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NATIONAL AND INTERNATIONAL LEGAL PARTICULARITIES
OF THE CRIMINAL INVESTIGATION OF CUSTOMS OFFENCES COMMITTED
THROUGH POSTAL SHIPMENTS

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Abstract

This paper provides a comprehensive analysis of the procedural and criminal aspects concerning the investigation of customs-related offences committed through postal consignments. It emphasises how the use of postal and international courier infrastructures facilitates the diversification and evolution of smuggling practices, allowing offenders to operate at increasingly sophisticated levels.

The study further outlines the procedural framework regulating the investigation, evidence collection, and documentation of customs offences perpetrated via postal shipments, while addressing the balance between enforcement measures and the protection of fundamental rights under domestic and international law.

Keywords: smuggling, customs-related offences, postal consignments, customs control, global logistics, fundamental rights, criminal procedure.

PARTICULARITĂȚI LEGISLATIVE NAȚIONALE ȘI INTERNAȚIONALE
ALE INVESTIGĂRII PROCESUAL-PENALE A INFRAȚIUNILOR VAMALE
COMISE PRIN INTERMEDIUL TRIMITERILOR POȘTALE

Abstract

În acest articol este efectuată și prezentată o analiză generală al procesului de investigație a infracțiunilor vamale ce sunt comise prin intermediul trimiterilor poștale. Este evidențiat modul în care utilizarea infrastructurilor poștale și a serviciilor internaționale de curierat facilitează diversificarea și evoluția practicilor de contrabandă, permițând autorilor să acționeze la niveluri tot mai sofisticate.

Studiul conturează, totodată, cadrul procesual care reglementează activitățile de investigare, administrare a probelor și documentare a infracțiunilor vamale săvârșite prin trimiteri poștale, abordând în același timp echilibrul necesar între măsurile de aplicare a legii și protecția drepturilor fundamentale, atât în dreptul intern, cât și în dreptul internațional.

Cuvinte-cheie: contrabandă, infracțiuni vamale, trimiteri poștale, control vamal, logistică globală, drepturi fundamentale, proces penal.

Introduction. In the context of the accelerated development of trade and the expansion of global courier networks, the risk of customs offences being committed through postal shipments has increased considerably. These offences fall within the sphere of cross-border criminality and have significant consequences not only for the economic

security of the state but also for the international legal order. Through postal and courier networks, criminal groups resort to sophisticated mechanisms for concealing prohibited goods or goods subject to customs duties such as excisable products, narcotic substances, counterfeit goods, or items subject to restriction regimes. In this way, the form of committing offences through postal shipments has taken shape, adapted to new technological and logistical realities, which transform legitimate infrastructures into instruments of unlawful activity.

Research methodology is based on the use of classical legal-scientific analysis methods, including logical and grammatical analysis, synthesis, deduction and induction, observation, and comparison. Following examination of relevant materials encompassing national and international normative acts, specialist doctrine, court jurisprudence, and other related sources corresponding conclusions and recommendations were formulated, designed to reflect the research findings and the proposed directions.

Discussion and results applied. In the context of contemporary globalisation, national borders have lost their traditional rigidity, economic and commercial barriers have been largely abolished, and the circulation of information now occurs with unprecedented speed through a simple technological gesture. This opening of markets and the free movement of goods and persons, although generating considerable economic benefits, simultaneously creates fertile ground for the proliferation of criminal phenomena.

As Pino Arlacchi, former Executive Director of the United Nations Office for Drug Control and Crime Prevention, stated at the tenth UN Congress on the Prevention of Crime and the Treatment of Offenders: *“there have never been so many economic opportunities for so many people, but, equally, there have never been so many ways for criminal organisations to exploit the system in their own interest”* [1].

Law No.39/2016 of the Republic of Moldova defines a postal item as: *“an item bearing an address to which it is to be delivered by the postal service provider. This category includes correspondence items, as well as printed matter (books, catalogues, newspapers, periodicals) and postal parcels containing goods with or without commercial value”*, and an international postal item as: *“a postal item dispatched from the territory of the Republic of Moldova to an address not located on its territory, or dispatched from outside the Republic of Moldova to an address located on its territory”* [2].

The second paragraph of the above-cited law prohibits the inclusion in all categories of postal items of the following objects:

“(a) Narcotic drugs and psychotropic substances, as defined by the International Narcotics Control Board (INCB);

(b) Obscene or immoral objects;

(c) Counterfeit and pirated objects;

(d) Other import or circulation objects that are prohibited in the country of destination;

(e) Objects which, by their nature or packaging, may present a danger to agents or the general public, or which may stain or damage other postal items, postal equipment or property belonging to third parties;

(f) Documents bearing the character of current and personal correspondence exchanged between persons other than the sender and the addressee or persons residing with them;

(g) Hazardous goods;

(h) Explosive devices and inert military equipment, including inert grenades, inert shells and other analogous items, as well as imitations of such devices and items;

(i) Live animals” [2].

