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## Stages of the Commission of the Smuggling of Narcotic Drugs, Their Analogues and Precursors, or Counterfeit Drugs

### 1. Introduction

The relevance and novelty of the topic of the research lies in the fact that the stages of the commission of a crime were mainly considered by scientists in a general sense. The problem of the stages of the smuggling of narcotic drugs, psychotropic substances, their analogues and precursors or counterfeit drugs has not been detailed and considered from the standpoint of comparative analysis with other foreign countries. In addition, the article substantiates and proposes new approaches and improvement of current legislation, including with regard to the issuance of fair decisions by the courts, since the above crime constitutes a high level of public danger.

The aim of the study is to detail and establish the features of the stages of drug smuggling, their theoretical and practical aspects.

To achieve the above goal, the following tasks must be completed:

- to characterize the stage of preparation for drug smuggling, its features in comparison with foreign legislation;

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- to define a completed attempt on drug smuggling and highlight its problematic aspects;
- to consider the concept of “unsuitable attempt” as a promising aspect of its introduction into domestic legislation;
- to investigate the stage of the completed crime and compare with the stage of the completed attempt, to establish differences and common signs;
- to consider and characterize the problematic aspects of the prolonged crime in the context of drug smuggling.

During the research, the following methods were used: analysis method, statistical method, deduction, induction, comparative analysis.

## **2. The preparation for commission the smuggling of narcotic drugs, their analogues and precursors, or counterfeit drugs**

So, the commission of the smuggling of narcotic drugs, their analogues and precursors, or counterfeit drugs goes through all three stages of criminal activity: preparation for the commission of a crime, attempt to commit a crime and completed crime to its full completion.

It should be noted that the Ukrainian legislator, defining the stage of preparation for the commission of a crime covered only the most common types of preparation (searching for or adapting means or tools, looking for accomplices or conspiracy to commit a crime, removal obstacles), and also supplemented the definition with the generalizing concept of «other intentional creation conditions for committing a crime», then outlining an inexhaustible list of actions that may represent preparations for committing a crime. Textually, article 14 paragraph 1 of the Criminal Code of Ukraine provides: «Preparation for a crime is the search for or adaptation of means or tools, the search for accomplices or conspiracy to commit a crime, the removal of obstacles, as well as other deliberate creation of conditions for the commission of a crime»<sup>2</sup>.

For example, according to the article 16 paragraph 2 of the Criminal Code of the Republic of Poland, preparation for a crime is punishable if

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<sup>2</sup> Baulin U.V., Borysov V.I., Maliarenko V.T. (Eds.). (2017). Kryminalnyi kodeks Ukrainy: Naukovo-praktychnyi komentar [Criminal Code of Ukraine: Scientific and practical commentary]. Kharkiv: Odisei.

so provided by law. That is, preparation for a crime is punishable only so provided by the Special Part of the Criminal Code of the Republic of Poland. At the same time, the Polish legislator provides for a separate sanction for preparation to commit a crime, which, of course, is less severe than for a completed crime. Meanwhile, preparation for the commission of a crime and responsibility for preparation for a crime are defined only in the General part of the Criminal Code of Ukraine according to Ukrainian criminal law<sup>3</sup>.

The experience of European states in determining and imposing penalties for the preparation for the commission of a crime is also interesting. In particular, M.I. Khavronyuk considered the sentencing for preparation for a crime and attempt to commit a crime under the Criminal Code of Ukraine in the framework of a comparative analysis of the criminal codes of European states. The scientist has identified three areas of punishment for the preparation for a crime:

- 1) preparation for a criminal act is not punished at all (Albania, Italy, Denmark, Belgium, France);
- 2) preparation is punishable only for grave and especially grave crimes (Russia, Latvia, Lithuania) or for a crime for which the law provides for imprisonment for at least eight years and only on the condition that it has the manifestation of certain actions aimed at committing a crime in complicity (Holland);
- 3) the stage of the preparation for crimes is not mentioned in the General Part of the Criminal Code, however, the Special Part determined which preparations for (of course, the most dangerous) crimes are punished. This version is the most common<sup>4</sup>.

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<sup>3</sup> Voitanovych O.Y. (2013). Zarubizhnyi dosvid formuvannia pravovoi ideolohii ta shliakhy schodo zapozychennia dlia Ukrainy. Porivnialno-analitychne pravo [Foreign experience in the formation of legal ideology and ways of borrowing it for Ukraine. Comparative and analytical law]. Retrieved from: [http://www.pap.in.ua/2\\_2013/Voitanovich.pdf](http://www.pap.in.ua/2_2013/Voitanovich.pdf).

<sup>4</sup> Khavroniuk M.I. (2015). Pokarannia za hotuvannia do zlochynu i zamah na zlochyn: paradoksy natsionalnoho kryminalnoho kodeksu, osoblyvo u porivnianni z inozemnym [Punishment for preparation for a crime and attempted crime: paradoxes of the national criminal code, especially in comparison with foreign ones]. Retrieved from: [www.Zakonoproekt.org.ua](http://www.Zakonoproekt.org.ua).

