibited to sell tobacco products without packages and more or less than 20 cigarettes in a package. The sale of any sweets, toys or other goods with an illustration of tobacco is prohibited. Other forms of advertising, sales promotion and sponsorship of tobacco products are prohibited. It is prohibited to advertise ashtrays and other tobacco accessories or devices on which the brands of tobacco products are displayed, as well as to promote the sale of these accessories. It is prohibited to distribute tobacco products for free or at a low price and to carry out other tobacco sales promotion campaigns.

The country has a policy of raising taxes on tobacco products. In this respect, it is difficult to balance the taxes levied on different types of tobacco products, such as tobacco in carry-on baggage, e-cigarettes and other products, based solely on the tax rates for filtered and non-filtered cigarettes. Another challenge is to ensure the enforcement of laws when tobacco products (especially e-cigarettes) are advertised and sold to minors, and sales promotion and marketing campaigns are carried out by using modern means of communication (the Internet, social networks, etc.). There is also a need to develop a mechanism for legal response to promoting displaying and/or advertising tobacco products in print media.

The use of tobacco brands on other products (brand extension) is restricted, but a complete ban on businesses undertaking similar practices to reduce marketing costs could also be approved.

The use of any tobacco products (including e-cigarettes and heated tobacco devices) is prohibited in public places and on public transportation, except for casinos, slot machine salons, taxis and scooters, specialty cigar bars, prisons and detention centres; smoking by actors and/or other performers is not prohibited during a play/performance and/or theatrical action in the building intended for permanent professional theatre activities. From 1 January 2021, smoking is no longer allowed in stadiums with administration. Special smoking areas can be arranged in

airport transit zones, psychiatric and palliative care facilities. Liability for violation of the laws is enshrined in the Code of Administrative Law Violations of Sakartvelo.

The legal framework of the country is supported by at least 85 percent of the population, and the law abidance rate amounts to 98 percent. In accordance with Article 8 of the WHO Framework Convention on Tobacco Control, which directly enshrines protection measures against passive smoking, Sakartvelo has been striving to implement the strategic goals and objectives defined in the Tobacco Control Strategy and the Action Plan. In 2013, the National Centre for Disease Control and Public Health was established. The purpose of the Centre is to strengthen tobacco control measures in close cooperation with non-governmental organizations, the health care sector and international organizations, especially the World Health Organization, and to carry out public health programs.

Despite the positive results achieved in the area under consideration, Sakartvelo still needs to ensure the continuity of tobacco control, as well as monitoring and improving the existing legal framework.

Tobacco control is a significant aspect of Sakartvelo's EU integration process. In accordance with the Association Agreement between the EU and Sakartvelo, concluded in 2014, one of Sakartvelo's obligations is effective application of the international agreements recognized by the EU member states in the area of health care. This is especially true of international health care standards and the provisions of the WHO Framework Convention on Tobacco Control.

According to Article 71 (e) of the Association Agreement, the parties shall cooperate in combating and preventing illegal trade in goods, including tobacco products, across national borders.

According to Article 283 of the Association Agreement, the parties shall take countermeasures against smuggling of excise goods by expanding cooperation and gradually harmonizing excise tax rates for tobacco products, taking into account the situation in regions and the provisions of the WHO Framework Convention on Tobacco Control. The countries shall seek to strengthen regional cooperation.

The process of cigarette smuggling is also subject to customs regulations, issued by the Customs Department with the Revenue Service under the Sakartvelo Ministry of Finance. In accordance with Part 14 of Article 289 of the Customs Anti-Smuggling Act, if a case of smuggling is detected, the offender is punished with a monetary fine as a sanction.

4.3. The tobacco control legal framework in Serbia

The tobacco industry value chain shows that in the Republic of Serbia, the tobacco market players are various public bodies directly or indirectly affected by the level of cigarette

smuggling. The most influential institutions in this area are the Tobacco Administration and the Customs Administration, which form part of the country's Ministry of Finance²⁷⁵.

The Tobacco Administration was established in accordance with the provisions of the Tobacco Act. As mentioned above, it falls directly within the jurisdiction of the Ministry of Finance. The competence of the Tobacco Administration shall include the issue of licences for the manufacture, processing, import and export of tobacco and tobacco products, the registration of manufacturers, processors and distributors of tobacco and tobacco products and the storage of their lists, as well as the surveillance of the tobacco market, the drawing up of regulations and ordinances governing the tobacco industry. The Tobacco Administration cooperates with other authorities and organisations responsible for combating the illicit trade in tobacco products, raw and processed tobacco. In 2019, the Tobacco Administration contributed to the Task Force on Tobacco Smuggling, which led to positive results in stabilising the market and reducing illegal tobacco plantation areas.

The Customs Administration is an administrative authority under the authority of the Ministry of Finance of Serbia. It performs administrative and professional functions related to customs clearance of goods, supervision of customs procedures, passenger control, foreign trade and provision of services, and other functions assigned by law.

In recent times, the Serbian Customs Administration is strengthening its administrative and operational capacity, which, for example, resulted in an additional 10 % increase in the collection of customs duties in the first 9 months of 2018. The Information Technology Strategy of the Customs Administration should be updated on the basis of the latest operational strategy and the 2017–2020 Action Plan. There is still a lack of modern strategic and modern management methods, especially for quality and change management. Work is ongoing on the implementation of a functional, interconnected IT system, but there is a tendency that qualified staff continues to leave the IT sector, so the development of a system for maintaining and motivating qualified IT engineers remains a topical problem.

Significant efforts and investments are needed to ensure the compatibility and interoperability of the country's IT systems with the EU IT systems (the investments in question should be financed from the national budget in the coming years). The risk management system needs to be strengthened. The risk analysis of imported and exported products should be carried

²⁷⁵ Zubović J., Djukić M., Jovanović O. Economic aspects of tobacco control and empirical findings in Serbia. *Institute of Economic Sciences*, Belgrade, 2020, 189–191.

out before they enter or leave the country. This analysis should be carried out in a coherent and comprehensive manner in line with the provisions of the EU Customs Code²⁷⁶.

The legal framework in the area under consideration is constantly being improved and applied to the EU's legislative provisions, bearing in mind that Serbia is seeking EU membership. The most important laws governing the tobacco market are as follows:

1. The Tobacco Law;
2. The Excise Duty Law;
3. Law on the Ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products;
4. The Customs Law.

Under the **Excise Duty Law**²⁷⁷, tobacco products (cigarettes, cigars, cigarillos, shredded tobacco and other tobacco products) are subject to excise duty. The law states that the weighted average retail price of tobacco products is determined once a year, by 15 February of the current year at the latest, while the minimum excise duty is set every six months, until 15 February and 31 July of the current year. The weighted average retail price is calculated by dividing the total value of all cigarettes on the market at the retail price by the total quantity of cigarettes released to the market in the Republic of Serbia in the previous calendar year.

In addition to the specific excise duty on cigarettes, there is also a proportional 33 % excise duty on all types of cigarettes. The latter excise duty shall be calculated on the basis of the retail price of cigarettes charged by the manufacturer or importer. Excise duty on cigarettes shall be adjusted on the basis of the annual index of consumer prices only if, in the calendar year preceding the year in which the adjustment is made, the consumer price index exceeded 2 %. Excise duty on tobacco and tobacco products shall be calculated on the basis of the price per kilogram. The retail price of tobacco and tobacco products shall be determined by manufacturers or importers who must inform the Tobacco Administration of the retail price fixing and publish this price in the Official Gazette of the Republic of Serbia with the written confirmation of the Tobacco Administration. Under the Excise Duty Act, the sale of tobacco products at prices different from those set and published by the manufacturer or importer is prohibited. The retail price must also be marked in retail stores and clearly visible to consumers.

²⁷⁶ European Commission. Serbia 2019 Report. Brussels, 29.5.2019 Available at: <https://www.stat.gov.rs/media/4783/serbia-report-2019.pdf>.

²⁷⁷Excise Tax Law. DMK: *Tax&Finance*. Available at: https://www.dmk.rs/uploads/Serbia%20Excise%20tax%20law_dmk.rs.pdf

Tobacco markets and tobacco production processes are regulated by the Serbian Tobacco Law²⁷⁸. In addition to the state as the main regulator and consumers as end users of tobacco products, there are many different actors in the tobacco market that operate under the provisions of the Tobacco Act. These include manufacturers, processors, wholesalers, retailers, importers and exporters of tobacco products. The Tobacco Law lays down the conditions, methods and classification requirements for the manufacture, processing and marketing of tobacco and processed tobacco. It also lays down the principles of registers, accountings and records, defines the type of data to be included in the information on the composition of the product and the labelling of tobacco products, and lays down the conditions for monitoring the application of the provisions of the law.

The Tobacco Law defines all the elements relating to tobacco and its products and specifies the functions of the Tobacco Administration as an administrative body within the Ministry of Finance. The requirements for the various parts of the tobacco product value chain shall be determined in accordance with the provisions of this Law. The Law also regulates the management of technological processes, the assessment of tobacco quality, and the specifics of public procurement procedures in the area concerned (preparation of public procurement documents, invitation to participate, submission and acceptance of an application, publication and analysis of the proposed prices, drawing up of lists of candidates involved and formalisation of the entity that has won the public procurement).

The amendments to the Tobacco Law adopted in December 2018 paved the way for a more effective fight against illicit trade in tobacco products and increased market control. The Tobacco Law now lays down more detailed obligations for all the businesses to which it applies, allows for more effective work of inspection authorities and adequate penalties policy for all participants in the tobacco market. The Law on Amendments to the Tobacco Law was also drafted under the responsibility of the Tobacco Administration (the latter law entered into force on 1 January 2020). The aim of the amendments is to optimise and digitalise the implementation of administrative procedures carried out by the Tobacco Administration under the e-Paper programme for administrative procedures and regulatory simplification for the years 2019-2021.

The main amendments to the original Tobacco Law concern the production of tobacco products and the processing of tobacco, the introduction of new tobacco processing activities, as well as the regulation of trade in tobacco products under a special procedure. Full

²⁷⁸ Zakon o duvanu [Tobacco Law]. *Paragraf: Pravna i ekonomska izdanja*. Available at: https://www.paragraf.rs/propisi/zakon_o_duvanu.html

implementation of the law will ensure better coordination and cooperation between all responsible authorities, which in turn will lead to greater transparency and better provision of public services to businesses. The amendments to Articles 80 and 84 of the Tobacco Law concerning the rights, duties and powers of inspectors of phytosanitary, agricultural, republican sanitation and republican markets in order to improve the control and suppression of illicit trade in tobacco and tobacco products have been approved. The amendments to Articles 86 and 93 of the Tobacco Law make it possible to harmonise the provisions on the imposition of penalties. As a result of these amendments, revenue from excise duty on tobacco products increased from 99.48 billion dinars in 2018 to 105.93 billion dinars in 2019, an increase of 6.5 % per year²⁷⁹.

In May 2017, the Republic of Serbia ratified the World Health Organisation Framework Convention on Tobacco Control. This demonstrates the country's determination to strengthen regulation in the area in question. On the basis of that convention, the Protocol to Eliminate Illicit Trade in Tobacco Products was adopted²⁸⁰. 40 States are required to ratify the Protocol in order for it to enter into force. This was achieved in 2018 and the Protocol entered into force on 25 September 2018. The Republic of Serbia ratified the Protocol with the adoption of the Law on the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products, which is one of the most important laws to prevent cigarette smuggling.

The Protocol is based on three main poles²⁸¹:

1. preventing the illicit trade in tobacco and tobacco products by controlling the supply chain from the processes of tobacco cultivation, manufacture or import of tobacco products to the retail sale of tobacco and tobacco products;
2. the application of laws restricting illegal activities and providing for dissuasive sanctions;
3. international cooperation in technical and administrative management, law enforcement and legal matters.

It should be noted that the so-called “detection and tracing” system, which is one of the most important tools for controlling the supply of tobacco and its products, as provided for in the

²⁷⁹ Zubović J., Djukic M., Jovanović O. Economic aspects of tobacco control and empirical findings in Serbia. *Institute of Economic Sciences*, Belgrade, 2020, 189–191.

²⁸⁰ WHO FCTC. Protocol to Eliminate Illicit Trade in Tobacco Products. Available at: <https://fctc.who.int/publications/m/item/brochure-protocol-to-eliminate-illicit-trade-in-tobacco-products>

²⁸¹ WHO FCTC. Protocol to Eliminate Illicit Trade in Tobacco Products. Available at: <https://fctc.who.int/publications/m/item/brochure-protocol-to-eliminate-illicit-trade-in-tobacco-products>

‘Protocol to Eliminate Illicit Trade in Tobacco Products’, is not yet fully applied in Serbia, although progress has been noted²⁸².

