

UDC 343.1

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Vynnychenko, Vitalii (2024). Specificities of documenting smuggling of cultural values and weapons in Ukraine. *Entrepreneurship, Economy and Law*, 2, 40–46, doi <https://doi.org/10.32849/2663-5313/2024.2.07>

SPECIFICITIES OF DOCUMENTING SMUGGLING OF CULTURAL VALUES AND WEAPONS IN UKRAINE

Abstract. Purpose. The purpose of the article is to study the specific tactics of documenting smuggling of cultural values and weapons in Ukraine. **Results.** The article analyses the specific features of documenting crimes related to smuggling of cultural values and weapons in Ukraine. The paper examines the legal framework governing the processes of recording such offences, the specifics of methods and means of documentation, and the role of law enforcement bodies in collecting evidence. The key challenges faced by law enforcement bodies in documenting smuggling, including concealment of criminal acts, use of modern technologies and international channels, are considered. Emphasis is placed on international cooperation and the use of advanced technical means for recording and examining evidence. The article offers recommendations for improving the smuggling documentation process, which will contribute to the effective prevention and investigation of these crimes. **Conclusions.** It is concluded that a clear procedure for operational staff in the course of identifying persons involved in smuggling cultural values and weapons across the State border requires a high level of professional training from the Security Service of Ukraine. This includes in-depth knowledge of the current legislation governing operative-search activities, inquiry and pre-trial investigation, as well as familiarity with departmental regulations that define the specifics of the customs authorities and related processes. In the process of operative development, measures are implemented to respond to situations when operational staff receive primary information about individuals or groups of individuals committing crimes under investigation. The process of documenting the facts of smuggling is situational and depends on the circumstances that arise when signs of such crimes are detected. This activity of operational units is aimed at recording specific facts and is constantly influenced by available information and changes in the operative and tactical situation. In each situation, the initial information becomes the basis for formulating tasks for operational staff, among which one can distinguish between typical tasks that are typical for most cases and specific tasks that are inherent only in specific circumstances.

Key words: smuggling, cultural values, weapons, documentation, law enforcement bodies, evidence, international cooperation, criminal offences, investigation methods, technical means.

1. Introduction

Obviously, resistance from the criminal environment can be overcome both in the course of criminal procedural functions and within the framework of operative-search activities aimed at combating crime. However, with the complication of the criminogenic situation in the country and the increase in organised forms of criminal activity, the problem of operative-search support for criminal proceedings in the context of counteraction by the criminal environment has acquired an independent significance, important for the development of the theory of operative-search activities.

The study of operative-search activities as a tool of operative-search support for combating smuggling of cultural values and weapons

has become relevant in the current context of reforming the entire system of combating crime. The reason for this is the change in the model of law enforcement in accordance with the current Criminal Procedure Code of Ukraine, which led to amendments to the Law of Ukraine 'On Operative-search Activities' (Alforov, 2013).

The purpose of the article is to study the specific tactics of documenting smuggling of cultural values and weapons in Ukraine.

Nowadays, contemporary scientists have achieved significant success in this area, having contributed to the formation and further development of operative and search documentation, in particular, scientific and theoretical developments have been made

by S.V. Albul, M.O. Bandurka, R.S. Bielkin, V.H. Bobrov, V.I. Vasylynchuk, A.F. Voznyi, D.V. Hrebelskyi, M.L. Hribov, E.O. Didorenko, I.P. Kozachenko, Ya.Yu. Kondratiev, Ye.D. Lukianchykov, D.Y. Nikiforchuk, Yu.Yu. Orlov, M.A. Pohoretskyi, V. H. Samoilov, O.S. Starenkyi, S.S. Cherniavskyi, A.M. Cherniak and others. However, the issue of operative-search documentation of crimes in general, and smuggling of cultural property and weapons in particular, is insufficiently researched, which raises a number of questions for practical operatives regarding the information to be documented, including the methods of documenting such information, etc.

2. Regulatory and legal framework for documenting smuggling of cultural values and weapons in Ukraine

Today, in the theoretical and applied school of operative-search activities, it is common to use the term 'documenting' during pre-trial investigation. In this sense, we will also use the concepts of operational proving, criminal search proving, operative-search proving, etc. and 'operative-search documentation' (Albul, Andrusenko, 2016). Without focusing in detail on the correlation between these concepts of documenting and proving, as this has been the subject of scientific research by many scholars in the field of the theory of the OSA, criminal procedure, and forensics, we note that in this research we rely on the provisions of current legislation and use the term "documentation."