Thus, the current Criminal Code of Ukraine (article 14 paragraph 1) provides for the following types of preparation: searching for or adaptation means or tools, searching for accomplices, conspiracy to commit a crime, removal obstacles, other deliberate creation of conditions for committing a crime (for example, the acquisition of narcotic drugs for illegal movement across the border, equipping for this purpose hiding places, hiding places on vehicles, in luggage, clothing and hiding smuggled items in them; manufacture of forged customs documents and other; inciting another person to participate in smuggling, the distribution of roles between members of a criminal group in committing smuggling; selection of sources of acquisition and points of sale smuggled drugs). According to article 16 paragraph 1 of the Criminal Code of the Republic of Poland, the types of preparation for a crime are: creation of conditions aimed at the execution of a crime, in particular, conspiracy to commit a crime; searching for adaptation of means, collection of information, development an action plan<sup>5</sup>.

The development of an action plan as a type of preparation is defined as a condition that facilitates the commission of a crime. If a person makes a plan to commit a crime, then it is likely that the crime will be realized. Various circumstances and details are taken into account that may serve or damage the commission of a crime, when there is the development of an action plan. Proof that planning of a crime cannot be a composite concept of intent can be various schemes of entry to the premises, plans for step-by-step actions of accomplices in paper form, corruption schemes of committing crimes. All this cannot be attributed to the intent to commit a crime. Planning a crime is a type of preparation that the Ukrainian legislator provided for in the formulated and generalized form of preparation, namely, «another deliberate creation of conditions for the commission of a crime», thus a list of all possible types of preparation was avoided.

In this context, the most convenient is the opinion of V.M. Burdin, who is convinced that the actions of the person who made the prepara-

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<sup>5</sup> Benitskiy A.S., Huslavskiy V.S., Dudorov O.O., Rozovskiy B.H. (eds.) (2011). *Kryminalne pravo Ukrainy. Zahalna chastyna: pidruchnyk* [Criminal law of Ukraine. General part: textbook]. Kyiv: Istyna.

tions contain a full-fledged corpus delicti with all four elements. Another thing is, due to which features it is formed and where they are provided<sup>6</sup>.

So, I.U. Vakula expressed in her dissertation an opinion, which is quite convenient and it is worth agreeing, that it is necessary to establish criminal responsibility for preparation for crimes prescribed by the art. art. 201 and 305 of the Criminal Code of Ukraine. The smuggling of items provided for in these crimes may be preceded by the stage of preparation for the crime. The preparatory acts of these crimes can be attributed to the search for accomplices among the customs officers, preparation of the hiding places of smuggled items in order to move them across the customs border or outside customs control, and others. Also, the scientist suggests article 14 paragraph 2 of the Criminal Code of Ukraine should read as follows: „2. Criminal responsibility is for preparation for grave and especially grave crimes, as well as crimes provided for in art. art. 201, 305 of the Special Part of this Code”<sup>7</sup>.

### **3. The attempt to commit smuggling of narcotic drugs, their analogues and precursors, or counterfeit drugs**

The next important step is the attempt. The attempt to commit smuggling of narcotic drug, as follows from the content of the article 15 of the Criminal Code of Ukraine is the commission with direct intent of actions aimed at the illegal movement of narcotic drugs, psychotropic substances, their analogues and precursors or counterfeit drugs across the customs border of Ukraine, outside customs control or with concealment from customs control, when there is a threat of violation of the established procedure for moving items off the crime across the border, however, this procedure was not violated, since the illegal movement did

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<sup>6</sup> Burdin V.M. (2013, october). *Suspilna nebezpechnist hotuvannia do zlochynu. Aktualni problemy kryminalnoi vidpovidalnosti: materialy mizhnarodnoi naukovo-praktychnoi konferentsii* [Social danger of preparation for a crime. Actual problems of criminal liability: materials of the international scientific and practical conference] (pp. 176–180). Kharkiv: Pravo.

<sup>7</sup> Vakula I.U. (2019). *Stadii vchynennia zlochynu za kryminalnym pravom Ukrainy ta Respubliky Polshcha: porivnialno-pravove doslidzhennia* [Stages of committing a crime in the criminal law of Ukraine and the Republic of Poland: comparative legal research]. (Doctoral dissertation). Lviv State University of Internal Affairs, Ukraine.

not occur for because of reasons beyond the control of the guilty person. So an attempt to commit smuggling is the presentation of hand luggage and baggage with drugs hidden in hiding places to customs control before the departure abroad, as well as other actions aimed at moving items of the crime with hiding them from customs control (for example, the submitting of a customs declaration with unspecified items, that must be declared, presentation of customs and other documents with deliberately false information entered into them about the number and nature of the exported items, for example: counterfeit drugs)<sup>8</sup>. Thus, a citizen of the Republic of Belarus bought a narcotic drug – cannabis near the parking of a gas station. This drug, he decided to move across the state border from Ukraine to Romania, keeping him with him. In pursuance of his criminal intent aimed at the illegal movement of a severely hazardous drug through the customs border from Ukraine to Romania, with hiding from customs control, M., in order to complicate the detection of the above drug, placed it among his personal belongings, namely in a bag with documents and 13.11.2017, about 15 p.m. 40 min., arrived at the Customs Check Point «Porubnoye», which is located on the territory of Chernivtsi region. Later, during customs control, the citizen filled out a customs declaration, in which he deliberately did not indicate in paragraph 3.3 about the presence of a prohibited drug. Realizing that the declaration he filled out contains deliberately false information, he presented it to the customs inspector on the same day and during an oral questioning said, that he had no prohibited things and items. However, on the same day at 16 o'clock 00 minutes during an in-depth customs examination of personal belongings, namely a bag with documents, employees of Chernivtsi customs found and seized a crushed substance of plant origin, green, with a total weight of 24.07 grams, which was wrapped in a sheet of paper and with adhesive tape<sup>9</sup>.