The Republic of Serbia has reached a relatively high level of the customs union. The new Customs Law, which allows for further adaptation of the legislation under the EU Customs Code, was adopted in December 2018. The main objectives of the new Customs Law are the shift towards a paperless business and economic environment and the simplification, modernisation and rationalisation of customs procedures, thus creating conditions for greater legal certainty, predictability and uniformity of business, simplification of customs regulations and procedures and more efficient customs operations according to modern needs. The following provisions were adopted on the basis of the new law:

1. Provisions for the appointment of customs agents for the clearance of certain types of goods or specific procedures.

2. Provisions on the form, content, methods of completion and completion of customs declarations: these provisions unify customs documents, normalise and simplify customs procedures and procedures for the completion and submission of customs declarations and other documents used therein, and facilitate the entry of data into an electronic transit declaration.

3. Provisions on customs procedures and customs formalities.

4. Resolution on special conditions for trade with the Autonomous Province of Kosovo and Metohija: this Resolution establishes special conditions for trade with the Autonomous Province of Kosovo and Metohija during the period of validity of United Nations Security Council Resolution No 1244.

5. Provisions on customs concessions: those provisions lay down the types, quantities and value of goods which, in accordance with the provisions of the Customs Law, are not subject to import duties, and lay down the terms, conditions and procedures for exemption from import duties.

The new Customs Law entered into force on 17 June 2019, and it is therefore too early to draw conclusions on the effectiveness of its application.

In 2019, Serbia recorded positive developments in the application of laws aimed at combating the illicit trade in tobacco products. All responsible public authorities applying these laws are under the supervision of the Task Force on Combating Tobacco Smuggling. The state

²⁸² Joossens L, Feliu A, Fernandez E. The Tobacco Control Scale 2019 in Europe. Brussels: Association of European Cancer Leagues, Catalan Institute of Oncology; 2020. Available at: <http://www.tobaccocontrolscale.org/TCS2019.pdf>

institutions' readiness to take not only theoretical but also practical actions to combat the illicit trade in tobacco products is also demonstrated by the announcement of 2017 and 2018 as the "Year of Fighting the Shadow Economy".

The Government of the Republic of Serbia has set up a Task Force on Combating Tobacco Smuggling, headed by the Chief of Police. The first positive results are the increase in the number of seizures of illicit tobacco products, in particular cigarettes. However, even the increased activity of the public authorities controlling the application of those laws will remain ineffective if the cases are not properly heard and closed in court. The Council of Foreign Investors supported the efforts of the Republic of Serbia to combat illicit trade in tobacco and tobacco products and proposed the establishment of a special prosecution unit to be responsible for investigating cases of excise goods²⁸³. This measure would undoubtedly have a significant impact on the reduction of cigarette smuggling, but it has not yet been introduced.

Despite the general stabilisation of the market, there is still a negative impact on the illicit raw tobacco market, which in turn jeopardises the sustainability of the entire supply chain of the tobacco industry, as well as the country's employment rate and GDP, which are directly affected by both the production and marketing chains of tobacco products. Furthermore, the illicit trade in tobacco products has a negative impact on consumers themselves, as the products consumed are of unknown origin, the conditions for their production, storage and transport are not controlled, illegal production is available to a minority of consumers, the production does not contain any information on the health damage of the products, and packaging may contain illegal advertising and images.

The Government of the Republic of Serbia is working to suppress the illicit trade in tobacco products. As mentioned above, this is done by increasing the quantities of illicit tobacco products seized. According to data from the Ministry of Interior of the Republic of Serbia, 21 tonnes of raw tobacco and 175,000 packets of cigarettes were seized during 2018. The number of cases against different categories of criminal operators was also higher than in previous years. However, the inadequacy of the work of the prosecutor's office and the courts remains evident, leading to an estimated steady share of illicit tobacco consumption in the share of general consumption and an increasing share of illicit cigarette trade in the general trade²⁸⁴. If the practice of inefficient prosecution and judicial work continues in the future, it can be predicted

²⁸³ White Book: Proposals for improving the business environment in Serbia. The Council of Foreign Investors, 2019. Available at: https://fic.org.rs/wp-content/uploads/2020/09/e-WB_2019.pdf

²⁸⁴ *Ibid.*

that the share of the illicit tobacco trade will only grow, as the shadow economy and smuggling flourish when actors can expect high earnings in low-risk and low-punitive conditions.

The gap between producer and retail prices, as well as the simple transportation of products, makes tobacco products an attractive product for illicit trade. Smuggling of raw tobacco and cigarettes increased at the end of 2012, with a sharp increase in excise duty on tobacco products. When analysing smuggling routes, cigarettes and raw tobacco come from Montenegro and Bosnia and Herzegovina and move towards the EU, while Serbia serves as a transit country. Rising tobacco prices in the Republic of Serbia (in line with the EU price level) have a significant impact on the growth of the shadow market. However, if the increase in cigarette prices were gradual, the flow of cigarettes purchased from illegal sources would be lower. Moreover, given that the structure of the market is not disturbed, and the fact that prices of all types of cigarettes are not increasing in the same way, it is not surprising that tobacco products are increasing in the shadow sector.

In conclusion, if the legal framework to combat illicit trade in tobacco products is not established and adequately applied in the Republic of Serbia, the development of illicit trade will lead to a number of negative socio-economic phenomena, such as declining budget revenues, intensification of criminal activity and corruption. International cooperation, the supervision of cross-border trade, the identification of smuggling cases and the exchange of information between the authorities responsible are key factors to suppress illicit trade in tobacco products.

The analysis of the results of scientific literature and Empirical research has enabled the development of a model for the impact of cigarette smuggling on the macroeconomic situation in Moldova, Sakartvelo and Serbia in the context of interdisciplinarity. This model has been created after the analysis of the scientific literature: Kimball, Abumere et al., Achim et al., Adom & Williams, Aghazadeh et al., Akdemir et al. Akintoye & Araoye, Alazab & Broadhurst, Albanese, Ali & Isse, Allum & Gilmour, Amaral & Quintin, Antonopoulos & von Lampe, Arli & Tjiptono, Arsic et al., Aziani A., Dugato, Baker. Bangasser, Bardhan, Barrera et al., Batabyal & Chowdhury, Begović & Mijatović, Benassi et al., Benson & Decker, Billingslea, Bjelajac, Blecher, Boivin, Boles, Borošak & Šumah, Borricand, Bossler & Holt, Bouet & Roy, Brodie et al., Brown et al., Buehn et al., Burke, Chan & Owusu, Chen, Chionis & Chalkia, Chow, Clark, Clement, Cohen et al., Colladon & Remondi, Colledge, Dahari et al., Dastir & Mukherjee, de Mendonca & da Fonseca, de Soto, Dell'Anno & Solomon, Di Nicola & Terenghi, Dobson et al., Dwiputri et al., Elbahnasawy & Revier, Elgin & Schneider, Enste, Fan et al., Filippov, Fisman et al., Friebel & Guriev, Fried et. al. Galeotti, Gasparèniènè, Remeikienè et al., Gilmour, Gjinovci, Goel et al., Golub & Mbaye, Goolsbee et al., Harkin et al., Hart, Heinemann & Schneider, Herwartz et al., Hoda & Mansoor, Holz et al., Hopton, Yip et al., Innes, Yu et al., Yusuff and

other authors²⁸⁵ (see Appendix 2, Figure 16). The model includes an approach to the impact of cigarette smuggling on national economies in a broad sense, linking cigarette smuggling to money laundering, organised crime and, of course, corruption. In particular, cigarette smuggling, money laundering, corruption and organised crime are closely interlinked and feed each other, so it would not be appropriate to include cigarette smuggling alone in the model. Cigarette smuggling unequivocally finances organised crime, which results in a low probability of detecting organised crime in European countries, making it easier and simpler to carry out cigarette smuggling. The greater corruption in countries, the easier it is to smuggle cigarettes, and at the same time, the corrupt officials are funded by cigarette smuggling. Society in the countries examined has long been aware that corruption is a negative social phenomenon, but it is involved in corruption, otherwise, it would be more difficult to carry out everyday life activities. Money laundering is also carried out through cigarette smuggling to meet personal needs, legalise money in the official market and fund corrupt schemes. Society is apathetic about money laundering and organised crime because it does not believe that the accused of illegal activities will be punished accordingly, not only by removing individuals from their positions but

²⁸⁵ Kimball K. E. Smuggling and recovery of non-packet information. US Patent 8,306,023 B2, Nov. 6, 2012; Abumere S. I., Arimah B. F., Jerome T. A. The informal sector in Nigeria's development process. Tyrimo ataskaita Nr. 1. Ibadanas: Plėtros politikos centras, 1988; Achim M. V., Borlea S. N., Gaban L. V., Cuceu, I. C. Rethinking the shadow economy in terms of happiness. Evidence for the European Union member states. *Technological and Economic Development of Economy*, 24(1), 2018, 199–228; Adom K., Williams C. C. Evaluating the explanations for the informal economy in the third world cities: some evidence from Koforidua in the eastern region of Ghana. *International Enterprise Management Journal*, 10, 2014, 427–445; Aghazadeh A., Ardebili M., Ashouri M., Mahdavisabet M. Organized smuggling of goods in the criminal law of Iran and Turkey. *Journal of Politics and Law*, 10(5), 2017, 24–28; Akdemir N., Sungur B., Başaranel B. Examining the challenges of policing economic cybercrime in the UK, 2020; Akintoye K. A., Araoye, O. E. Combating e-fraud on electronic payment system. *International Journal of Computer*, 25(8), 2011, 48–53; Alazab M., Broadhurst R. An Analysis of the Nature of Spam as Cybercrime, 2017; Albanese J. The causes of organized crime: do criminals organize around opportunities for crime or do criminal opportunities create new offenders? *Journal of Contemporary Criminal Justice*, 16(4), 2000, 409–423; Ali M. A., Isse H. S. Determinants of economic corruption: a cross-country comparison. *Cato Journal*, 22(3), 2003, 449–466; Allum F., Gilmour S. Routledge handbook of transnational organized crime. London, Routledge, 2012; Amaral P. S., Quintin, E. A competitive model of the informal sector. *Journal of Monetary Economics*, 53(7), 2006, 1541–1553; Antonopoulos G. A., von Lampe K. Where there's smoke, there's money: an introduction to the special issue on the illicit tobacco market. *Trends in Organized Crime*, 19(3 / 4), 2016, 211–217; Arli D., Tjiptono F. Consumer digital piracy behaviour among youths: insights from Indonesia. *Asia Pacific Journal of Marketing and Logistics*, 28(5), 2016, 898–922; Arsic M., Arandarenko B., Radulovic B., Randelovic S., Jankovic I. Causes of the shadow economy. In: Krstic G., Schneider F. (eds) Formalizing the shadow economy in Serbia. Contributions to Economics, 2015: 21–46; Aziani A., Dugato M. Cigarette Trafficking – Introducing the Transnational Dimension of Cigarette Trafficking in Europe and Beyond. In: ITTP NEXUS in Europe and Beyond, edited by Alberto Aziani and Marco Dugato. Milano: Transcrime – Università Cattolica del Sacro Cuore, 2019; Baker D. J. The concept of cybercrime: applying the general part to limit offending via cyber means. *People's Procuratorial Semimonthly*, 1, 2018, 1–14; Bangasser P. E. The ILO and the informal sector: an institutional history. © International Labour Organization, 2000; Bardhan P. The economist's approach to the problem of corruption. *World Development*, 34(2), 2006, 341–348; Barrera V., Malm A., Decary-Hetu D., Munksgaard R. Size and scope of the tobacco trade on the darkweb. *Global Crime*, 20(1), 2019, 26–44; Batabyal S., Chowdhury A. Curbing corruption, financial development and income inequality. *Progress in Development Studies*, 15(1), 2015, 49–72; Begović B., Mijatović B. (ed.) CORRUPTION at the Customs: combating corruption at the customs administration. Belgrade: Center for Liberal-Democratic Studies, 2002; etc.

also by seizing their wealth and avoiding criminal liability. The interaction of phenomena is affected by the difficult economic situation in European countries, the level of public tolerance and low awareness, high-income opportunities, mild sanctions policies, insufficient trade and cash flow controls, easy border crossing procedures, differences in cigarette prices, excise policies and ethical and historical events.

CONCLUSIONS

In order to achieve the goal of the research and fulfil the set objectives, the author of the thesis had raised three research questions. The answers to these questions have been formulated during the development of the work.

The section of the work "The problem of criminalization of tobacco smuggling: example of Latvian and Lithuanian legislation" provides an answer to the first research question (What are the shortcomings in determining the composition and qualification of criminal offenses that threaten the interests of the national economy in the sphere of customs activity in Lithuania and Latvia (Articles 190 and 191 of the Criminal Code of Lithuania, Articles 190 and 191 of the Criminal Code of Latvia) and what initiatives to improve legal acts are immediately necessary?).

