

Criminal Offenses Illegal Production and Illegal Trade in Criminal Legislation of the Republic of Serbia – Criminally Legal and Criminalistics Approach

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Abstract

The authors first deal with the analysis of the provisions of the criminal offense of illegal production and illegal trade under the criminal legislation of the Republic of Serbia. In addition, the authors provide basic guidelines for combating of the criminal offenses illegal production and illegal trade. In discussing the topic of the paper, the authors start from the fact that these two criminal offenses from the field of crimes against economic interest, which are represented in the total amount of committed offenses in this area in the territory of the Republic of Serbia to large extent, and that there is no sufficient commitment to scientific and professional considerations and analyzes of the problems of counteracting illegal production and illegal trade, as criminal offenses against economic interest whose execution causes enormous damage to the state budget and the country's economic system. Accordingly, the authors aim of the paper is to encourage scientific and professional debate on these crimes and, at the same time, to make up for the lack of papers dealing with these two criminal offenses.

Keywords: illegal production, illegal trade, detection, proving.

I. Introduction

The existence of illegal markets and the lack of some products on the market undoubtedly affect supply and demand. This affects the huge differences in commodity prices. On the other hand, the openness of borders and the desire to earn money quickly are the basic factors that influence and determine the appearance and existence of illicit production and illicit trade. Both illicit manufacturing and illicit trade are forms of unjustified enrichment of individuals. In recent years, there has been a tendency for an increase in illicit production and illicit trade, which has certainly been contributed by the liberalization of the market, but also by the lack of control of the competent services and the lack of activity of the services most responsible to combat this type of criminal

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manifestation, as well as the lack of proactive approach in countering these types of economic crime. The manner of committing these two criminal offenses of economic crime mainly consists in:

- a) illegal production of goods for further sale;
- b) sales of such goods (its criminal realizations)..

Simply put, the point is that the goods are illegally produced and sold and not reported, and at the same time avoid the payment of taxes and related contributions. The possibility of providing material and other indications that indicate the existence of these crimes, reflected primarily in sudden and dubious enrichment.

Illegal production and illegal trade are criminal forms manifestation of economic crime related to the illegal traffic of goods and their export or import into the country, which is why the commission of these two criminal offenses is often connected with the criminal activity of smuggling. Namely, illegal production and illegal trade is a criminal offense committed in the field of production or trade, in the domain of traffic of goods and performance of trade services, while smuggling involves entering or taking goods through a customs line outside the customs control and thus avoiding payment of customs duties. Both illicit manufacturing and illicit trade occur in complex forms. This is especially because both criminal offenses are activities that are usually organized in an organized manner, sometimes by groups. The organization and professionalism of the perpetrators, with a strict division of criminal activities and respect for the hierarchy (from financiers and organizers who are usually untouchable, to suppliers, intermediaries, distributors and resellers), give this form of crime a special dimension, gravity and importance (Nicevic & Ivanovic, 2013: 41).

The concealment of criminal activities of these two criminal offences itself depends on the skill, inventiveness, resourcefulness, practicing, perseverance and other psychosocial characteristics of the perpetrator of these crimes as well as objective circumstances. Considering the characteristics of goods that are illegally produced or sold, it is possible to group all the ways of committing this criminal offense through several forms of illegal production and illegal trade: illegal production/trade in agricultural products; illegal production/trade in domestic and foreign production of textile goods; illegal production/ trade of technical goods, of which the trade of computer equipment etc., should be placed first in the recent past; illegal production/trade in gold and other valuable items; illegal production / trade in works of art and antiques; illegal production/trade in motor vehicles etc.¹ Essentially, any commodity, for which there are shortage of supply or has enough on the legal market, may be subject to both illegal production and illegal trade.

Some of the above manifestations related to illegal trade and illegal trade are also being transformed into manifest forms of organized crime. The transition period,

¹ It should be noted here that here intentionally is not mention of the illegal production of weapons or explosive materials, since when it comes to these goods it will exist a criminal offense of the illicit manufacture, possession, carrying and trafficking of weapons and explosive materials referred in the Article 348 of the CC. Namely, although the production or trade of such goods can also lead to the existence of characteristics of some other criminal offenses, such as illicit manufacturing (Article 234 CC) and illicit trade (Article 235 CC). In both cases, there will be only the criminal offense of Illicit Manufacturing, Holding, Carrying and Trafficking of Weapons and Explosive Substances under Article 348 of the Criminal Code, since it is a special form in relation to the criminal offense of illegal production, and when it comes to the criminal offense of illegal trade it should be noted that illegal trafficking in firearms or explosive materials is not criminalized as illegal trade (Lazarevic, 2006: 862).

especially in terms of changes in ownership structure and privatization, difficult economic situation, situation and supply of certain goods on the market, are crucial factors when it comes to the decision of certain persons and groups to start activities in this field. By committing the criminal offenses of illicit manufacturing and illegal trade, not only has the state budget been harmed, it also opens up room for the functioning of the illegal market in some economic branches, and such activities of individuals and groups really undermine the economic system of states.