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<sup>8</sup> Vakula I.U. (2014). *Vydy stadii vchynennia zlochynu za kryminalnym pravom Ukrainy ta Respubliky Polshcha* [Types of stages of committing a crime under the criminal law of Ukraine and the Republic of Poland] (2). Lviv: Naukovyi visnyk Lvivskoho derzhavnoho universytetu vnutrishnikh sprav.

<sup>9</sup> Arkhiv Hlybotskoho raionnoho sudu Chernivetskoï oblasti. (2018). No. 715/1108/18 [Archive of the Golubitsky district court of the Chernivtsi region]. Retrieved from: <https://www.google.com/search?q>

According to paragraph 8 of the Decision of the Plenum of the Supreme Court of Ukraine of 3 June, 2005 No. 8, „an attempt to smuggle takes place if its items are found before they can be transported across the customs border of Ukraine (during the inspection or reinspection of goods, vehicles, carry-on luggage, luggage or personal examination, etc.). The crime is considered be completed from the moment of illegal movement of smuggled items across the customs border of Ukraine”<sup>10</sup>.

#### 4. The concept of «unsuitable attempt»

The situation is relatively clear with the concept of attempt to commit smuggling of narcotic drugs, while in the theory of criminal law and in scientific circles, the concept of «unsuitable attempt» is increasingly discussed. Let's consider this definition in more detail. In the domestic criminal law literature, the definition of a separate type – an unsuitable attempt – has both supporters and opponents. In particular, V.P. Tikhiy, A.V. Shevchuk propose to allocate special types of attempt to commit the crime, namely, the unsuitable attempt. In turn, A. V. Shevchuk divides an unsuitable attempt in two components: an attempt on an unsuitable object (item) and an attempt with unsuitable means<sup>11</sup>.

It is also fair to note that in spite of the fact that the criminal legislation of Ukraine does not contain provisions concerning the unsuitable attempt, the practice of qualifying the actions of a criminal who was actually mistaken about the properties of the items or means has long been widespread in law enforcement<sup>12</sup>. In both cases, the person makes a factual error, which deprive her of the opportunity to bring the crime to an end.

An example related to the topic of our research can be the case when a person intends to smuggle drugs and for this purpose finds accomplic-

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<sup>10</sup> Postanova Plenumu Verkhovoho Sudu Ukrainy. No. 8. § 8 [Resolution of the Plenum of the Supreme Court of Ukraine] (2005).

<sup>11</sup> Shevchuk A. V. (2002). *Stadii vchynennia zlochynu* [Stages of the crime]. Chernivtsi: Ranok.

<sup>12</sup> Postanova Plenumu Verkhovnoho Sudu Ukrainy. No. 3. § 6 [Resolution of the Plenum of the Supreme Court of Ukraine]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/v0003700-02>. (2002).

es who will subsequently produce and provide him with a psychotropic substance – amphetamine for smuggling to the Republic of Poland. After the preparation, citizen X. receives a psychotropic substance, carefully disguises it in a cache to pass customs control, however, during customs inspection, the items of the crime was discovered, and citizen X. was detained. During the forensic chemical examination it was found that the powder, similar to the psychotropic substance amphetamine, is an ordinary powder that does not contain any narcotic elements. So, in accordance with the norms of Ukrainian legislation, the item of the crime is actually absent, which means that the corpus delicti itself is absent. How can we, in this case, qualify the actions of citizen X.? In our opinion, it is in this case that the term «unsuitable attempt» should be used, since the criminal intended to use the unsuitable item of the crime, not knowing that in fact it would not entail any negative consequences.

The actions of the seller in this case will be qualified in accordance with article 4 of the Decision of the Plenum of the Supreme Court of Ukraine of 26 april, 2002 No. 4 «Jurisprudence practice in cases of crimes in the field of trafficking *у*а narcotic drugs, psychotropic substances, their analogues or precursors», where there is indicated, that the actions of a person, who under the guise of narcotic drugs, psychotropic substances, their analogues or precursors, deliberately sells any other means or substances in order to seize money or property, should be qualified as fraud, and if there are grounds for this, it should be qualified as incitement to make attempt for illegal acquisition of narcotic drugs, psychotropic substances, their analogues or precursors, while the actions of the buyer must be qualified as an attempt to commit the crime prescribed by the articles 305, 307, 309, or 311 of the Criminal Code of Ukraine<sup>13</sup>.