The work section "Peculiarities of tobacco smuggling" provides answers to the second research question (What measures of an organizational nature are immediately necessary presently required in order to effectively limit the smuggling of tobacco products in Lithuania and Latvia?). It should be noted that these organizational solutions are diverse: it is both to strengthen intensive international institutional cooperation to facilitate the fight against various forms of tax fraud and tax evasion by all cooperating countries, as well as reducing the level of corruption, as well as inter-institutional cooperation of law enforcement authorities, and the fact that civil society organizations must raise their organizational capacities, manage and implement municipal projects in a transparent manner, continuously improve the knowledge of anti-corruption and good governance, and share practices with other institutions, as well as other moments which are further described in the conclusions and proposals.

In response to the third research question (What positive lessons in the field of legal regulation and practice could be learned from this for countries whose policies and economy are oriented towards European integration and joining the European Union?), it was concluded that each analyzed country has its own characteristics. For example, Lithuania is a neighborhood with the Grodno tobacco factory, and the external customs border of the European Union; Serbia is seeking EU membership and the legal framework in the area under consideration is constantly being improved and applied in line with the EU's legislative provisions; the position of the Transnistria Separatist Region in the Republic of Moldova, etc. However, the conducted analysis reveals both areas where wider unification is possible, and areas where creative use of the experience of other countries is possible.

In the continuation - conclusions and proposals - these and other important points will be examined in more detail.

1. Conclusion

By merging the concepts of smuggling and organised crime, organised smuggling can be defined as an illegal activity of goods, valuables and/or people across the border of a particular country, carried out by an organised group consisting of three or more persons, developing joint plans, whose joint efforts are directed towards material benefits.

Proposal

On the basis of an analysis of literature, the author of this work proposes to define organised smuggling activities as an *economic crime related to the illegal transport of goods or other items across the state border, committed or carried out by an organised, hierarchically controlled, tightly regulated and closely connected group of individuals seeking material gain.*

The author proposes to make amendments to the relevant legal acts by implementing the definition of "organized smuggling activity" proposed by the author of the thesis, which will promote a uniform understanding of the phenomenon in different European countries.

2. Conclusion

Legally smuggling is usually defined by a number of its most important features – a crime or a legal offence that violates customs orders and procedures, national financial regulations, the transport of goods, valuables and/or people across the border of a particular country, where the said goods, values and/or people are concealed from customs controls, unreported, using misleading documents and/or misleading customs identification measures for their declaration, and this crime or misconduct harms the established farming order, the country's economic, financial, business systems, and the general social well-being.

Proposal

The distinguishing threshold for the application of the type of legal liability – administrative or criminal – is the value of the seized items (determined according to the size of the MDL in force at the time, the exchange rate and the value of the items determined at the time of the crime), as well as the types of items transported without authorisation. The opinions of legislators and legal analysts on the liability for smuggling provided for in the laws of the Republic of Lithuania and the Republic of Latvia differ: the penalties for smuggling provided for in the laws of the Republic of Lithuania have been criticised for excessive rigour, inconsistency in legal regulation and a significant gap between criminal and administrative liability, which

does not reflect the degree of seriousness of these offences, therefore it is proposed to review the above-mentioned regulatory measures.

The author proposes to make amendments to the relevant regulatory legal acts in order to harmonize the practice of applying administrative and criminal liability as much as possible in Latvia, Lithuania, as well as in other European countries.

3. Conclusion

Smuggling is a complex phenomenon of the shadow economy, the control and prevention of which fall within the remit of a number of institutions. In Lithuania and Latvia, the institutional control system for combating smuggling consists of: the Customs Department under the Ministry of Finance of the Republic of Lithuania, the State Tax Inspectorate, the State Border Guard Service at the Ministry of the Interior of the Republic of Lithuania and the Republic of Latvia, the Police Department under the Ministry of the Interior of the Republic of Lithuania, the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania, the Drugs, Tobacco and Alcohol Control Department and the Government Commission for the Coordination of Cooperation between State Economic and Financial Control and Law Enforcement Authorities.

After research by Lithuanian and foreign scientists, one indisputable aspect was observed in all that transiting from Lithuania and through Lithuania to foreign states causes political and economic damage to the countries of Lithuania and Europe. The latency of smuggling complicates the assessment of the damage it causes to the state budget and the economy, as well as the smuggling distorts official statistics and leads to an incorrect assessment of economic indicators. However, due to its geographical and political situation (neighbourhood with the Grodno tobacco factory, the external customs border of the European Union), Lithuania also finds itself on the major international route of cigarettes for illegal sale as a transit country. Transit can be carried out in two ways: importing the cigarettes illegally, i.e. smuggling, and the so-called “white smuggling” method, which, according to the cargo documents, appears to be a completely legal ordinary transit of cigarettes (in criminal terms, this is the illegal non-export of goods provided for in Article 200 of the CC).

Proposal

The most important institutional controls include risk management, control of the illegal circulation of excise goods in the internal market, legal and administrative measures, measures for the rapid exchange of information and measures to reduce public tolerance for smuggling

activities. It is therefore proposed to strengthen intensive international institutional cooperation to facilitate the fight against various forms of tax fraud and tax evasion by all cooperating countries.

4. Conclusion

Only empirically validated and statistically significant studies can lead to changes in the legal framework that will have a positive impact on the fight against cigarette smuggling and the phenomena that accompany it.

Proposal

The doctoral thesis research revealed that first of all, in reducing cigarette smuggling, it is appropriate to deal with the rooting of corruption in state institutions, which would make it easier to control money laundering and the involvement of organised crime in cigarette smuggling. These activities are inextricably linked to each other, so reducing the level of corruption would expand the problems addressed in this thesis.

5. Conclusion

In order to determine the impact of cigarette smuggling on the economies of Serbia, Georgia and Moldova, a comprehensive evaluation methodology has been developed with the multifunctional impact of cigarette smuggling on the economies of the countries. The interaction of cigarette smuggling with macroeconomic indicators was investigated using mathematical-statistical methods, the state of the macroeconomic situation of countries was investigated using the PEST method and statistical analysis, and legal regulation of cigarette smuggling was investigated using analysis of legal documents and expert interview methods.

The regression model, compiled by statistical calculations, revealed that in Moldova the taxation of cigarettes is influenced by the tax base (specific tax, MDL per 1000 cigarettes) and corruption phenomena, which in this case were expressed through the number of cases of active corruption. In this case, it is concluded that the fight against corruption in Moldova is closely linked to the flow of reducing cigarette smuggling. Georgia's regression models revealed that the level of excise duties and the flow of imported tobacco determine the country's tax collection.

Proposal

The calculated positive and strong links between legal tobacco production, excise duties on cigarettes and excise duties on imports of tobacco products with the corruption control index

suggest that strengthening corruption control in this country would improve the volume of legal tobacco products, which would also reduce cigarette smuggling.

6. Conclusion

PEST analysis in Moldova reveals that the country is implementing changes in the fight against smuggling. The legal regulation introduced amendments to the Customs Code and the Code of Infringements adapted to the *acquis communautaire* of the EU. The changes made it easier to detect cases of smuggling, but the number of cases remains high due to the poor implementation of the mechanisms envisaged, the existence of misleading, deliberately designed smuggling schemes, and the breach of duty obligations.

Proposal

According to estimates and analysis of PEST, smuggling in Moldova is closely linked to corruption, which is mainly driven by the instability of the legal base, constant political tensions between pro-Russian and pro-Western forces, and the existence of oligarchic elites in politics, business and public administration. Among the legal measures taken to improve the situation are the reform strategy of the public administration, the law on professional integrity testing, the e-health strategy 2020, the cooperation agreement between the State Agency for Intellectual Property Rights of Moldova (AGEPI) and the State Medical Agency (SMA). Unfortunately, Moldova is far behind the average of the EU countries in Europe in terms of bribery, perception of corruption and the viability of democratic institutions, which is a major obstacle to reducing cigarette smuggling. It is proposed to continue working in these directions.

7. Conclusion

A PEST analysis in Georgia revealed that smuggling is a direct threat to the country's national security, which is stimulated by a relatively high number of smokers. On average, men and women smoke 21 and 15 cigarettes per day. The catastrophic rise in smuggling in Georgia began in 1998 and lasted for five years, but has been significantly reduced. The large quantities of tobacco products smoked suggest that the actual volume of smuggling can be at least twice as high as those recorded in official statistics.

Proposal

Importers and exporters have no doubt that the increase in excise duties will serve the future growth of smuggling volumes (the relationship of excise duty on cigarettes to corruption

has also been established by mathematical statistical calculations). The rising cost of the product also increases the risk of smuggling. Smuggling is also stimulated by low penalties for this offence, so the temptation to earn higher income in relatively low-risk conditions is even higher (profit from each packet of cigarettes to GEL 1). As regards cigarette smuggling, Georgia's legislation such as the Companies Act, the Privatisation Law, the Restitution and Compensation Act, the Competition Protection Act, the Public Procurement Law, the Investment Law and the Labour Law are the most important ones. The latter, adopted on 17 December 2010, was in line with the provisions of the International Labour Organisation.

8. Conclusion

The PEST analysis in Serbia showed that the prices of tobacco products in countries below the EU are conducive to smuggling. As regards smuggling, external trade in Serbia is regulated by customs legislation, which is aligned with the *Acquis Communautaire*. The Republic of Serbia also applies the provisions of the Euro-Mediterranean *Regional Convention No P7_TA(2012)* of 16 February 2012 on Euro-Mediterranean preferential rules of origin, the customs tariffs are aligned with the requirements of the EU Combined Nomenclature (2018) and the operational capacity of the customs administration is strengthened.

Proposal

The unsatisfactorily assessed institutional environment in the country promotes the existence of corruption, illegal trade, the shadow economy, money laundering, smuggling and other negative social phenomena. Progress has been made in improving the country's regulatory and institutional environment: adopting amendments to the Criminal Code relating to economic crimes, issuing a law on the organisation of public bodies to help fight corruption, organised crime and terrorism, adopting the law on seizure and confiscation of proceeds of crime, adapting existing laws to international standards. However, despite the progress made, the problem of corruption remains acute and it is proposed to continue to improve the above-mentioned regulatory measures intensively.

9. Conclusion

Analysis of legal acts and expert interviews revealed that illicit trade in tobacco products and tobacco product smuggling in the Republic of Moldova is not the subject of any separate law. The acts and elements of smuggling are described in the Criminal Code, the Customs Code and the Code of Offences.

Proposal

1. The Republic of Moldova has not adopted a National Strategy to Combat Illicit Trade, a strategy to develop an integrated action plan for all responsible state structures. The provisions relating to the offence of smuggling apply to both natural and legal persons, and it is legally possible to penalise offenders only on the basis of the Criminal Code. In order to qualify acts and attempts to commit an act as a crime under the elements of a crime, the state needs a clear legal framework that meets EU standards.

2. Creating a common and efficient mechanism to achieve inter-institutional cooperation of law enforcement authorities, aiming to prevent and combat smuggling, corruption, money laundering and organised crime.

3. Implementing all the operational and organisational measures which would annihilate smuggling networks and finding solutions to the position of the Transnistria Separatist Region in the Republic of Moldova, where the quantities of cigarettes are much higher than storage and consumption capacities.

4. Amending the Customs Code of the Republic of Moldova, to withdraw the license and the right to operate any duty-free stores in Transnistria.

5. More rigorous and frequent control of all spheres that could be involved in cigarette smuggling, including customs control as well as stiffer penalties and fees.

6. Facilitate cross-border cooperation – at the international level, states must ensure that there are agreements on the rapid exchange of information regarding the relations between financial institutions.

7. Increasing the level of legal awareness of citizens, increasing transparency and merit-based selection for positions.

10. Conclusion

Tobacco control is an important aspect of Georgia's integration into the EU. According to the Association Agreement concluded in 2014 between the EU and Georgia, one of Georgia's obligations under this agreement is the effective application of international agreements recognised by EU member states in the field of health protection. Georgia's legal base is supported by at least 85 % of the population, while the level of application of the law is 98 %.

Proposal

In line with Article 8 of the Framework Convention on Tobacco Control, which directly lays down safeguards against passive smoking, Georgia has been pursuing strategic objectives

and targets since 2013 in line with the Tobacco Control Strategy and Action Plan. Embedding these strategies would help improve the state's performance in the fight against smuggling.

11. Conclusion

Serbia is seeking EU membership and the legal framework in the area under consideration is constantly being improved and applied in line with the EU's legislative provisions. The main laws regulating the tobacco market are the Tobacco Law, the Excise Duty Law, the Law on the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products and the Customs Law. In the Republic of Serbia, the most important players in the tobacco market are the Tobacco Administration and the Customs Administration, which are part of the country's Ministry of Finance.

Proposal

1. Serbian local government units should create their own strategies for internal risk management and keep them updated. These strategies could be prepared according to the manual for Financial and Control Management issued by the Ministry of Finance. In addition, the governments should establish internal and whistle-blowers' protection rules for collection of the regular data on the risk of corruption.

2. Serbian local government units should strengthen their administrative capacities through capacity-building training on local governance and anti-corruption issues, and also, increase their knowledge regarding the current legislation; the countries should also increase their transparency by taking concrete actions as defined in relevant legislation, such as improving citizens' access to information and strengthening the electronic infrastructure of the municipalities.