Considering the concept of 'documentation', it should be noted that the legal literature also has no consensus on the understanding of the concept of 'documentation', which is due to the lack of regulatory framework for the definition of this term, its content and meaning. Indeed, the Law of Ukraine 'On Operative-search Activities' does not use the term proving, instead, the Law states that certain OSA are conducted to identify and document the facts of unlawful acts (Article 8(2)), and the OSA materials are used to obtain factual data that may be evidence in criminal proceedings (Article 10(2)) (Law of Ukraine on operative-search activities, 1992).

Different approaches to defining the tasks of documentation are related to the fact that scholars analyse the actions of operational units which are different in nature. In this context, A. Sakovskyi's opinion is reasonable, as he proposes to distinguish between the concepts of 'documentation', 'operational documentation' and 'operational and search documentation' (Sakovskyi, 2020).

The category of 'operative-search documentation', which has a relatively

narrow meaning (carried out exclusively within the framework of operative-search activities (OSA) and is associated with the name of the relevant law), should be considered as an integral part of the broader concept of 'operational documentation'. This concept includes the actions of operational units both within the scope of the OSA and within the criminal procedure, and is based on the provisions of Article 41 of the CPC of Ukraine (Criminal Procedure Code of Ukraine, 2012) 'Operational units' and Articles 5 and 7 of the Law of Ukraine on operative-search activities (Law of Ukraine on operative-search activities, 1992).

When considering the issue of operative-search documentation of cultural values and weapons in Ukraine, we do not generalise in the context of comparing operative-search documentation with documents drawn up in the course of the conduct of the OSA or materials of the operative-search case. In this context, we propose to understand *operative-search documentation of smuggling of cultural values and weapons as a complex activity of operatives, which is implemented in the course of their conduct of the investigative activity in the manner and forms provided for by the current legislation, and consists in the knowledge (collection (search and detection), study (verification) and evaluation) by the operational officer of information about the unlawful acts of individuals and groups engaged in the illegal transfer of cultural values and weapons across the state border, as well as recording of the obtained factual data in the relevant official documents of the OSA for the purpose of further storage, transformation, transfer, certification of the obtained information in the interests of the OSA and criminal proceedings (author's definition).*

Given the changes that came into force in connection with the adoption of the current CPC of Ukraine, the discussion is still ongoing about the possibility of replacing the search operations with the conduct of covert investigative (search) actions and, accordingly, replacing the process of documentation with evidence in criminal proceedings. The opinions of some authors are divided, some claiming that conducting CISA allows for immediate receipt of evidence in criminal proceedings (Babikov, Sokolkin, 2014), while conducting search operations does not allow for immediate use of documented information in criminal proceedings, but requires its legalisation or declassification. However, we are proceeding from the tasks of the OSA, and therefore it is necessary to expose criminal networks with transnational ties (Verbenskyi, Bezkhlibnyk,

Berlach, 2010), organised criminal groups with a hierarchical structure, a significant degree of secrecy, and a corruption component, so their development within the scope of an operative-search case is more effective, as it allows the use of a wider arsenal of operative-search measures, covert means and covert methods (Chikovani, 2014; Hribov, Sukhachov, 2019).

In addition, combating smuggling of cultural values and weapons has specific features related to the attitude of the population to these crimes, as well as the fact that the perpetrators are persons who have the appropriate power and can use it in case of a threat – in our case, the threat of criminal prosecution.

Despite the covert nature of certain investigative measures, in particular documentary measures, it can be seen that many of them have significant parallels with investigative actions. For example, measures such as interviews can be compared to interrogation (Smyk, 2018), and inquiries and requests for materials are similar to the procedures provided for in Article 93 of the CPC of Ukraine (Criminal Procedure Code of Ukraine, 2012). Collecting samples for comparative research is not much different from obtaining samples necessary for comparative research and from obtaining samples for examination; identification of a person is not much different from line-up; inspection of premises, buildings, structures, areas and vehicles is not much different from examination; control over mail, telegraph and other communications is not much different from seizure of correspondence, its inspection and confiscation, etc.