It should be mentioned that the provision concerning the concept of an unsuitable attempt is inherent in the criminal legislation of the Republic of Poland and the criminal laws of many other foreign states. For example, the relevant norms are contained in the criminal codes of the Federal Republic of Germany, Macedonia and Montenegro, Switzerland, the Republic of Lithuania, etc. It should also be noted that leniency for an unsuitable attempt is a discretionary power of the court but not an

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<sup>13</sup> Постанова Пленуму Верховного Суду України. No. 4. § 4 [Resolution of the Plenum of the Supreme Court of Ukraine]. (2002).



obligation, therefore sometimes there are cases when an attempt to commit a crime is punishable as a completed crime.

It is necessary to agree with the opinion that exists in Ukrainian legislation that the recognition of a crime as unfinished because of the factual error of the guilty person does not always indicate a lesser degree of his public danger in comparison with the completed crime<sup>14</sup>. That is why, in our opinion, such a concept as «unsuitable attempt» should be introduced into the theory of criminal law. It should be taken into account that crimes such a drug smuggling committed with an unsuitable item or unsuitable means are also socially dangerous, although not as much as ordinary crimes, since they equally infringe on public values. Therefore, when the courts passing a sentence, they must take into account all the factual circumstances of the commission of a crime or the reasons why the crime was not brought to an end. At the same time, the article 8 of the Decision of the Plenum of the Supreme Court of Ukraine of 3 June, 2005 № 8 should be supplemented with the following content: „When considering smuggling cases, the courts should take into account that an attempt is considered to be unsuitable if a person intends to move an unsuitable item (for example, if a person believes that he transports narcotic drugs, but in fact it is an ordinary powder) or commit a crime with unsuitable means (for example, a customs invoice, which in fact does not bear legal force)”<sup>15</sup>.

## **5. The moment, when the smuggling of narcotic drugs, their analogues and precursors, or counterfeit drugs is a completed crime**

The moment when the smuggling is defined as a completed crime has a great practical and theoretical importance.

According to the current legislation, smuggling is completed crime from the moment of the factual illegal movement of items across the customs border of Ukraine. If the items of the smuggling are revealed during the inspection or re-inspection of things or a personal examination, during

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<sup>14</sup> Stashys V.V., Tatsiy V.U. (2010). *Kryminalne pravo Ukrainy. Zahalna chastyna* [Criminal law of Ukraine. General part]. Kharkiv: Pravo.

<sup>15</sup> Postanova Plenumu Verkhovoho Sudu Ukrainy. No. 8. § 8 [Resolution of the Plenum of the Supreme Court of Ukraine] (2005).

departure from Ukraine, the actions should be qualified as an attempt to commit smuggling (with reference to Article 15 of the Criminal Code of Ukraine). The illegal movement of smuggled items to the territory of Ukraine, discovered during customs control, forms a complete *corpus delicti*<sup>16</sup>. S.A. Soroka takes the same position in her dissertation<sup>17</sup>.

It is necessary to say that various points of view have formed in the theory of criminal law in relation to the moment of the completed crime. They can be conditionally divided into groups. Let's consider them:

- 1) in particular, I.A. Aleksieiev, M.A. Efimov argue that smuggling as a completed crime takes place not only when the guilty person managed to smuggle certain items across the state border, but also when the attempt to commit smuggling was suspended by customs authorities or border guards during the examination;
- 2) M.B. Krupkin argues that the moment when the cargo crosses the border, leaving the country, cannot be considered a mandatory sign of finished smuggling, since in this case it is necessary to recognize that the displaced goods entered the territory of another state<sup>18</sup>, that is, beyond the competence of state bodies. We can talk about criminal responsibility for smuggling when the actions aimed at the illegal movement of goods across the border were committed in the territory of the country, but not abroad;
- 3) a significant group of scientists adheres to a completely different view<sup>19</sup>. They argue that the smuggling should be considered completed crime only from the moment when the cargo crosses the state (customs) border outside customs control or with con-

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<sup>16</sup> Omelchuk O.M. (2003). *Kryminalno-pravova kharakterystyka stadii vchynennia kontrabandy* [Criminal and legal characteristics of the stages of committing smuggling]. Khmelnytskyi: Zoria.

<sup>17</sup> Soroka S.O. (2010) *Kontrabanda narkotychnykh zasobiv: problemy protydii* [Smuggling of narcotic drugs: problems of counteraction]. (Doctoral dissertation). National Academy of Ukraine, Institute of State and Law V.M. Koretsky, Ukraine.

<sup>18</sup> Shevchuk A.V. (2002). *Stadii vchynennia zlochynu* [Stages of the crime: author] (Master's thesis). Kiev National University named after T. Shevchenko, Ukraine.

<sup>19</sup> Filei Yu.V. (2015). *Vplyv pryntsyypiv kryminalnoi vidpovidalnosti na pobudovu kryminalno-pravovykh sanktsii za zlochyny proty moralnosti* [Influence of the principles of criminal responsibility, construction of criminal sanctions for crimes against morality.]. Retrieved from: <http://lsej.org.ua/1>.