3. Civil society organizations in Serbian countries must raise their organizational capacities, manage and implement municipal projects in a transparent manner, continuously improve the knowledge of anti-corruption and good governance, and share practices with other institutions.

4. Local governments should adopt regulations on corruption reporting, keep the reporting up to date and supplement it in line with international standards. The authorities should work in close contact with global institutions that are seeking to reduce corruption.

12. Conclusion

The model of the impact of cigarette smuggling on the macroeconomic situation in Moldova, Sakartvelo and Serbia in the context of interdisciplinarity revealed that the smuggling of cigarettes unequivocally finances organised crime, which results in a low probability of detecting organised crime in Moldova, Sakartvelo and Serbia, making it easier and easier to carry out cigarette smuggling. The model covers corruption, organised crime, money laundering operations, taking into account the macro-economic situation of countries.

Proposal

The greater corruption in countries, the easier it is to carry out cigarette smuggling, which makes it more difficult to detect organised crime, as money laundering operations conceal the origin of money. Society is apathetic about money laundering and organised crime because it does not believe that the accused of illegal activities will be punished accordingly, not only by removing individuals from their positions but also by seizing their wealth and avoiding criminal liability. Promote public awareness and education on these issues. The specificity of this model reflects not only the examined countries but another European countries.

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Aknowledgment

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APPENDIXES

APPENDIX 1

Table 1. The major characteristics of smuggling in the legal context

Context	Characteristics	Literature sources
By the nature of an offence	A crime or an administrative offence	Malinauskaitė et al., 2002; Žygytė, 2017; Filippov, 2019
By the nature of the regulations that are violated	Violation of customs order, procedures, financial regulatory provisions	Criminal Code of the Republic of Lithuania, 2003; Abramavičius et al., 2001; Martsiushevskaya and Ostroga, 2017; Stankevič, 2017
By an object	Transportation of goods, values, people, etc.	Criminal Code of the Republic of Lithuania, 2003; Wessels, 2003; Martsiushevskaya and Ostroga, 2017; Žygytė, 2017; Stankevič, 2017
By the aspect of internationality	Illegal cross-border activities	Abramavičius et al., 2001; Joossens and Raw, 2012; Martsiushevskaya and Ostroga, 2017; Žygytė, 2017
By the damage area	Illegal activities that cause damage to economic, financial, business systems, social welfare; crime against the economy	Malinauskaitė et al., 2002; Criminal Code of the Republic of Lithuania, 2003; Babachinaitė et al., 2008; Veršekys, 2016; Žygytė, 2017; Stankevič, 2017

Source: compiled by the author.

Table 2. Characteristics of organised crime reflected in definitions of different context

Dimension (context)	Characteristics	Literature sources
Common aim of the group members	Provision of illicit goods/services	Beirne and Messerschmidt, 2006; Andersen and Taylor, 2007; Winslow and Zhang, 2008; Hagan, 2010; Kirby and Penna, 2010
	The primary aim is to earn profit/income from illegal activities	Albanese, 1989; Winslow and Zhang, 2008; Hess, 2009; Galeotti, 2009; Swain, 2009; Conklin, 2010; Briggs, 2010; Allum and Gilmour, 2012
Activity duration and volume	It is a continuous activity	Albanese, 2000; Hess, 2009; Galeotti, 2009; Gilmour, 2009; Hagan, 2010; Kirby and Penna, 2010
	The volume and types of activities may vary	INTERPOL, 2020
Tight control hierarchical structure	Organised crime is hierarchical and structured	Chaw, 2003; Andersen and Taylor, 2007; Hess, 2009; Galeotti, 2009; Abadinsky, 2010

	Organised crime is characterized by a limited, exclusive membership	Abadinsky, 2010
	The group is controlled following clear rules and regulations	Conklin, 2010; Abadinsky, 2010; Wright, 2013
	The members of the group work in an organized manner, certain functions are assigned to each member	Borricand, 1999
Maintaining control/power	An expression of power (social, political, religious, industrial, ethnic, etc.)	Clark, 2005; Abadinsky, 2010
Social interaction	Close social contacts among group members	Abadinsky, 2010
	A wide network of participants	Kirby and Penna, 2010

Source: compiled by the author.

Table 3. Article 208 of the Code of Administrative Offences of the Republic of Lithuania provides for penalties for smuggling activities

Value of illegally transported items in EUR	Penalty in EUR	Additional administrative impact measures
From EUR 2501 to EUR 7500	3500-6000	Confiscation or non-confiscation of smuggled articles, as well as transport and other means of transporting or concealing smuggled articles across the State border of the Republic of Lithuania
From EUR 251 to EUR 2500	1820-4000	Confiscation or non-confiscation of smuggled articles, as well as transport and other means of transporting or concealing smuggled articles across the State border of the Republic of Lithuania
Up to EUR 250	200-1120	Confiscation or non-confiscation of smuggled articles, as well as transport and other means of transporting or concealing smuggled articles across the State border of the Republic of Lithuania

Source: compiled by the author.

Table 4. Article 199 of the Criminal Code of the Republic of Lithuania provides for penalties for smuggling activities

Condition	Punishment
Unauthorised movement of firearms, ammunition, explosives, explosives, radioactive substances or other strategic goods, toxic, potent, narcotic, psychotropic or drug precursors	Imprisonment from 3 to 10 years

Non-authorized moveable cultural goods or antiques	Fine or imprisonment of up to 8 years
The value of the articles to be presented to customs exceeds 250 MLS	Fine or imprisonment of up to 8 years
Substances specified in the Law on the Control of Certain Doping Substances of the Republic of Lithuania without authorisation	Fine, attachment or imprisonment of up to 6 years
The value of the articles to be presented to customs is 150-250 MLS	Fine or imprisonment of up to 4 years

Source: compiled by the author.

Table 5. Number of smuggled cigarettes and drugs and precursors detained by Lithuanian customs authorities and number of pre-trial investigations launched in the first half of 2002-2021

Year	Number of pre-trial investigations	Quantities of smuggled cigarettes (in packs, million) and tobacco (tonnes) detained	Number of drugs and precursors (kg)
2021 st half of the year.	130	8,8 and 46 t of tobacco	(no data provided)
2020	95	16,6 and 26 t of tobacco	107
2019	173	8,25	500
2018	446	6,14 and 99 t of tobacco	1 000 kg of drugs and 5 000 kg of precursors
2017	353	6	1701
2016	423	11,35	~10
2015	286	10,5	424
2014	328	5,1	~627
2013	316	4,2	1100
2012	186	6,68	460
2011	218	3.26 and 69 t of tobacco	~213.8
2010	179	9.68 and 8.5	~58
2009	149	3,8	~6
2008	53	1.8 and 0.19 t	~10
2007	63	1,7 and 3 t	~182
2006	56	2 and 2 t	~161
2005	77	1,7	~13 kg
2004	83	1,55	~33.7 (and 26 kg abroad)
2003	101	1,9	~37,8 (and 11 kg abroad)
2002	79	6,3 and 5.8 t	~7.5

Source: Customs of the Republic of Lithuania, 2021.²⁸⁶

²⁸⁶ Muitinės kriminalinė tarnyba. 2002 – 2022 m. MKT atskleistų pažeidimų apžvalga. Available at: <https://rmutine.lt/web/guest/280>

Table 6. The tasks and logical sequence of the empirical research of the dissertation work

Stages	Task	Method	Result	Limitations of the applied methods
1	To calculate the interrelationships between the smuggling of tobacco products and selected macroeconomic indicators in Sakartvel and Moldova in 2008-2019.	Correlation analysis using Pearson and Spearman correlation coefficients, multiple regression analysis, statistical data collection.	Obtaining statistically significant relationships in order to find out the effect of illegal cigarette trade turnover on economies.	Absence of macroeconomic data for Serbia. Absence of requested indicators in Sakartvelo and Moldova. A short string of data.
2.	To carry out a macro-environmental analysis of Sakartvelo, Moldova and Serbia in the context of cigarette smuggling.	PEST, statistical data analysis.	Finding out the real situation about the current state of the country's economy, evaluating them from the point of view of smuggling of tobacco products.	There are no restrictions.
3.	Conduct an analysis of the legal documents regulating cigarette smuggling in Sakarya, Moldova and Serbia.	Expert interview.	Analysis of laws regulating the smuggling of tobacco products and formulation of proposals to reduce it.	It was difficult to find experts who knew this field in Eastern European countries.
4.	Formulate conclusions.	Summary of Empirical Research.		There are no restrictions.

Table 7. Pearson's correlation coefficient values between specific tax and corruption perception index, the number of active corruption cases and the ratio of the number of bankrupt companies and operating companies

Pearson correlation coefficient, N = 11				
Prob > r , when H0: Rho=0				
	Y2_1	X1	X5_M2	X14
Y2_1	1.00000	-0.73071 0.0106	0.85732 0.0007	0.78460 0.0042

Table 8. Pearson's correlation coefficient values between specific tax (Y2_3_2) and corruption perception index, number of active corruption cases

Pearson correlation coefficient			
Prob > r under H0: Rho=0			
Number of variables			
	Y2_3_2	X1	X5_M2
Y2_3_2	1.00000	-0.67206	0.93387
		0.0333	<.0001
	10	10	10

Table 9. Regression model for specific tax

Parameter estimates					
Variable	DF	Estimate	Standard Error	t Value	Approx Pr > t
Intercept	1	-29.5268	12.0265	-2.46	0.0396
Number of active corruption cases (X5_M2)	1	1.4082	0.1906	7.39	<.0001

Specific tax = -29.5268 + 1.408. Number of active corruption cases (3).*

Table 10. Pearson's correlation coefficient of tobacco production and turnover of legal trade in tobacco products, N = 11 Prob > |r| under H0: Rh0=0

	X1	X8	X9	X10	X11	X12	X19	X21	X22	X23
Y1_1	-0.71769	-0.72174	0.86429	0.88401	-0.91558		-0.66345	-0.64665	-0.62591	-0.64455
Sig.	0.0086	0.0080	0.0003	0.0001	<.0001		0.0187	0.0231	0.0295	0.0237
Y1_2	0.79542		-0.90022		0.79646	0.92881	0.89461			0.91005
Sig.	0.0020		<.0001		0.0019	<.0001	<.0001			<.0001

Table 11. Pearson's correlation coefficient of excise duty paid on cigarettes, N = 11 Prob > |r| under H0: Rh0=0

	X1	X8	X19	X21	X22	X23
YS_1	0.72294	0.83673	0.79718	0.84837	0.73553	0.87076
Sig.	0.0079	0.0007	0.0019	0.0005	0.0064	0.0002

Table 12. Pearson's correlation coefficient for the import of excise tobacco products, N = 11. Prob > |r| under H0: Rho=0

	X1	X8	X21	X22	X23
YS_3	0.53126	0.93631	0.95845	0.91155	0.59989
Sig.	0.0755	<.0001	<.0001	<.0001	0.0392

Table 13. Pearson's correlation coefficient of excise duties paid on tobacco production, N = 11 Prob > |r| under H0: Rho=0

	X8	X16	X21	X22
YS_5	-0.70097	0.67713	-0.64350	-0.63930
Sig.	0.0111	0.0156	0.0240	0.0252

Table 14. Regression analysis model for cigarette production (Y1_1)

Parameter Estimates					
Variable	DF	Estimate	Standard Error	t Value	Approx Pr > t
Intercept	1	7223	1186	6.09	0.0002
X1	1	-1848	757.8883	-2.44	0.0374
X8	1	-659.4326	266.3535	-2.48	0.0352

Table 15. Regression analysis model of excise tax on cigarettes (YS_1)

Parameter Estimates					
Variable	DF	Estimate	Standard Error	t Value	Approx Pr > t
Intercept	1	-62.8514	44.8598	-1.40	0.1915
X8	1	45.6670	9.4513	4.83	0.0007

Table 16. Regression analysis model of excise duty on tobacco import (YS_3)

Parameter Estimates					
Variable	DF	Estimate	Standard Error	t Value	Approx Pr > t
Intercept	1	-455.9086	71.9919	-6.33	<.0001
X8	1	127.8818	15.1677	8.43	<.0001