Emergency Ordinance No.13/2013 of Romania contains the definition of a postal item, identified as: *“an addressed item in the final form in which it is to be transported and delivered to the address indicated by the sender. In addition to correspondence items, this category includes, for example, books, catalogues, newspapers, periodicals, postal parcels containing goods with or without commercial value, and paper-based postal money orders”*, using the terms: *“international postal item a postal item dispatched from the territory of Romania to an address not located on that territory, or dispatched from outside the territory of Romania to an address located on that territory, and a postal item dispatched from outside the territory of Romania to an address not located on that territory, but in transit through the territory of Romania”*, and *“intra-Community postal item an international postal item dispatched from the territory of Romania to an address on the territory of another Member State of the European Union, or dispatched from an address on the territory of another Member State of the EU to an address on the territory of Romania, and a postal item dispatched from the territory of one Member State of the European Union to an address on the territory of another Member State of the European Union, but in transit through the territory of Romania”*[3].

That act expressly stipulates that: *“The following acts constitute contraventions, unless committed under such conditions as to constitute, according to criminal law, offences: (c) postal items consisting of goods whose transport is prohibited by legal provisions, even if only over a portion of the route”* [3].

The basis for including these provisions was Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997, which establishes common rules for the development of the internal market of postal services and the improvement of the quality thereof, subsequently amended by Directive 2002/39/EC of 10 June 2002, intended to consolidate the gradual opening of the postal sector to competition, bearing in mind that this regulation was subsequently revised by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 [4], which aims at completing the liberalisation of the postal services market in the European Union.

Under European Union law, the offence of smuggling is analysed primarily through the lens of the protection of the Union's financial interests (the so-called PIF: *Protection des Intérêts Financiers*), regulated by:

- The PIF Convention of 26 July 1995 and Directive (EU) 2017/1371 [5] on the fight against fraud to the Union's financial interests by means of criminal law;
- The Union Customs Code (Regulation (EU) No. 952/2013) [6], which establishes customs declaration obligations and the legal regime for goods introduced into or removed from the customs territory of the Union;
- Directive 2008/6/EC [7] on the complete liberalisation of the postal services market, which introduces the obligation for Member States to guarantee the security of international postal flows and cooperation with customs authorities.

The European Union is the world's largest importer and exporter of goods, managing an internal market of almost 500 million inhabitants. Customs legislation is fully harmonised and provides a stable and comprehensive legal system aimed at ensuring the correct and uniform application of the Union's autonomous and international rules, and establishing the obligations and rights of customs administrations and economic operators in a common and transparent manner [8].

In 1990, the World Trade Organization developed a set of release procedures designed to accelerate the clearance of low – or negligible-value goods at the border, which were transported primarily by courier services and express mail [9].

At that time, the guidelines operated on the principle of information provided by the operator to customs authorities prior to the arrival of goods. The guidelines were revised

in 2014 to reflect revisions made to the Kyoto Convention and a number of other developments, and again in 2018 [10].

The need had already emerged for customs to assume greater and broader responsibilities in areas such as security, trade fraud, illicit trafficking in drugs and weapons, money laundering, cybercrime, smuggling, environmental crime, and transnational organised crime.

The accelerating pace of digital transformation of economies and businesses – where information technology, mobile technology, the Internet, and electronic payment systems have transformed the way businesses and consumers buy and sell goods – has further compounded this challenge.

Postal authorities, on the other hand, generally accept customs declarations in paper form, which makes electronic and advance information impractical.

The postal situation is acknowledged in the guidelines, which specifically indicate that postal shipments for which information is provided in a non-electronic format and is supplied after arrival should nonetheless benefit from prompt, if not immediate, release. The need to develop more advanced mechanisms has, however, been emphasised. At the same time, the wealth of information available to e-commerce operators is recognised and continued cooperation is recommended.

According to international protocols, most private postal services have standard logistics which offenders intentionally exploit to their advantage. When a postal package begins its journey from the originating post office, it passes through a physical screening process, as shown in Fig. 1. There is little or no authentication involved in subsequent stages. Depending on the destination, the package is sent to a sectional distribution centre for local distribution or from there to the national distribution centre for interstate deliveries.