- cealment from customs control, regardless of whether the cargo is imported into the territory of the state or exported from it;
- 4) according to M.I. Zagorodnikov, the movement in the considered variant should be understood as overcoming of the three regimes in the border and customs control zones established by the state, and not as a formal moment of physical movement across the state border line. In addition, the detection of smuggled items during customs inspection takes place when prohibited items are moved across the border and it should be considered as a completed crime, and not as an attempt and preparation to commit smuggling (for example, detection of smuggled items when they are exported outside of the territory of Ukraine at border stations, in ports, near the checkpoints of the Border Troops, by the moment, when these items are presented for customs inspection)<sup>20</sup>. A.M. Yakovlev supports the same position, he believes that when the goods is imported, movement takes place at the factual crossing of the customs border, and during when export movement takes place – when a customs declaration is submitted;
  - 5) O.M. Omelchuk expresses the following position: a certain period passes from the moment of customs inspection on the territory of a foreign state and until the moment the items are actually moved across the state border line. During this period the guilty person has the opportunity to voluntary renunciation of bringing the crime to an end, as a result the criminal responsibility is excluded. If his criminal actions are stopped, during this time, the committed actions can be qualified as an attempt to commit smuggling<sup>21</sup>;
  - 6) A.A. Muzyka and O.P. Horoh prove the necessity of recognizing the attempt to commit smuggling as a completed crime in their monograph<sup>22</sup>.

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<sup>20</sup> Danyliuk T.M. (2009). *Teoretyko-prykladni problemy vstanovlennia momentu zakinchennia zlochynu* [Theoretical applied problems of establishing the moment of the end of the crime]. (Doctoral dissertation). Lviv State University of Internal Affairs, Ukraine.

<sup>21</sup> Omelchuk O.M. (2002). *Kontrabanda za kryminalnym pravom Ukrainy* [Smuggling in criminal law of Ukraine]. (Doctoral dissertation). Lviv National University of Ivan Franko, Ukraine. dys.

<sup>22</sup> Muzyka A.A., Horokh O.P. (2010). *Pokarannia za nezakonnymi obih narkotychnykh*

Having analyzed various points of view, it should be noted that the persons who import drugs into the territory of Ukraine and those who perform actions related to the movement of drugs from the territory of Ukraine are in unequal conditions. In fact, committing the same illegal, socially dangerous actions, the persons are differently punished, and sometimes they are exempted from the criminal responsibility. To prove this fact, we analyzed about 50 sentences which were passed in the period from 2015 to 2020 in Volyn region. Thus, out of 49 analyzed sentences, 24 sentences were passed under the article 305 of the Criminal Code of Ukraine (completed crime) and 25 – under the art. art. 15 and 305 of the Criminal Code of Ukraine (completed attempt). At the same time, for a completed attempt, persons were punished in the form of: release from serving a sentence with probation – 8 sentences (32%); fine – 15 sentences (60%); arrest – 1 sentence (4%); imprisonment – 1 sentence (4%). Also, for the completed crime, the persons were punished in the following way: fine – 18 sentences (75%); release from serving a sentence – 2 sentences (8.5%); imprisonment – 4 sentences (16.5%). It should be mentioned that in some sentences, persons who moved the same items of the crime – cannabis (a severely hazardous drug), in the same size (small size) – carried different penalties. For example, according to the verdict of the Volodymyr-Volynsky local court of the Volyn region of 16 January, 2017, citizen A. was found guilty of committing a criminal offense prescribed by the article 305, paragraph 2 of the Criminal Code of Ukraine (smuggling a highly dangerous drug – cannabis from Poland to the territory of Ukraine, with a total weight of 1.588 g) and impose a penalty agreed by the parties in the form of a fine in the amount of 1471 tax-free minimum incomes of citizens, which is 25007 hryvnas 00 kopecks. In this case, the person carried criminally responsibility for the completed crime in the form of a fine<sup>23</sup>.

Another example is the verdict of the Ratnivsky District Court of the Volyn Region of June, 2017, according to which citizen M. was found

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zasobiv [Punishment for drug trafficking]. Khmelnytskyi: Publishing house of Khmelnytsky University of Management and Law.

<sup>23</sup> Arkhiv Liuboml'skoho raionnoho sudu Volynskoi oblasti. (2017). No. 163/2409/17 [Archive of the Lyuboml district court of the Volyn region]. Retrieved from: <https://www.google.com/search?q=%D0%90%D1%80%D1%85%D1%96%D>.

guilty of committing a crime under the article 15, paragraph 2, article 305, paragraph 2 of the Criminal Code of Ukraine (smuggling of a highly dangerous drug, the circulation of which is prohibited – cannabis, with total weight 1.56 g through the customs border of Ukraine) and on the basis of art. art. 75, 76 of the Criminal Code of Ukraine, M. was released from serving a sentence if he does not commit a new crime within a two-year probationary period<sup>24</sup>.