Table 17. PEST analysis of Moldova in the context of smuggling

Factors limiting smuggling		Factors promoting smuggling	
Factor	Additional information	Factor	Additional information
Political factors			
Political steps to fight the oligarchy	<ul style="list-style-type: none"> The ruling coalition against the oligarchy in politics USA, EU support 	Political instability of the country	<ul style="list-style-type: none"> Confrontation of pro-Western and pro-Russian forces Political crisis
New public administration strategies and laws	<ul style="list-style-type: none"> Professional integrity test for civil servants E-health strategy 	Slow progress of structural reforms	<ul style="list-style-type: none"> Only paper anti-corruption reforms; Corruption in business and public administration promoted by the oligarchic elite
Improving the anti-smuggling legal framework	<ul style="list-style-type: none"> Customs Code The Criminal Code Code of Offenses Legislative reforms Guillotine I and Guillotine II Adaptation of laws to the 	Legal liberalization of money laundering	<ul style="list-style-type: none"> Capital amnesty law Granting citizenship to investors

	acquis Communautaire		
		Uncontrolled separatist territories	Transnistria
Economical factors			
Raising wages	<ul style="list-style-type: none"> • 2% wage increase was recorded compared 2019 to 2018; • Higher incomes can encourage residents to work in the formal sector of the economy 	An underdeveloped economy dependent on remittances from emigrants	<ul style="list-style-type: none"> • Emigrants' remittances make up as much as 10% of the country's GDP • Sensitivity of the economy to changes in external markets (e.g. Russia) • An economy driven by consumption, but not by productivity • Cash payments
In comparison, the constant exchange rate of the national currency against the euro	<ul style="list-style-type: none"> • In the period between 2018 September and 2019 August, only minor fluctuations in the value of the MDL against the euro were recorded 	High level of shadow economy	<ul style="list-style-type: none"> • In 2016 the level of the shadow economy in Moldova was approximately 29.7 percent of GDP • Undeclared business income, wages in envelopes, unregistered employees
Trade and investment partnership with the EU	<ul style="list-style-type: none"> • Compatibility of trade agreements with other free trade agreements • Implementation of EU health and safety standards • Support for small and medium-sized businesses under the EU4Business program • Creation of business incubators • Promotion of smart and sustainable regional economic development under the EU4Moldova: Focal Regions program 	Dependence of the economy on the agricultural sector, which is characterized by a high level of the shadow economy	<ul style="list-style-type: none"> • 2003-2016 the share of the shadow economy in Moldova's agricultural sector increased from 67 % to 76 %
		Inactive labor force participation in the labor market	<ul style="list-style-type: none"> • The labor force participation rate fell from 40.6 percent in 2017 to 40.2 percent in 2018
		A high level of inflation, reducing the real income of the population	<ul style="list-style-type: none"> • Annual inflation rate in 2019 rose to 5.4%
		High interest rate mean high borrowing costs for businesses and households	<ul style="list-style-type: none"> • In 2019 July 31 the National Bank of Moldova increased the base interest rate to 7.5%
		Large international trade deficit	<ul style="list-style-type: none"> • Structural imbalances in international trade encourage illegal trade
		Instability of financial markets,	<ul style="list-style-type: none"> • Capital outflow from productive sectors

		which encourages illegal money flows	<ul style="list-style-type: none"> • Weak cash flow control • The banking system is a corridor for money laundering
		Underdeveloped private business sector	<ul style="list-style-type: none"> • Volatile and complex business regulation • Lower product prices in black markets • Complex legal competition
		High taxes on tobacco products	<ul style="list-style-type: none"> • Annual increase of excise tax on tobacco products according to the fiscal policy program
Social factors			
Decreasing income inequality	<ul style="list-style-type: none"> • The Gini index fell from 39.5 in 1998 until 25.7 in 2018 	Educated labor force participation is low	<ul style="list-style-type: none"> • The economically active share of the population is lower than the average of EU Central and Eastern European countries • Lack of lifelong learning experience
International cooperation in the field of border protection	<ul style="list-style-type: none"> • EUBAM mission • Closer cooperation between Moldova and Ukraine 	Low public trust in the country's government	<ul style="list-style-type: none"> • 78 percent of Moldovans believe that the country is moving in the wrong direction • Confrontation between pro-Russian political forces and the pro-Western part of society
Promotion of re-emigration	<ul style="list-style-type: none"> • "Pare 1+1" program 	Weakening of family values	<ul style="list-style-type: none"> • Small families • The problem of "parent drain"; • High number of divorces
EU support to Moldovan civil society	<ul style="list-style-type: none"> • Promotion of cooperation and trust between the communities on both sides of the Dniester • Free travel in the Schengen area with a biometric passport • Erasmus+ • Informal youth education projects 	Declining population	<ul style="list-style-type: none"> • Decreasing labor force • Problems of an aging society • Intensive emigration
		Open niches for smuggling on the Moldovan-Ukrainian border	<ul style="list-style-type: none"> • Weak wall protection • Gaps in laws • The prevalence of corruption
Technical factors			
International	<ul style="list-style-type: none"> • EUBAM mission 	Ineffective border	<ul style="list-style-type: none"> • Confusing customs

cooperation	<ul style="list-style-type: none"> • Implementation of EU standards • Moldova-Ukraine joint border control agreement • Participation in EU security, defense and training missions 	control	<p>procedures and tariffs encourage corruption and opacity</p> <ul style="list-style-type: none"> • The customs union with Russia, Belarus and Kazakhstan facilitates illegal movement of goods
IT development	<ul style="list-style-type: none"> • Development of 3 G and 4 G networks • Development of the use of mobile electronic signature • Research and innovation "ICT4" system • Access to INTETE resources • RAMP management and control technologies • Integrated income management information system • E-government system 	Low level of technology implementation	<ul style="list-style-type: none"> • Insufficient provision of state institutions with IT • Vulnerability of financial institutions

Source: compiled by the author.

Table 18. PEST analysis of Sakartvelo in the context of smuggling

Factors limiting smuggling		Factors promoting smuggling	
Factor	Additional information	Factor	Additional information
Politiniai veiksniai			
International integration	<ul style="list-style-type: none"> • UNO • IMF • European Security and Cooperation Organization • European Bank for Reconstruction and Development • International Bank for Reconstruction and Development; • Council of Europe, etc. 	Existence of separatist regions	<ul style="list-style-type: none"> • Abkhazia • Adjara • South Ossetia
Effective fight against corruption	<ul style="list-style-type: none"> • 44th least corrupt country among 180 countries 	Vulnerability of the banking sector	<ul style="list-style-type: none"> • 17 million USD money laundering case in 2019
Implementation of political and economic reforms	<ul style="list-style-type: none"> • The success of the reforms has been recognized by the World Bank and the IMF 	Absence of a national security plan	<ul style="list-style-type: none"> • There are no strictly defined national security priorities and measures • Budget funds are not allocated for the implementation of measures
Development of the legal framework	<ul style="list-style-type: none"> • Companies Act • Privatization Law • Act of restitution and compensation 		

	<ul style="list-style-type: none"> • Competition Protection Act • Public Procurement Law • Investment Law • Labor law according to ILO regulations 		
Economical factors			
A favorable environment for economic development	<ul style="list-style-type: none"> • Attractive business environment • Stability of state finances • Development of infrastructure 	The economy is sensitive to changes in external markets	<ul style="list-style-type: none"> • A large share of emigrants' remittances in GDP • Sensitivity to the Russian market
Development of international trade	<ul style="list-style-type: none"> • Association agreement with the EU • Preferential trade regime with the EU • Free trade and industrial zones • Promotion of foreign investments • Free trade agreement with China • Development of Black Sea ports 	The unemployment rate is quite high	<ul style="list-style-type: none"> • 12.78% in 2018
Reducing energy dependence	<ul style="list-style-type: none"> • Local hydropower resources • Construction of the Baku-Tbilisi-Ceyhan oil pipeline • Construction of the South Caucasus gas pipeline • Construction of Baku-Tbilisi-Kars railway 	Low and unstable wages	<ul style="list-style-type: none"> • 398 US dollars / month in 2019
Growth of the exchange rate of the national currency against the euro	<ul style="list-style-type: none"> • 1 EUR = 3,188 GEL in 2020 	High inflation rate	<ul style="list-style-type: none"> • 6.1% in 2020; • 3% target level was not achieved
Interest rate reduction	<ul style="list-style-type: none"> • CB interest rate reduced to 8.25% in 2020, June 24 	Negative balance of international trade	<ul style="list-style-type: none"> • Great price, quality and quantity competition in the EU and global markets • Structural imbalances in international trade encourage illegal trade
Tax reforms	<ul style="list-style-type: none"> • Reduction of tax rates • Simplification of taxation 	Increasing the excise tax on tobacco products	<ul style="list-style-type: none"> • It is planned to increase from 37 cents to 1.35 USD per pack

	<ul style="list-style-type: none"> • Deregulation 		
Social factors			
High level of literacy of the population	<ul style="list-style-type: none"> • 99,4 % in 2017 	Population decline	<ul style="list-style-type: none"> • Emmigration • Low birth rate
		High income inequality of the population	<ul style="list-style-type: none"> • 36.4 GINI index in 2018; • Obtaining informal income
		Human rights issues	<ul style="list-style-type: none"> • girls get married 17% of those under 18 years old age; • Child labor
		The negative impact of armed conflicts	<ul style="list-style-type: none"> • Physical and psychological injuries • Loss of permanent residence • Less opportunities for children's social and cultural development
		Declining public trust in government	<ul style="list-style-type: none"> • 64% of respondents in 2020 has a bad opinion of the work of the government • 57% of respondents in 2020 does not appreciate the work of the parliament
		Favorable conditions for smuggling	<ul style="list-style-type: none"> • A large number of smokers • Small penalties • Niches in separatist regions • Little operational and judicial experience in the fight against migrant smuggling
Technological factors			
Border protection	<ul style="list-style-type: none"> • Functions of the border police 	Slow R&D activity	<ul style="list-style-type: none"> • Lack of modern technologies • Lack of funds
Protection of intellectual property	<ul style="list-style-type: none"> • Sakartvel Center for Intellectual Property 	Low level of IT modernization in business enterprises	<ul style="list-style-type: none"> • Technologies not updated for more than 30 years • Dependence on external use
IT implementation in the public service sector	<ul style="list-style-type: none"> • PABX system • E-management project • Development of the e-government concept 		

Source: compiled by the author.

Table 19. PEST analysis of Serbia in the context of smuggling

Factors limiting smuggling		Factors promoting smuggling	
Factor	Additional information	Factor	Additional information
Political factors			
Reforming the legal framework	<ul style="list-style-type: none"> • Companies Act • Privatization Law • Law on Restitution and Compensation; • Competition Protection Law • Public Procurement Law; • Investment Law etc 	Incomplete, inconsistent legal reforms	<ul style="list-style-type: none"> • Additional regulations to implement the law have not been approved
Reforming the institutional base	<ul style="list-style-type: none"> • Business registers agency • Privatization agency • Restitution agency • Competition Protection Commission • Public Procurement Office • Investment and Export Promotion Agency, etc. 	Problems of poor institutional environment	<ul style="list-style-type: none"> • Intellectual property protection issues • Problems of combating organized crime • Problems of judicial independence • Inefficient resolution of legal disputes • Unreliability of auditing and reporting standards • Burden of government regulation • Problems of property rights protection • High level of corruption
International integration	<ul style="list-style-type: none"> • UNO • OSCE • IMF • World Bank • EBRD • Council of Europe • CE free trade agreement • Association agreement with the EU • Since 2012 March – the status of a candidate for EU membership 	Insufficient operational efficiency	<ul style="list-style-type: none"> • There are no planned measures to reduce the risk of money laundering and terrorist financing • Insufficient cooperation between institutions • Inefficient investigation of cases of illegal activity • Inefficient criminal prosecution • Only partial alignment of the tobacco control law with EU regulations • Customs reduction, free econ. zone activity control • No smuggling prevention strategy
Legal and institutional measures for the prevention of illegal activity	<ul style="list-style-type: none"> • Money laundering prevention administration • Money Laundering and Terrorist Financing Prevention Law • Tax administration • Strategies and action plan 		

	<p>for assessing the risk of money laundering and terrorism financing</p> <ul style="list-style-type: none"> • Customs laws acquis Communautaire • Preferential rules of origin of European and Mediterranean countries • Compliance with the provisions of the regional convention • EU combined application of nomenclature requirements • Law on approval of the protocol to eliminate illegal trade in tobacco products • Tobacco Act Amendment Act 		
Economical factors			
Gradual growth of the country's economy	<ul style="list-style-type: none"> • GDP per capita in 2019 amounted to 7213.18 US dollars 	Large scale migration	<ul style="list-style-type: none"> • Decreasing number of working-age population
A decrease in the unemployment rate	<ul style="list-style-type: none"> • In 2020 I quarter unemployment rate fell to 9.7% • Labor force activity in 2020 I quarter increased to 54% 	The growth of the shadow economy	<ul style="list-style-type: none"> • The shadow economy reaches about 30% of GDP • Shadow workers make up about 19.5% of the workforce
Real wage growth	<ul style="list-style-type: none"> • Average per year, month for work increased from 53633 to 58892 RSD/month 	The country's large budget deficit and public debt	<ul style="list-style-type: none"> • In 2014 it was reached a record high level of 6.2% of GDP
Anti-inflation policy	<ul style="list-style-type: none"> • From 2019 the average inflation rate did not exceed 2% • Greater purchasing power of the population 	International trade deficit	<ul style="list-style-type: none"> • 2009-2018 amounted to 13.7% of GDP
Exchange rate stability	<ul style="list-style-type: none"> • Greater stability of the population's real income 	Regular increase of taxes on tobacco products	<ul style="list-style-type: none"> • In 2019 taxes on tobacco products were 9 times higher than in 2008.
Low interest rate	<ul style="list-style-type: none"> • In 2020 amounted to 1.25%; • Low borrowing costs 		
Reduced VAT rates	<ul style="list-style-type: none"> • For most foods • For medications on the list of the health insurance fund • Textbooks and teaching aids • For communal services, etc. 		