The survey of respondents revealed that the following investigative (search) actions are most often carried out when documenting this category of crimes

- investigative inspection – 87.4%;
- presentation of items for identification – 43.7 %;
- search, seizure, forensic examinations – 68.5 %;
- interrogation of suspects and witnesses – 91.3%;
- entering a person's home or other property – 45.5%.

In the course of documenting smuggling, timely detection, recording and seizure of objects, documents, substances and traces is of key importance, which is ensured by conducting an investigative examination. This inspection provides the primary information necessary to formulate versions of the crime, the mechanism of its commission, as well as the circle of participants and the identity of the offender, which is important for organising the search for the offender and other operative-search activities.

Prior to the investigative inspection, preparatory measures are taken, including securing the scene and preserving the situation in its original form. Security tasks may be assigned to customs officers, police, the administration of enterprises or institutions, as well as to persons who have discovered the fact of smuggling.

It is important to remember that when choosing a method of recording illegal activities, the operational units of the Security Service should be aware of the purpose and objectives of the OSA and criminal procedure. Therefore, search operations cannot be automatically replaced by covert investigative (search) actions or vice versa. OSA is aimed at detecting and exposing illegal activities (including their immediate termination), while criminal procedure is aimed at investigating criminal offences, proving the guilt of a particular person and criminal prosecution.

The above factors combine to create significant obstacles to effective documentation by the Security Service's operational units under Article 201 of the Criminal Code of Ukraine (2001), and require a comprehensive approach and specialised methods of work on the part of law enforcement bodies.

It should be noted that today the doctrine of OSA discussions has formed a position according to which OSA is performed in three forms: operative-search, operative development and operative prevention. In each of these forms, operational staff receive actual data on the illegal activities of individuals or groups.

However, operative-search documentation is carried out exclusively during operative-search and operative development, when personnel detect, perceive and record actual data on illegal activities, for example, in the process of preventing or stopping the smuggling of cultural values and weapons across the state border of Ukraine.

Phases of operative-search documentation of organised groups involved in smuggling cultural property and weapons across the state border:

- Detection and recording of traces of illegal activities, that is, includes the establishment of signs indicating a criminal offence related to illegal border crossing; identification of a scheme of illegal activities (usually during an operative-search);
- Identification of the means and instruments used to commit the offence, that is, establishing their location, as well as additional traces (form, method of their removal); identification of objects that may become evidence;
- Identification of persons involved in illegal activities, that is, identification of persons who

prepared or committed the crime, assisted in its organisation or concealment; identification of persons who have information and may be involved as witnesses;

- Planning measures to record unlawful acts, that is, developing an action plan to record the crimes of a particular person or group of persons, determining the need to use technical and software tools;

- Recording and stopping illegal actions, that is, using technical means to document actions; stopping the illegal activities of individuals or groups.

Therefore, documentation is an important element of operative-search activities, which ensures the effective detection, recording and stopping of illegal activities related to the smuggling of cultural property and weapons.

Nowadays, the doctrine of operative-search activities (OSA) enshrines the approach according to which OSA is carried out in three main forms: operative-search, operative development and operative prevention. In the process of implementing each of these forms, operational staff receive factual data on the illegal activities of individuals and groups.

The operative documentation is an integral part of each of these forms. However, operative-search documentation is used exclusively during operative-search and operative development. In these cases, employees collect, analyse and record factual data on the illegal activities of individuals or groups, in particular in the process of preventing, detecting or suppressing smuggling of cultural property and weapons.

Therefore, the main areas of documenting the smuggling of cultural property and weapons across the state border include:

- Detection, recording and stopping of illegal activities;

- Detection and verification of persons who may act as witnesses in criminal proceedings;

- Detection of items and documents that may become sources of evidence and ensuring their preservation for further use.

It should be noted that if any grounds for conducting search operations exist, an operative-search case is commenced (Law of Ukraine on operative-search activities, 1992).

The decision to commence such a case must be officially approved by the head of the Security Service of Ukraine or other body specially authorised by law to perform operative-search activities. If the person involved in the crime is identified, the case is commenced against that person; if the person remains unknown, the case is opened against unidentified persons planning to commit a criminal offence. All search operations are carried out within

the framework of such a case, which stores all documents created by operational staff during the development of a particular person (Albul, Yehorov, Poliakov, Shchurat, 2023).