The above example demonstrates a complete attempt and how we can notice the item of the crime in both cases – cannabis which is a severely hazardous drug, the mass of the transported substance is also identical, but the punishment is completely different. In our opinion, the number of persons exempted from punishment for an attempt to commit smuggling indicates that, in fact, persons committing the same unlawful act, encroaching on the same object, but they bear different responsibility. Thus, not only the principles of justice and individualization of punishment are violated, but the punishment itself does not fulfill one of the main function – prevention (prophylaxis) of drug smuggling, the fight against organized criminal groups, as well as international and transnational criminal activities. We think it is necessary the attempt to commit smuggling of narcotic drugs amount to a completed crime, given that the degree of public danger from the committed actions is the same. Therefore, taking into account the above sentences, the part of the norm should be reworded as follows: «Smuggling or attempt to commit smuggling of narcotic drugs, psychotropic substances, their analogues and precursors, or counterfeit drugs...».

## 6. The definition of the prolonged crime

Next, we propose to consider the issue of the prolonged crime, since it is important for the correct understanding and qualification of the actions of the guilty person who smuggles drugs.

So, according to the article 6 of the decision of Plenum of the Supreme Court of Ukraine of 4 June, 2010 No. 7, the prolonged crime, in

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<sup>24</sup> Arkhiv Liuboml'skoho raionnoho sudu Volynskoi oblasti. (2018). No. 163/654/14-k [Archive of the Lyuboml district court of the Volyn region]. Retrieved from: <https://www.google.com/search?>

accordance with the article 32, paragraph 2 of the Criminal Code, consists of two or more identical acts, united by a single criminal intent. It means that it is necessary to combine identical acts with a single criminal intent in order to commit the first of a series of identical acts. The person understand that in order to realize her criminal intent, it is necessary to do several such acts, each of which is aimed at the realization of this intention<sup>25</sup>.

Such actions do not form repetition. Each of this action becomes an element of an isolated (single) crime and cannot be a separate (independent) crime for any other of these acts, and if identical crimes are repeated, each of them has its own mental element of the crime, in particular an independent intent that occurs each time before committing a separate (new) crimes. In particular, I.O. Zinchenko and V.I. Tyutyugin, detailing the legislative definition of the concept of the prolonged crime, believe that the prolonged crime is a type of simple (or complicated) single crime, which consists of two or more legally identical, not coinciding in time actions (actions or inactivity), which encroach on one object, cause a single criminal consequence (in crimes with material composition) and are united by a single intent and common goal. That is, for the prolonged crime is characterized by that the subject alternately influences (encroaches on) the same social relations<sup>26</sup>. For example, if a person from the beginning of his illegal activity intended to move a large amount of psychotropic substance – amphetamine – from the Republic of Poland to Ukraine, but each time transported a small amount of psychotropic substance for 10 times. It should be noted that such a socially dangerous act not only exists in time for a more or less long period, but also harms the object of criminal law protection in another way. When the prolonged crime takes place the damage is higher. Each subsequent episode of the prolonged crime additionally affects the object and the amount of damage from this increases<sup>27</sup>.

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<sup>25</sup> Postanova Plenumu Verkhovoho Sudu Ukrainy. No. 7. § 6. [Resolution of the Plenum of the Supreme Court of Ukraine]. (2010).

<sup>26</sup> Zinchenko I.O. (2010). *Odynychni zlochyny: poniattia, vydy kvalifikatsiia* [Single crimes: concept, types of qualification]. Kherson: «FINY».

<sup>27</sup> Vakula I.U. (2019). *Stadii vchynennia zlochynu za kryminalnym pravom Ukrainy ta Respubliky Polshcha: porivnialno-pravove doslidzhennia* [Stages of committing a crime

According to the article 3 of the Decision of Plenum of the Supreme Court of Ukraine of 3 June, 2005 No. 8, if a person had intent illegally move goods across the customs border in large quantities, but he/she moved them in small parts, his/her actions should be considered as the prolonged crime and qualified under the article 305 of the Criminal Code of Ukraine.

It should be mentioned that different views arise in scientific circles regarding the moment of the end of the prolonged crimes. So, I.A. Zinchenko and V.I. Tyutyugin believe that the specific nature of the prolonged crimes it is not only the complexity of their legislative structure, but the special complex nature of the criminal behavior of the subject. Therefore, the moment of the end of these crimes should not be associated with features of the corresponding corpus delicti, but with the special nature of the person's criminal behavior.

At the same time, there is the opinion in the scientific literature that in cases when the actions which make the prolonged crime, although they were not fully implemented by the guilty party in accordance with his intention, but in fact they could not longer cause more harm in their further implementation, which would have affected the qualifications. Such a crime is proposed to be considered completed from the moment the first action which was committed<sup>28</sup>.

In our case, if a person intends to move drugs with concealment from customs control, for example, from the Russian Federation to the Republic of Poland, she commits conditionally 3 illegal actions, which are united by the single criminal intent and purpose and, which ultimately constitute a completed crime, such as: 1) movement of narcotic drugs from the Russian Federation to Ukraine (completed crime) 2) transportation (actually storage) of narcotic drugs through the territory of Ukraine; 3) the intention to move narcotic drugs to the Republic of Poland from Ukraine (completed attempt). Accordingly, the actions of such a person will be qualified as a completed crime and do not require additional qualifications under the article 15 of the Criminal Code of Ukraine (as

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in the criminal law of Ukraine and the Republic of Poland: comparative legal research]. (Doctoral dissertation). Lviv State University of Internal Affairs, Ukraine.