The personal income tax has been reduced	<ul style="list-style-type: none"> • From 2018 it was reduced to 10% • Increases the purchasing power of the population 		
Measures to combat the shadow economy	<ul style="list-style-type: none"> • 2017 and 2018 are the years of the fight against the shadow economy • Increasing inspection and control 		
Social factors			
High literacy rate of the population	<ul style="list-style-type: none"> • 98.94% of the total population is literate • 62.17% of the population pursue tertiary education 	Declining population	<ul style="list-style-type: none"> • Declining birth rate • Migration
Cultivation of family values	<ul style="list-style-type: none"> • Mutual support • Equal opportunities for women and men 	The existence of old societal values	<ul style="list-style-type: none"> • Assessment of a person according to his position in society • Power gap
Positive public opinion about the EU	<ul style="list-style-type: none"> • Supporting transparency and openness • Supporting EU membership 	High income inequality of the population	<ul style="list-style-type: none"> • In 2017 the poverty risk level reached 25.5 % • In 2017 GINI index reached 36.2
		The spread of distorted Western values	<ul style="list-style-type: none"> • Orientation to material values • Hedonism • Individualism
		Corruption in the education sector	<ul style="list-style-type: none"> • Extremely high level of corruption in higher education institutions • Low level of professional ethics
		Low level of public trust in the government	<ul style="list-style-type: none"> • There is little trust in the ministry regulating employment and the economy • More than half of the population believes that government decisions are influenced by business interests
Technical factors			
Institutional infrastructure of border protection and	<ul style="list-style-type: none"> • Border Police • Customs administration • Veterinary and 	Lack of clear border demarcation	<ul style="list-style-type: none"> • Border with Bosnia and Herzegovina • Border with Croatia

control	phytosanitary inspection		<ul style="list-style-type: none"> • Border with Macedonia • Borders controlled by the province of Kosovo
Development of the technical equipment of the customs administration	<ul style="list-style-type: none"> • Scanners • Dogs • IT modernization 	Poor state of border infrastructure	<ul style="list-style-type: none"> • Insufficient technical equipment resources • Insufficient personnel resources • Insufficient staff qualification • Low level of computerization of customs procedures and linking with EU systems
Implementation of EU legal and technical standards	<ul style="list-style-type: none"> • Integrated border protection strategy and action plan • Strategy and action plan of the customs administration • Law on customs tariffs, harmonized with the World Customs Organization and EU nomenclature systems • SIS, VIS, TRACES, NCTS systems, TARIS database 		
Development of IT use in the public sector	<ul style="list-style-type: none"> • Implementation of e-government mechanisms • Development of IT relations between the MIA and the Anti-corruption Agency • International (USA, UK) support for IT development • Absorption of EU IPA 2015 program funds for IT development 		

Source: compiled by the author.

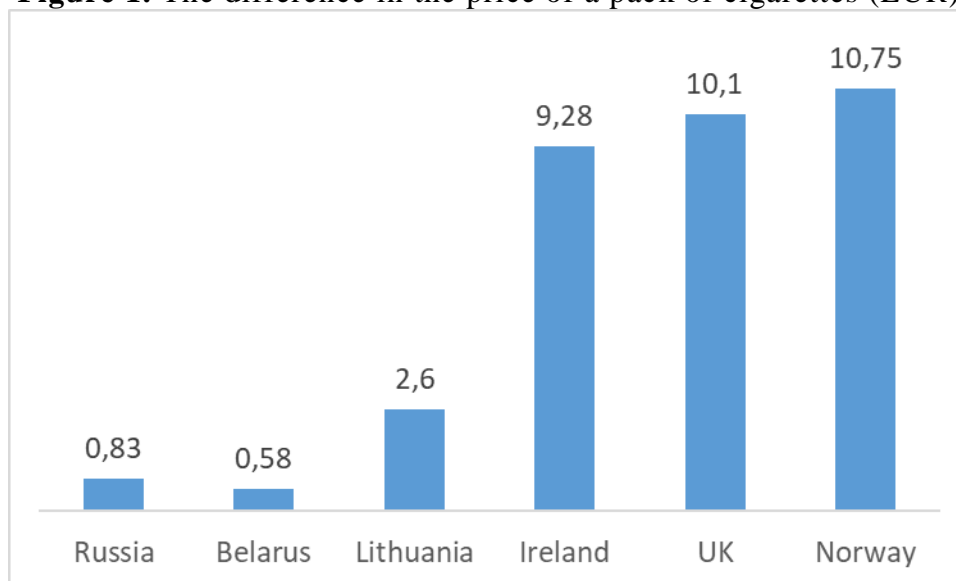
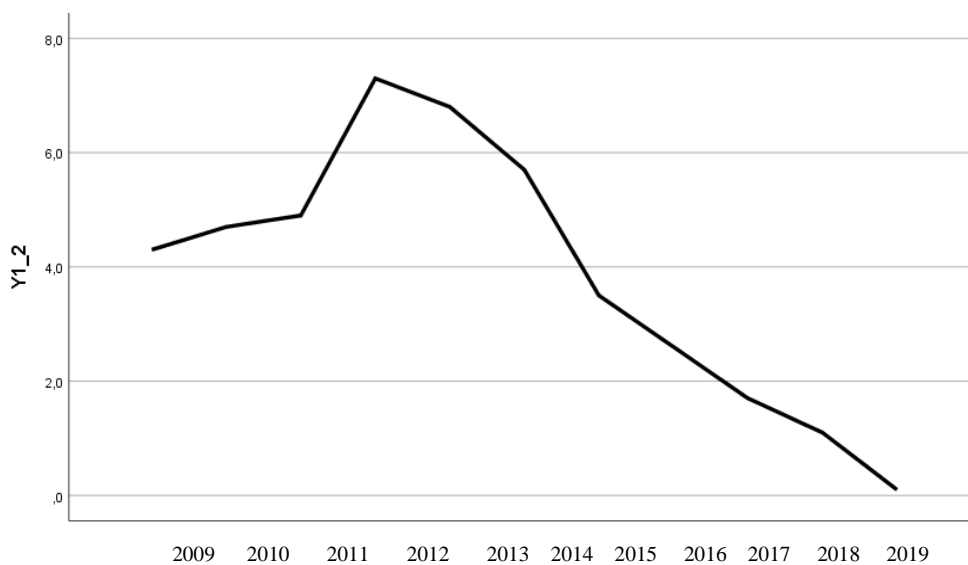
Figure 1. The difference in the price of a pack of cigarettes (EUR)**Figure 2.** Declining trend of sales of fermented tobacco products in 2009 - 2019

Figure 3. Growth trend of specific tax in 2009-2019

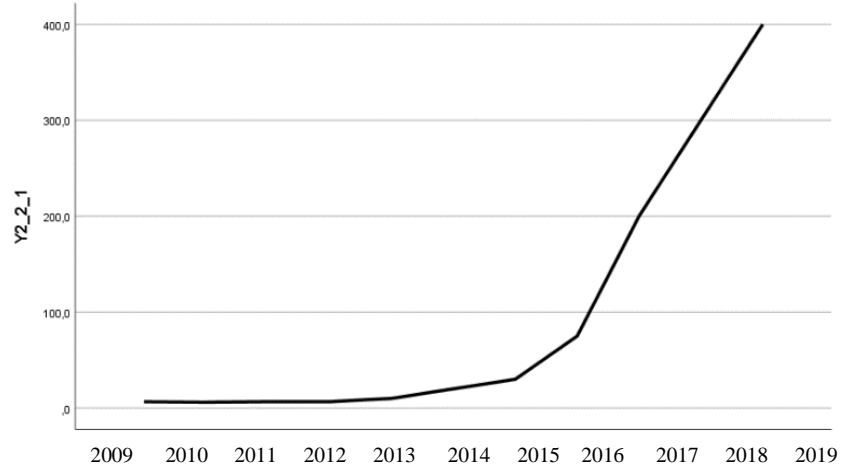


Figure 4. Change trend of the Corruption Perceptions Index in 2009-2019

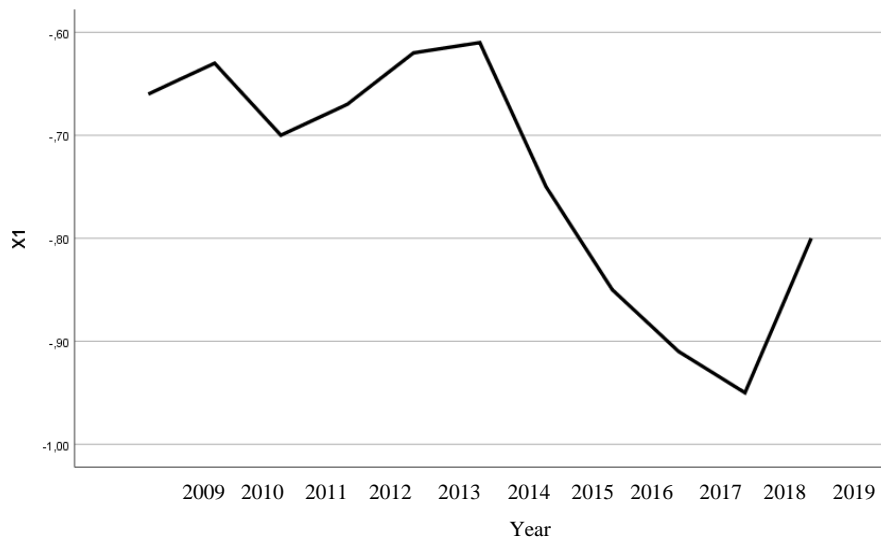


Figure 5. Negative statistically significant relationships between Y1_1 and X1, X8, X11, X19