3. Documentation measures for the smuggling of cultural values and weapons in Ukraine

In the course of search operations against organised groups involved in smuggling cultural values and weapons across the state border of Ukraine, operational units have the right to obtain the following documents:

- From citizens, organisations, enterprises and institutions (regardless of ownership), officials, government representatives, mass media: statements of citizens, notifications from organisations, enterprises, institutions and officials.

- Explanations from citizens and officials.

- Materials of inspections, inventories, audits of financial and economic activities of enterprises, institutions and organisations (Law of Ukraine on operative-search activities, 1992).

- Replies to official inquiries from organisations, enterprises, institutions and officials on issues within their competence.

- Copies of documents of archived criminal proceedings (cases) that were in the proceedings of law enforcement bodies or judicial authorities.

This approach ensures the effective organisation and conduct of operational and investigative activities aimed at combating smuggling and other crimes.

The inspection of smuggled items such as firearms, ammunition and cultural values should be of particular importance, as this process requires security measures to protect those present during the inspection. An operational officer usually cannot know in advance what kind of objects or substances they will be dealing with. This is especially true for explosive devices, hazardous substances or cultural values, which are often declared incorrectly or not at all.

However, basic security measures should be taken when verifying operational information during the inspection, including: to involve specialists from customs laboratories in inspections; to use specialised alarm devices in case of suspicion of explosives transportation; to use dosimeters and other radiation detection devices to detect radioactive substances; to take security measures, including isolating facilities, fencing off dangerous areas and restricting access to people; to entrust sampling of hazardous substances only to specialists, for example, from customs laboratories.

Verification of information and inspection of smuggled items usually includes inspection of places where they are likely to be stored. Most often, smuggled goods are found in

- unaccompanied baggage and medium-sized cargo;
- containers, loading platforms, bunkers, compartments of vehicles;
- cabins, passenger and cargo compartments of cars, buses, trains, ships, aircraft, as well as in the structural elements of containers;
- international postal items;
- containers accompanied by representatives of law enforcement agencies.

The following technical means are used to detect contraband:

- X-ray television devices that help detect foreign objects or cavities in hand luggage and baggage;
- fluoroscopic X-ray machines that allow to see through small objects (boxes, handbags, tubes, etc.) to detect hidden objects;
- mobile specialised equipment used for inspection of bulky goods, containers and vehicles;
- inspection mirrors, endoscopes, probes, echolocation devices that provide access to hard-to-reach places;
- metal detectors and alarm devices that help detect metal objects;
- equipment for measuring the volume of smuggled strategically important materials, such as metals and their alloys;
- means for unlocking containers, packaging, boxes and containers.

Therefore, the use of all available tools significantly increases the effectiveness of detecting hidden smuggling of cultural property and weapons in various objects and possible artificial environments.

All facts should contain references to the pages of documents obtained in accordance with the Law 'On Operative-Search Activities' and be attached to the materials of the operative-search case. If the documents were studied electronically (for example, through open sources or state information systems), this should also be indicated with grounds for the need to obtain official copies from the relevant state authorities.

The report of the operational officer may include covertly obtained copies of documents that indicate the preparation or commission of smuggling of cultural property and weapons, as well as audio recordings of intelligence interviews conducted by him/her. At this phase, information is collected in the course of an operative search, which is the initial stage of cognition in operative-search activities (Albul, Yehorov, Poliakov, Shchurat, 2023).

Documentation includes not only generating new documents, but also obtaining existing documents that can be used to meet the objectives of the OSA and criminal

proceedings. Operational staff can obtain ready-made documents that are relevant to decision-making in the OSA and criminal proceedings, as well as documents that can potentially serve as material evidence (Hribov, Sukhachov, 2019).

Criminal activities of organised groups engaged in smuggling cultural values and weapons across the state border are documented, in particular, through direct observation of real events by operatives. This enables real-time information to be obtained about the circumstances of illegal activities that are under the 'control' of operational staff.

In the course of operative documentation, a decision may be made to develop a person who has not previously aroused suspicion, if identified:

- signs of a specific crime;
- signs indicating criminal activity of the person;
- anti-social behaviour;
- traces of past criminal activity;
- connections and environment of a criminal nature;
- grounds to consider the person as an object of operative development in the future.

The use of operative development in documenting the smuggling of cultural property and weapons is to conduct covert search operations against individuals or groups reasonably suspected of preparing or committing a crime. The main purpose of such activities is to prevent or solve crimes in situations where other methods are not effective or complex enough.