<sup>28</sup> Zinchenko I.O. (2010). *Odynychni zlochyny: poniattia, vydy kvalifikatsiia* [Single crimes: concept, types of qualification]. Kherson: «FINY».

the completed attempt). That is, the person may already be brought to criminal responsibility having actually committed the first unlawful act – moving drugs to the territory of Ukraine, but not having completed the next planned criminal offenses, since the following actions do not change the criminal-legal assessment of the offense.

Thus, when there is a problem concerning the moment of the end of the prolonged crimes, it is necessary to take into account not the features of the legislative structure of the *corpus delicti*, but the peculiarities of the factual commission of a socially dangerous act (its duration in time), as well as the mechanism of causing harm to the object of criminal law protection<sup>29</sup>.

## 7. Conclusions

Thus, it is worth noting that on the basis of the material which was analysed and positive foreign experience, as well as with the aim of applying by the courts fair punishment when passing sentences in cases of drug smuggling, we consider it appropriate to supplement the current legislation of Ukraine with such novelties, namely:

1. the article 14 paragraph 2 of the Criminal Code of Ukraine should read as follows: «2. Criminal responsibility is for preparation for grave and especially grave crimes, as well as crimes provided for in art. art. 201, 305 of the Special Part of this Code»;
2. the article 8 of the Decision of the Plenum of the Supreme Court of Ukraine of 3 June, 2005 № 8 should be supplemented with the following content: «When considering smuggling cases, the courts should take into account that an attempt is considered to be unsuitable if a person intends to move an unsuitable item (for example, if a person believes that he transports narcotic drugs, but in fact it is an ordinary powder) or commit a crime with unsuitable means (for example, a customs invoice, which in fact does not bear legal force)»;
3. the part of the article 305 of the Criminal Code of Ukraine should be reworded as follows: “Smuggling or attempt to commit smug-

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<sup>29</sup> Antoniuk N.O. (2015). *Obiektivni oznaky skladu prodovzhuvanoho zlochynu [Objective signs of the prolonged crime]*. Odesa: Yurydychna literatura.



gling of narcotic drugs, psychotropic substances, their analogues and precursors, or counterfeit drugs...”

## References

- Antoniuk N.O. (2015). Obiektivni oznaky skladu prodovzhuvanoho zlochynu [Objective signs of the prolonged crime]. Odesa: Yurydychna literatura.
- Arkhiv Liuboml'skoho raionnoho sudu Volyn'skoi oblasti. (2017). No. 163/2409/17 [Archive of the Lyuboml district court of the Volyn region]. Retrieved from: <https://www.google.com/search?q=%D0%90%D1%80%D1%85%D1%96%D>.
- Arkhiv Hlybotskoho raionnoho sudu Chernivets'koi oblasti. (2018). No. 715/1108/18 [Archive of the Golubitsky district court of the Chernivtsi region]. Retrieved from: <https://www.google.com/search?q>
- Arkhiv Liuboml'skoho raionnoho sudu Volyn'skoi oblasti. (2018). No. 163/654/14-k [Archive of the Lyuboml district court of the Volyn region]. Retrieved from: <https://www.google.com/search?>
- Baulin U.V., Borysov V.I., Maliarenko V.T. (Eds.). (2017). Kryminalnyi kodeks Ukrainy: Naukovo-praktychnyi komentar [Criminal Code of Ukraine: Scientific and practical commentary]. Kharkiv: Odisei.
- Benitskiy A.S., Huslavskiy V.S., Dudorov O.O., Rozovskiy B.H. (eds.) (2011). Kryminalne pravo Ukrainy. Zahalna chastyna: pidruchnyk [Criminal law of Ukraine. General part: textbook]. Kyiv: Istyna.
- Buridin V.M. (2013, October). Suspilna nebezpechnist hotuvannya do zlochynu. Aktualni problemy kryminalnoi vidpovidalnosti: materialy mizhnarodnoi naukovo-praktychnoi konferentsii [Social danger of preparation for a crime. Actual problems of criminal liability: materials of the international scientific and practical conference] (pp. 176–180). Kharkiv: Pravo.
- Danyliuk T.M. (2009). Teoretyko-prykladni problemy vstanovlennia momentu zakinchennia zlochynu [Theoretical applied problems of establishing the moment of the end of the crime]. (Doctoral dissertation). Lviv State University of Internal Affairs, Ukraine.
- Filei U.V. (2015). Vplyv pryntsyypiv kryminalnoi vidpovidalnosti na pobudovu kryminalno-pravovykh sanktsii za zlochynty proty moralnosti