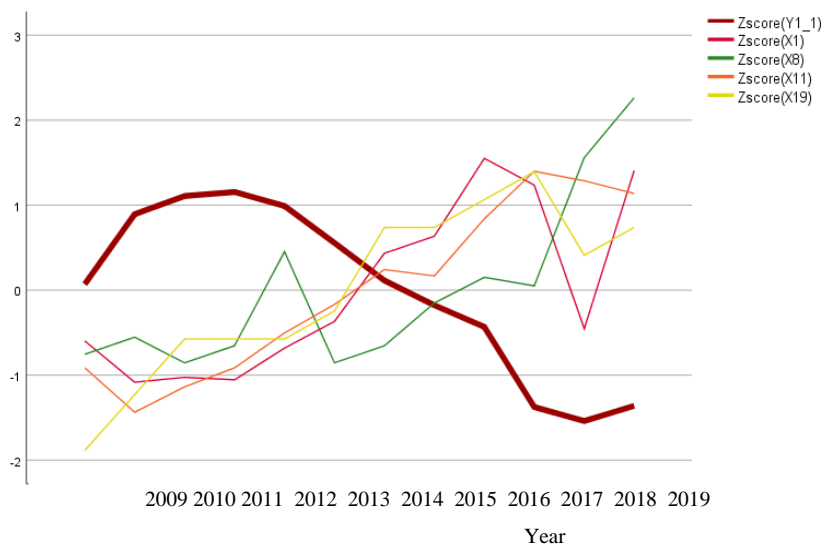


Figure 6. Positive correlations between Y1_2 and X1, X11, X12, X19, X23

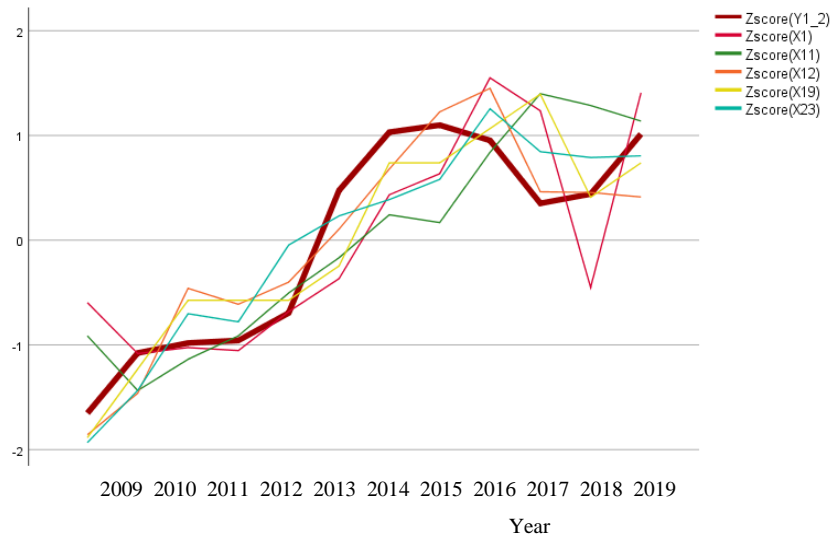


Figure 7. Positive correlations between YS_1 and X1, X8, X11, X12

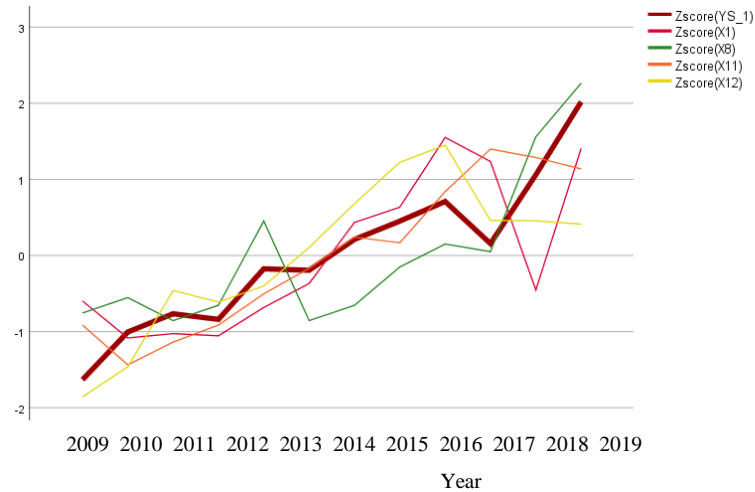


Figure 8. Positive correlations between YS_3 and X1, X8, X21, X22

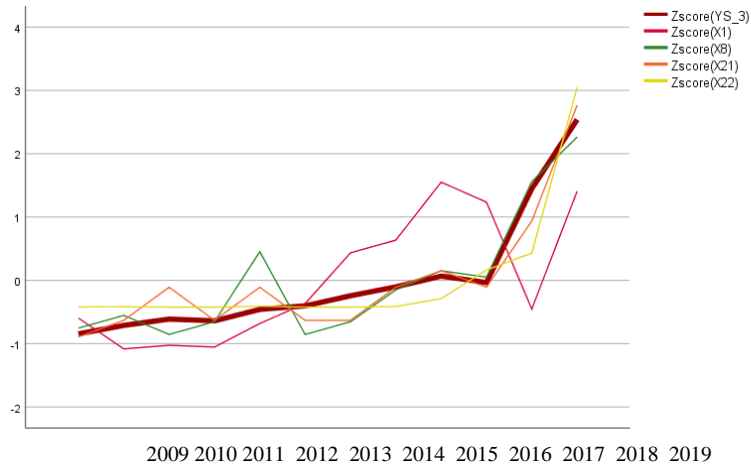
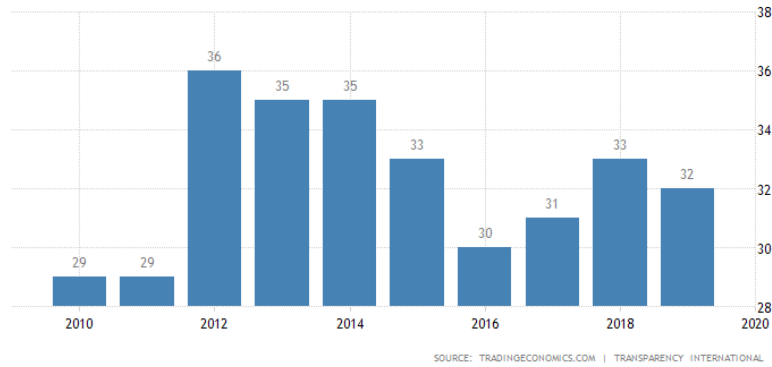
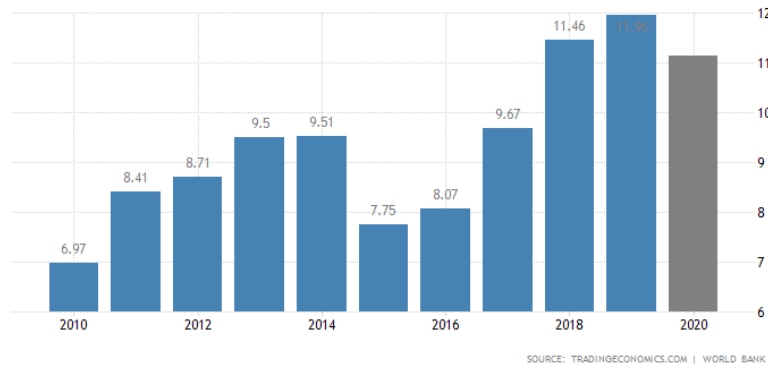


Figure 9. Dynamics of the Corruption Perceptions Index in Moldova in 2010-2019



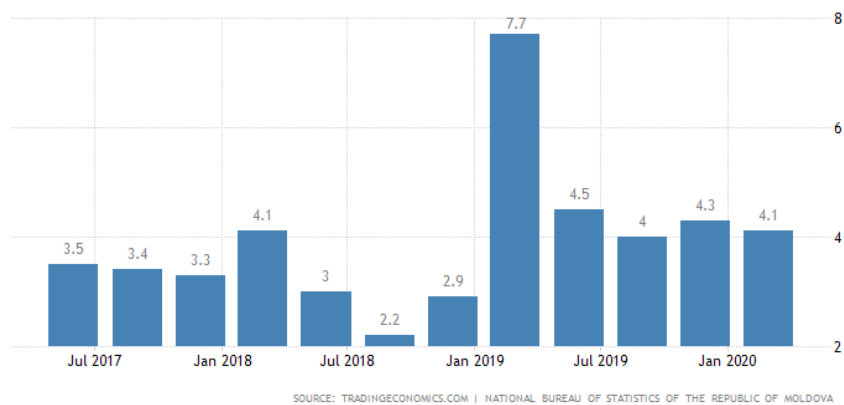
Source: „Trading Economics“²⁸⁷.

Figure 10. Moldova's GDP in value (US\$ billion) 2010-2019



Source: „Trading Economics“²⁸⁸.

Figure 11. Dynamics of the unemployment rate in Moldova in 2017-2020



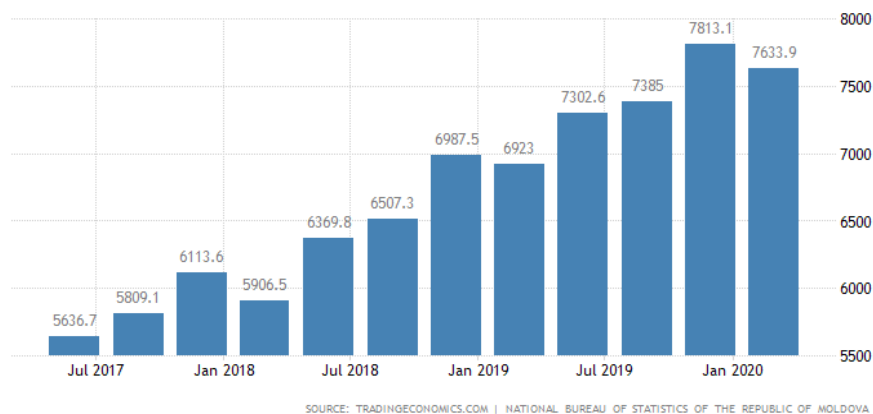
Source: „Trading Economics“²⁸⁹.

²⁸⁷ <https://tradingeconomics.com/moldova/indicators>

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

Figure 12. Dynamics of wages in Moldova in 2017-2020



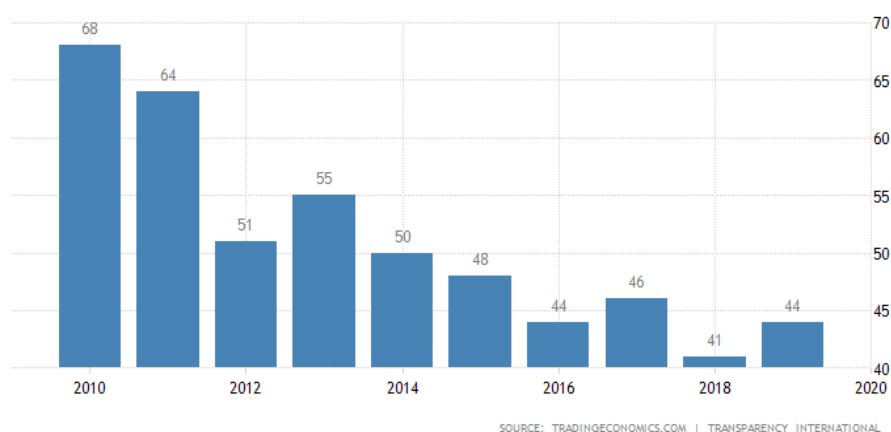
Source: „Trading Economics“²⁹⁰.

Figure 13. Dynamics of the inflation rate in Moldova in 2019 July-2020 June



Source: „Trading Economics“²⁹¹.

Figure 14. Dynamics of Sakartvelo's Corruption Perception Index in 2010-2019



Source: „Transparency International“²⁹².

²⁹⁰ <https://tradingeconomics.com/moldova/indicators>

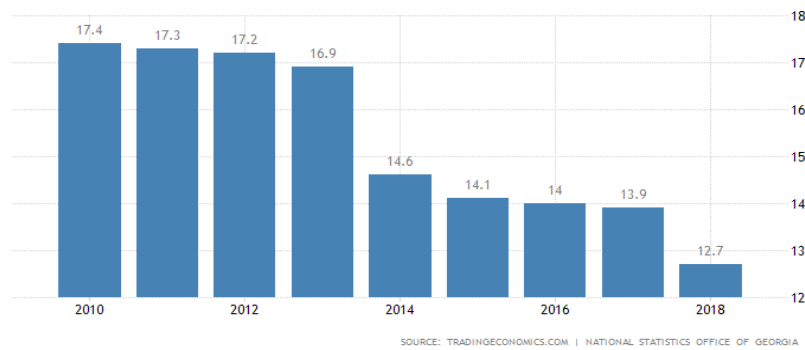
²⁹¹ *Ibid.*

Figure 15. Dynamics of Sakartvelo's GDP per capita in USD indicator in 2010-2020



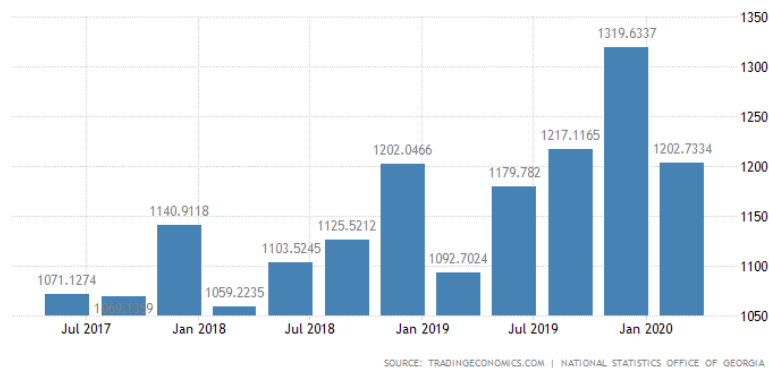
Source: „Trading Economics“²⁹³.

Figure 16. Dynamics of the Sakartvelo unemployment rate indicator in 2010-2018



Source: „Trading Economics“²⁹⁴.

Figure 17. Dynamics of Sakartvelo's average monthly salary in 2017 July-2020 January, GEL/month



Source: „Trading Economics“²⁹⁵.

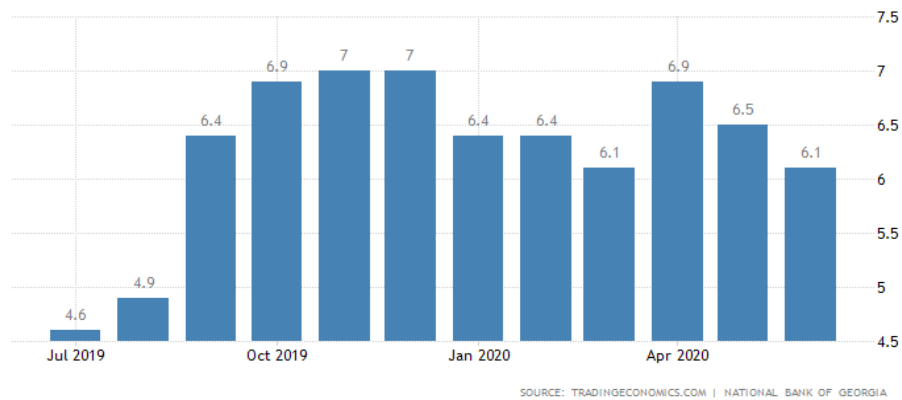
²⁹² <https://www.transparency.org/en/cpi/2020>

²⁹³ <https://tradingeconomics.com/georgia/indicators>

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

Figure 18. The dynamics of the inflation rate in Sakartvelo in 2019 July-2020 April



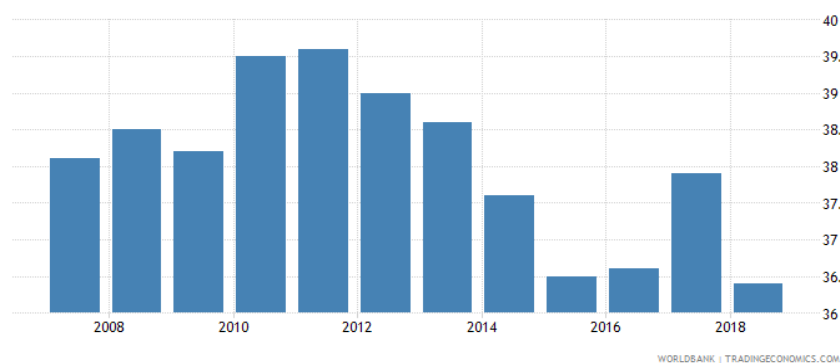
Source: „Trading Economics“²⁹⁶.