Most transfers are made by road using trucks, with the exception of postal items and express deliveries. A similar situation occurs in imports and exports, where the large volume of goods does not permit authentication.

Although packages are tracked throughout the entire process, the contents are not checked for counterfeits, adulterated substances, or illegal items, except for the physical check at origin. In order to achieve a more advanced level of surveillance of the postal parcel dispatch process, the following action model is proposed, which would facilitate the possibility of identifying possible manipulations in the postal lifecycle when packages are transferred between the sectional distribution centre, the national distribution centre, consolidation facilities, and import/export terminals, including for the purpose of identifying possible prohibited objects or substances that may be contained in the postal item [11].

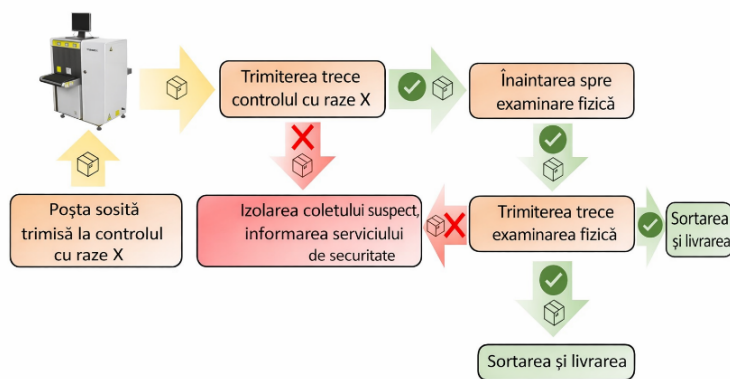


Fig. 1. The current filtering process followed by most postal services, which does not rely on any quantitative information.



Fig. 2. The lifecycle of mail from origin to destination, which may proceed through different modes

Pursuant to Article 30 of the Constitution of the Republic of Moldova [12], the state guarantees the inviolability of the secrecy of correspondence, regardless of its form letters, telegrams, postal items, telephone conversations, or other lawful means of communication. This constitutional guarantee reflects the commitment of the authorities to protect the sphere of private life and to prevent any arbitrary interference with persons' communications. In this regard, the criminal procedure legislation of the Republic of Moldova enshrines the same principle of the inviolability of correspondence. According to Article 14(1) of the Code of Criminal Procedure, the state guarantees: *"The right to the secrecy of letters, telegrams, other postal items, telephone conversations and other lawful means of communication is guaranteed by the state. In the course of criminal proceedings, no one may be deprived of or restricted in this right"* [13].

However, the right to the secrecy of correspondence does not have an absolute character, but rather a relative one, and may be restricted under certain conditions expressly provided by law. In accordance with the provisions of Article 138¹ of the Code of Criminal Procedure of the Republic of Moldova [13], the restriction of this right is permissible only where such a measure is necessary for the protection of national security, the economic well-being of the state, public order, or for the purpose of preventing and combating offences.

Moreover, the protection of the secrecy of correspondence is also enshrined in Article 8 of the European Convention on Human Rights, which guarantees every person the right to respect for their correspondence. Nevertheless, the European provision permits the interference of authorities in the exercise of this right where the measure is provided for by law, pursues a legitimate aim, and constitutes a necessity in a democratic society in particular for the protection of national security, public safety, public order, and the prevention of criminal acts, as well as for the protection of the rights and freedoms of others.

Reference has been made to these provisions with the purpose of noting that both national legislation and European Union legislation guarantee the inviolability of the secrecy of correspondence, which includes postal items, while providing that this right is not absolute, given that in cases where the presence of an offence is established by the competent authorities, it may be restricted in order to conduct an investigation aimed at countering the unlawful act, identifying the perpetrators, and sanctioning them within the limits of their culpability.

From a legal perspective, customs offences committed through postal shipments

fall within the category of acts aimed at evading customs control and avoiding payment of the fiscal obligations associated with goods introduced into the country. Under the criminal law of the Republic of Moldova, these are most commonly classified generally as smuggling offences.

Unlike classic smuggling, which involves the unauthorised physical crossing of a border, postal customs offences manifest through the use of a lawful transport channel (the postal service) for the purpose of concealing the illicit nature of the dispatched goods.

These may take the form of:

- The introduction into the territory of the state of goods without customs declaration;
- Undervaluation of the declared goods;
- Falsification of documents accompanying parcels;
- Dispatch by post of goods subject to import/export prohibitions.

It is evident that the use of postal networks for illicit activities marks a shift of smuggling from the physical space to the logistical and electronic domain. Although the modalities have modernised, the essence of the act the evasion of customs control remains the same.

