

CHANGES IN ARTICLE 200.1 OF THE CRIMINAL CODE OF THE RUSSIAN FEDERATION AS A POSITIVE IMPACT DECREASING THE NUMBER OF POTENTIAL CRIMINALS

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Abstract. The paper considers article 200.1 of the Criminal Code of the Russian Federation from both economic and legal points of view. In terms of justice, article 200.1 of the Criminal Code is unsuccessful, as some provisions cannot be fully used. Nevertheless, from the state point of view, the article works impeccably, since most objects of crime are confiscated to the state balance. The main purpose of the paper is to show possible ways to abort the conflict between the government and state-citizen interests and decrease the number of potential criminal cases.

Introduction. The paper aims to determine what is better: a law that works in favor of a person, or a law that works for the benefit of the economic interests of the state.

Main part. First, in judicial practice, there were two approaches to decide the fate of the smuggled items of cash and cash instruments: returning funds to the rightful owner or confiscating the smuggled items. At present, after comprehensive explanations of the Supreme Court, a uniform approach to the fate of funds and instruments is traced in judicial practice. They are confiscated into state revenue, regardless of the legality of fund possession, which is the most considered and fair approach. At the same time, a person who is not involved in smuggling and who is the legal owner of the money that has become the subject of smuggling can count on a refund of his own money.

Second, the studied law enforcement practice has confirmed the exemption from criminal liability for the voluntary transfer of cash and/or monetary instruments. However, the paragraph 4 of the notes to article 200.1 does not allow voluntary refusal to commit smuggling, because, in practice, there were no cases when a person provided cash and monetary instruments and did not incur procedural outgoings.

The entrance to the “green” corridor at customs is equivalent to a statement about the absence of objects necessary to be shown at customs declaration. The courts basically argue their position in such a way that a person who entered the “green” corridor declared the absence of such objects and, by law meaning, cannot return to the information desk to fill out a customs declaration, as well as re-select the “red” corridor. Thus, a person having a large non-declared amount of money with him/her and who entered the “green” corridor, cannot leave the “green” corridor without committing a crime, except cases where customs control forms have not been applied to the person.

Conclusion. The impossibility of applying paragraph 4 of the notes to article 200.1 of the Criminal Code of the Russian Federation served as a reason for the proposal to eliminate this paragraph of notes from the considered norm. As the alternative, the new edition of the notes to article 200.1 was offered which would make it possible to virtually voluntarily refuse to commit a crime by depositing money or monetary instruments. In addition, a change in customs procedure is proposed in custom law, according to which a person crossing the border should not be able to hand over the subject of a possible crime (money), but to fill out a declaration without applying corpus delicti. Thus, a person has a choice: enrichment of the state, or the declaration of funds showing their movement across the border.

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