Figure 19. The dynamics of the level of interest in Sakartvelo in 2010-2020



Source: „Trading Economics“²⁹⁷.

Figure 20. Dynamics of the Sakartvelo GINI index in 2008-2018



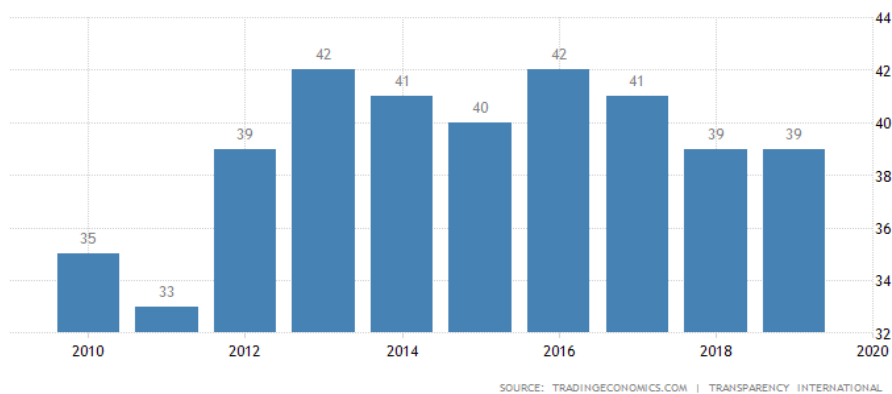
Source: „Trading Economics“²⁹⁸.

²⁹⁶ <https://tradingeconomics.com/georgia/indicators>

²⁹⁷ *Ibid.*

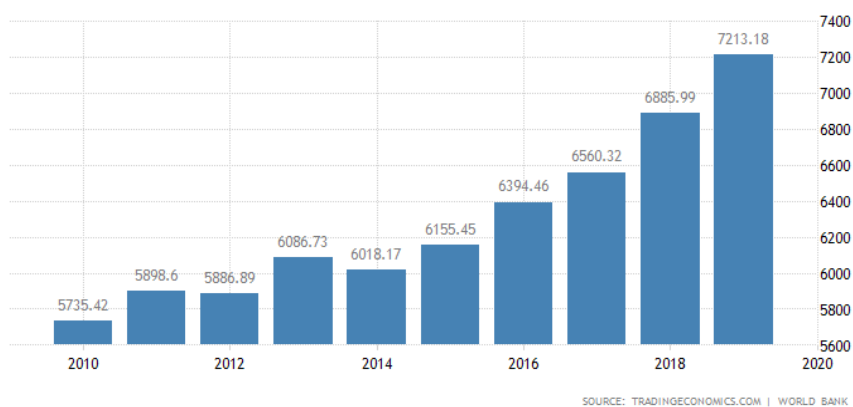
²⁹⁸ *Ibid.*

Figure 21. Dynamics of the Corruption Perceptions Index in Moldova in 2010-2019



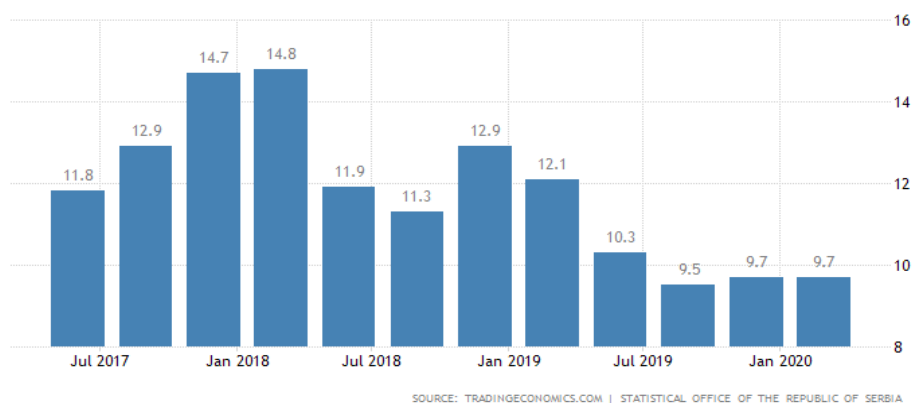
Source: „Trading Economics“²⁹⁹.

Figure 22. Dynamics of Serbia's GDP per capita indicator in 2010-2019



Source: „Trading Economics“³⁰⁰.

Figure 23. The dynamics of the unemployment rate indicator in Serbia in 2017, July - 2020, January



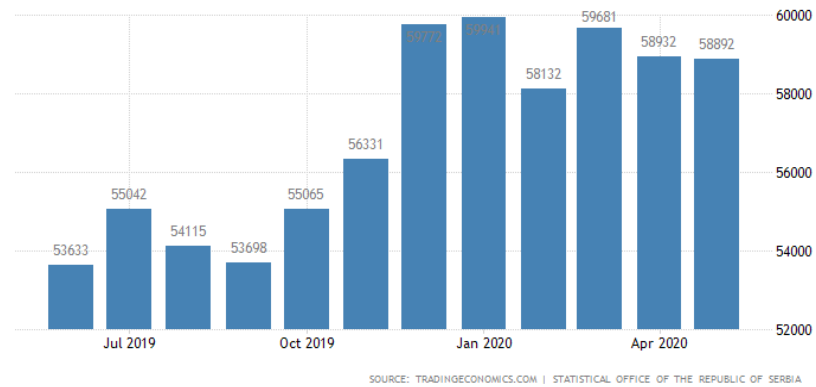
Source: „Trading Economics“³⁰¹.

²⁹⁹ <https://tradingeconomics.com/moldova/indicators>

³⁰⁰ <https://tradingeconomics.com/serbia/indicators>

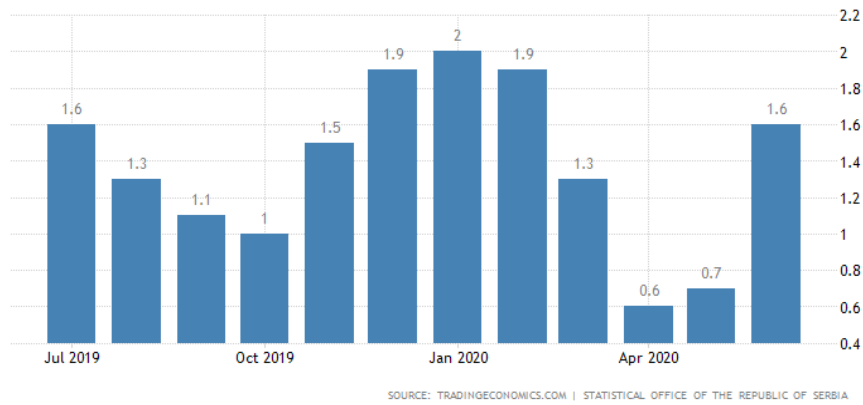
³⁰¹ *Ibid.*

Figure 24. Dynamics of average monthly wages in Serbia in 2019 June-2020 May



Source: „Trading Economics“³⁰².

Figure 25. The dynamics of the inflation rate in Serbia in 2019, July-2020, June



Source: „Trading Economics“³⁰³.

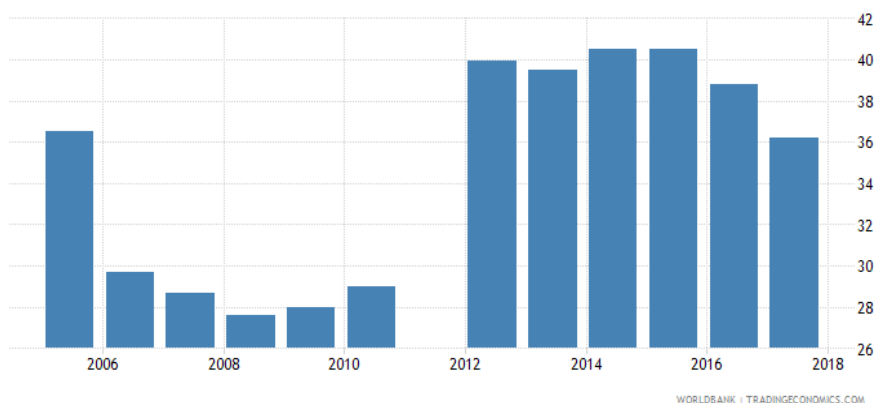
Figure 26. Interest rate dynamics in Serbia 2007-2020



³⁰² <https://tradingeconomics.com/serbia/indicators>

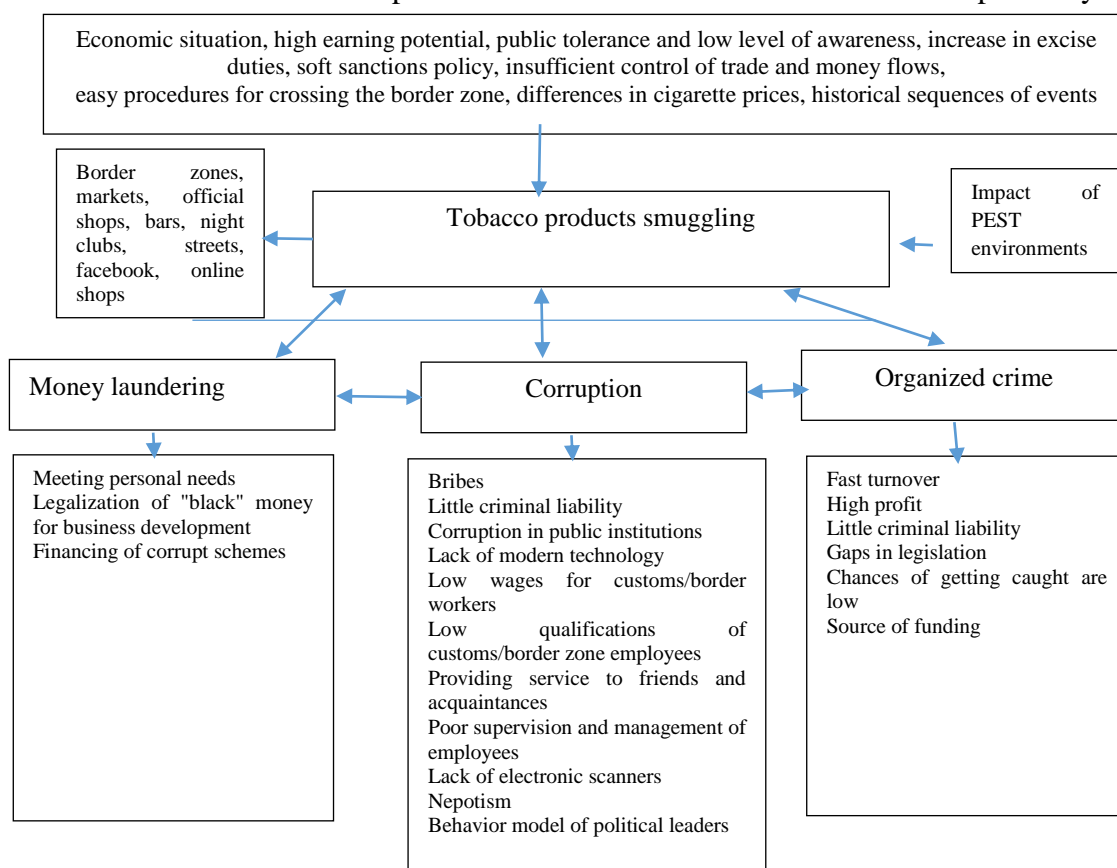
³⁰³ *Ibid.*

Figure 27. Dynamics of the Serbian GINI index in 2006-2018



Source: „Trading Economics“³⁰⁴.

Figure 28. A model of the impact of cigarette smuggling on the macroeconomic situation of Eastern European countries in the context of interdisciplinarity



Source: compiled by the author after the analysis of the literature and the results of empirical research

³⁰⁴ <https://tradingeconomics.com/serbia/indicators>