This evolution necessitates the adaptation of legislation to reflect the reality of digital commercial operations and to enable the effective identification and sanctioning of perpetrators. Simultaneously, this fact underscores the need to implement, in both the criminal procedure and customs legislation at national level and that of the European Union provisions expressly regulating the procedural actions undertaken for the investigation and documentation of offences committed through postal shipments.

At present, for the investigation of customs offences committed through postal shipments, where information exists indicating the presence of a prohibited item in the postal shipment, procedurally both special investigative measures and procedural measures are carried out, including: the retention, examination, delivery, search, or seizure of postal items belonging to persons implicated in the case.

Postal units retain postal items containing objects, materials, and substances prohibited from dispatch at the location where these are detected.

Items containing prohibited objects are in no case dispatched to their destination, delivered to addressees, or returned to their origin. If prohibited objects are discovered in items in transit, the latter will be retained and processed by the universal postal service provider in accordance with legislation. When prohibited objects are identified at the time of transport, the universal postal service provider is authorised to extract these objects from the item and to process them in accordance with legislation, while the remainder of the item is dispatched to its destination, accompanied by information regarding the removal of the inadmissible object.

Regarding the detection and retention of such postal items, postal service providers notify the competent law enforcement authorities. Officials of the competent state authority carry out, in the presence of the head of the postal unit, the confiscation of prohibited objects and substances in accordance with the provisions of the normative framework of the Republic of Moldova [14].

The provisional storage of such postal items is carried out at post offices, with the maintenance of records and the preservation of their integrity. Access by unauthorised persons to these items is excluded.

Consequently, once a postal item arrives at the post office, it is temporarily withdrawn from circulation; the head of the postal institution is obliged to immediately notify the criminal investigation body which presented the ordinance, confirming the retention of the postal items indicated in the authorisation act.

The concept of “*retention of a postal item*” is understood as the procedural action carried out by the head of the post office, on the basis of a ruling by the investigating judge authorising this special investigative measure. It consists of the suspension, at the level of the postal institution, of correspondence dispatched or received by persons who are suspects or accused, where there are reasonable grounds to believe that the respective items may contain information or objects with evidentiary value in a criminal case concerning one or more serious, particularly serious, or exceptionally serious offences [15, pp. 104-105].

Thus, the retention of postal items constitutes an exceptional procedural measure, designed to obtain relevant evidence in complex cases, being subject to judicial authorisation and to the review of legality exercised by the investigating judge, in order to guarantee respect for the right to private life and the secrecy of correspondence as provided by law and by the European Convention on Human Rights.

Conclusions. We conclude that the phenomenon of customs offences committed through postal items highlights a transformation of classic smuggling, adapted to the economic, logistical, and technological realities of the digital age. The use of postal channels lawful transport mechanisms for the dispatch of prohibited goods or goods subject to customs duties constitutes a modern form of evasion of state control, characterised by concealment, fragmentation of shipments, and the use of advanced means of communication.

The existing normative framework, although coherent at national and European level, requires uniform application adapted to the new operational realities. The legislation of the Republic of Moldova, Romania, and the European Union clearly establishes the legal regime of postal items and the applicable prohibitions; however, the practical effectiveness of these norms depends on the degree of cooperation between customs authorities, criminal investigation bodies, and postal operators.

An essential element is ensuring the balance between the efficiency of criminal investigation and the protection of the fundamental rights of the person. Constitutional and conventional guarantees regarding the secrecy of correspondence and the right to private life require that measures which by their very nature affect the general principles of criminal procedure such as the retention, opening, seizure, or search of postal items be ordered exclusively under the conditions strictly provided by law, with prior judicial authorisation and justification proportionate to the objective pursued. Accordingly, the “*retention of a postal item*” must be regarded as an exceptional procedural measure, subordinate to the principle of legality and subject to rigorous judicial review, in order to prevent the abuse of power and to guarantee compliance with the standards set out in Article 8 of the European Convention on Human Rights.

In procedural terms, it is necessary to consolidate the chain of custody of evidence obtained, to clarify the terminology of procedural acts, and to supplement the legal framework with precise concepts regarding the seizure of prohibited objects and the concurrent application of contravention or criminal procedure legislation. Postal operators, as technical participants in the criminal process, must possess clear internal procedures regarding the identification, reporting, and storage of suspicious items, in full accordance with criminal procedure norms.

Therefore, only a unitary legal-procedural approach, founded on the principles of legality, proportionality, and international cooperation, can guarantee the effectiveness of criminal investigations and the equitable protection of fundamental rights in this new form of cross-border economic criminality.

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