Within the scope of operative development, it is necessary to use all available measures and opportunities provided for by the rights of operational units in accordance with Article 8 of the Law of Ukraine 'On Operative-Search Activities' (Law of Ukraine on operative-search activities, 1992).

Documentation in the course of the operative development of a particular person involves not only recording the facts of the crime, but also the collection, analysis and evaluation of factual data that can help prevent future crimes.

It should be noted that among the documents that record the illegal activities of a particular person, the records reflecting the progress of documentation and the results of the relevant search operations are of particular importance (controlled delivery, apprehension, penetration and inspection of publicly inaccessible places, surveillance, audio, video control of a person or place, removal of information from electronic communication networks, electronic information networks). It is also important to record information about persons who are aware of circumstances that will be relevant

to criminal proceedings, as well as items and documents that may be of evidentiary value in criminal proceedings.

4. Conclusions

A clear procedure for operational staff in the course of identifying persons involved in smuggling cultural values and weapons across the State border requires a high level of professional training from the Security Service of Ukraine. This includes in-depth knowledge of the current legislation governing operative-search activities, inquiry and pre-trial investigation, as well as familiarity with departmental regulations that define the specifics of the customs authorities and related processes.

In the process of operative development, measures are implemented to respond to situations when operational staff receive primary information about individuals or groups of individuals committing crimes under investigation. The process of documenting the facts of smuggling is situational and depends on the circumstances that arise when signs of such crimes are detected. This activity of operational units is aimed at recording specific facts and is constantly influenced by available information and changes in the operative and tactical situation.

In each situation, the initial information becomes the basis for formulating tasks for operational staff, among which one can distinguish between typical tasks that are typical for most cases and specific tasks that are inherent only in specific circumstances.

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ОСОБЛИВОСТІ ДОКУМЕНТУВАННЯ КОНТРАБАНДИ КУЛЬТУРНИХ ЦІННОСТЕЙ ТА ЗБРОЇ В УКРАЇНІ

Анотація. *Мета* статті полягає у дослідженні особливостей тактики документування контрабанди культурних цінностей та зброї в Україні. *Результати.* Стаття присвячена аналізу особливостей документування злочинів, пов'язаних із контрабандою культурних цінностей та зброї в Україні. У роботі досліджено нормативно-правову базу, що регулює процеси фіксації таких правопорушень, особливості методів і засобів документування, а також роль правоохоронних органів у зборі доказів. Розглянуто ключові виклики, з якими стикаються правоохоронні органи під час документування контрабанди, зокрема приховування злочинних дій, використання сучасних технологій і міжнародних каналів. Значну увагу приділено міжнародному співробітництву та застосуванню передових технічних засобів для фіксації і дослідження доказів. У статті запропоновано рекомендації щодо вдосконалення процесу документування контрабанди, які сприятимуть ефективному запобіганню та розслідуванню цих злочинів. *Висновки.* Зроблено висновок, що чіткий порядок дій оперативних працівників під час розробки осіб, причетних до контрабанди культурних цінностей та зброї через державний кордон, вимагає від співробітників Служби безпеки високого рівня професійної підготовки. Це включає глибокі знання чинного законодавства, яке регулює оперативно-розшукову діяльність, дізнання та досудове слідство, а також ознайомленість з відомчими нормативними актами, що визначають особливості діяльності митних органів та пов'язаних з ними процесів. У процесі оперативної розробки реалізуються заходи, спрямовані на реагування на ситуації, коли оперативні працівники отримують первинну інформацію про осіб або групи осіб, що вчиняють злочини, які розслідуються. Процес документування фактів контрабанди є ситуативним і залежить від обставин, що виникають під час виявлення ознак таких злочинів. Ця діяльність оперативних підрозділів спрямована на фіксацію конкретних фактів і перебуває під постійним впливом доступної інформації, а також змін оперативно-тактичної обстановки. Вихідна інформація в кожній ситуації стає основою для формулювання завдань оперативним працівникам, серед яких можна виокремити типові завдання, характерні для більшості випадків, та специфічні, які притаманні лише конкретним обставинам.

Ключові слова: контрабанда, культурні цінності, зброя, документування, правоохоронні органи, докази, міжнародне співробітництво, кримінальні правопорушення, методи розслідування, технічні засоби.

The article was submitted 11.11.2024

The article was revised 03.12.2024

The article was accepted 23.12.2024