- [Influence of the principles of criminal responsibility, construction of criminal sanctions for crimes against morality]. Retrieved from: <http://lsej.org.ua/1>.
- Khavroniuk M.I. (2015). Pokarannia za hotuvannia do zlochynu i zamah na zlochyn: paradoksy natsionalnoho kryminalnoho kodeksu, osoblyvo u porivnianni z inozemnym [Punishment for preparation for a crime and attempted crime: paradoxes of the national criminal code, especially in comparison with foreign ones]. Retrieved from: [www.Zakonoproekt.org.ua](http://www.Zakonoproekt.org.ua).
- Muzyka A.A., Horokh O.P. (2010). Pokarannia za nezakonnymi obih narkotychnykh zasobiv [Punishment for drug trafficking]. Khmelnytskyi: Publishing house of Khmelnytsky University of Management and Law.
- Omelchuk O.M. (2003). Kryminalno-pravova kharakterystyka stadii vchynennia kontrabandy [Criminal and legal characteristics of the stages of committing smuggling]. Khmelnytskyi: Zoria.
- Omelchuk O.M. (2002). Kontrabanda za kryminalnym pravom Ukrainy [Smuggling in criminal law of Ukraine]. (Doctoral dissertation). Lviv National University of Ivan Franko, Ukraine. dys.
- Postanova Plenumu Verkhovnoho Sudu Ukrainy. No. 3. § 6 [Resolution of the Plenum of the Supreme Court of Ukraine]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/v0003700-02>. (2002).
- Postanova Plenumu Verkhovnoho Sudu Ukrainy. No. 4. § 4 [Resolution of the Plenum of the Supreme Court of Ukraine]. (2002).
- Postanova Plenumu Verkhovnoho Sudu Ukrainy. No. 7. § 6. [Resolution of the Plenum of the Supreme Court of Ukraine]. (2010).
- Postanova Plenumu Verkhovnoho Sudu Ukrainy. No. 8. § 8 [Resolution of the Plenum of the Supreme Court of Ukraine] (2005).
- Shevchuk A.V. (2002). Stadii vchynennia zlochynu [Stages of the crime]. Chernivtsi: Ranok.
- Shevchuk A.V. (2002). Stadii vchynennia zlochynu [Stages of the crime: author] (Master's thesis). Kiev National University named after T. Shevchenko, Ukraine.
- Soroka S.O. (2010) Kontrabanda narkotychnykh zasobiv: problemy protydii [Smuggling of narcotic drugs: problems of counteraction]. (Doctoral dissertation). National Academy of Ukraine, Institute of State and Law V.M. Koretsky, Ukraine.

- Stsahys V.V., Tatsiy V.U. (2010). Kryminalne pravo Ukrainy. Zahalna chastyna [Criminal law of Ukraine. General part]. Kharkiv: Pravo.
- Vakula I.U. (2014). Vydy stadii vchynennia zlochynu za kryminalnym pravom Ukrainy ta Respubliky Polshcha [Types of stages of committing a crime under the criminal law of Ukraine and the Republic of Poland] (2). Lviv: Naukovyi visnyk Lvivskoho derzhavnoho universytetu vnutrishnikh sprav.
- Vakula I.U. (2019). Stadii vchynennia zlochynu za kryminalnym pravom Ukrainy ta Respubliky Polshcha: porivnialno-pravove doslidzhennia [Stages of committing a crime in the criminal law of Ukraine and the Republic of Poland: comparative legal research]. (Doctoral dissertation). Lviv State University of Internal Affairs, Ukraine.
- Voitanovych O.Y. (2013). Zarubizhnyi dosvid formuvannia pravovoi ideologii ta shliakhy schodo zapozychennia dlia Ukrainy. Porivnialno-analitychne pravo [Foreign experience in the formation of legal ideology and ways of borrowing it for Ukraine. Comparative and analytical law]. Retrieved from: [http://www.pap.in.ua/2\\_2013/Voitanovich.pdf](http://www.pap.in.ua/2_2013/Voitanovich.pdf).
- Zinchenko I.O. (2010). Odynychni zlochyny: poniattia, vydy kvalifikatsiia [Single crimes: concept, types of qualification]. Kherson: «FINY».

## Summary

There are the main theoretical issues of the stages of committing a crime are analysed in the research, since this topic causes controversial views among scientists, and there is also no unified judicial practice of applying punishment in the smuggling of narcotic drugs, psychotropic substances, their analogues and precursors.

A comparative legal study of the stage of preparation for a crime, signs and types of preparation has been carried out. Based on the developed legislation and theoretical provisions, it can be argued that the criminal legislation of Ukraine differs from the legislation of other foreign states.

At the same time, on the basis of theoretical and legislative provisions of the criminal law of Ukraine, the signs and types of the stage of an attempt to commit the drug smuggling are revealed. The positions of the common and foreign scientists regarding the attempt to commit a crime are analyzed.

Separately, attention is focused on the concept of an unsuitable attempt to commit a crime, which is enshrined at the legislative level in the Republic of Poland, but is absent in Ukrainian legislation.

The article examines and analyzes the commission of smuggling of narcotic drugs at the stage of a completed crime, as well as examples of judicial practice according the guilty persons who are punished at the stage of an attempt and a completed crime.

In addition, the problem of the prolonged crime is highlighted according the commission of drug smuggling with the aim of further transporting the items of the crime to another state.

**Keywords:** stages of the crime, the preparation for a crime, an attempt to commit a crime, an unsuitable attempt, the completed crime, the prolonged crime