Because of the danger of these acts, in addition to studying the ways of committing these crimes, it is also necessary to look for opportunities to take certain measures to prevent the emergence of new phenomena that usually accompany the conditions that promote this form of crime and that usually accompany the legislation that defines this issue. Taking into account the fact that both illicit production and illicit trade are primarily a social phenomenon and a phenomenon related to all environments as a reflection of the effects of negative influences, as part of taking preventative measures, the "blade" should be focused primarily on measures that change the economic-social environment in terms of eliminating the negative influence, improvement of the population standards and humanization of the entire social relations. This, above all, must be clear to us, that criminal legislation, however rigid it may be, cannot suppress these antisocial phenomena. It is clear that such activities can be countered more efficiently only by specialized operational units that exist *de jure* but *de facto* do not achieve the expected results in that regard. In this regard, the problem should be defined first, considering the conditions and priorities of educating the existing but also recruiting new staff, importing and coordinating the activities of all lines of work within the existing organizational forms of the Ministry of Internal Affairs, market inspection, but also from the Customs Administration. Condition for success at this field is successful legislation, which would adequately treat these jobs in certain Regulations defining the status of these workers (pay coefficients), as well as regulations that should regulate the system of promotion of civil servants, especially police officers.

Analyzing the problem of countering the criminal offenses of illegal production and illegal trade in the Republic of Serbia, from the aspect of scientific and expert workers dealing with analyzes of these offenses, we concluded that these offenses are not at all the focus of researchers and scientists. Namely, the analysis of the bibliography of criminal offenses against economic interest, dealing with the issue of combating certain offenses in this area, mainly finds works dealing with the following criminal offenses: tax evasion, money laundering, smuggling, counterfeiting, forgery and misuse of credit cards, misuse responsible person in the economy etc. Apart from the parts of the university textbooks in the field of criminal substantive law, which deal with the problems of the criminal offenses of illegal production and illegal trade, there are almost no separate scientific and professional papers dealing with both the criminal and criminalistic side of these two criminal offenses. On the other hand, the number of adult perpetrators reported in the territory of the Republic of Serbia for committing these crimes, as well as the number of adults sentenced of this crime is not negligible and, with the above-mentioned criminal offenses, count in the group of the most frequently committed criminal offenses in the area against economic interest in the last five years and beyond. These two facts, the absence of separate papers dealing with these criminal offenses from the aspect of criminal law and crime, on the one

hand, and the presence of these crimes in the total number of committed criminal offenses against economic interest in the Republic of Serbia, were an inspiration to the authors for the subject of this The papers take the criminal and criminalistic aspects of these two offenses. In addition, the authors are of the opinion that with these criminal offenses causes enormous damage to the state budget and the economic system of the country, which additionally gives importance of addressing of these two criminal offences from criminal and criminalistic aspects.

Based on the stated topic and purpose of the paper, we conducted an analysis of reported and sentenced perpetrators of economic crime in the Republic of Serbia for the period 2014-2018, which is represented in the Table 1.

Table 1: Number of reported adult perpetrators and sentenced perpetrators of criminal offenses against economic interest in Republic of Serbia for the period of 2014 until 2018.

Criminal offences against economic interest	2014²		2015³		2016⁴		2017⁵		2018⁶	
	A *	B **	A	B	A	B	A	B	A	B
Fraud in doing business	0	0	0	0	0	0	0	0	63	16
Insurance fraud	0	0	0	0	0	0	0	0	9	7
Embezzlement in conducting an economic activity	0	0	0	0	0	0	0	0	33	32
Tax evasion	712	400	715	449	734	419	649	392	967	266
Non-payment of withholding tax	62	44	63	30	52	20	30	23	39	6
Abuse of the position of the responsible person	684	337	697	317	684	274	617	248	343	165
Public procurement abuse	17	2	32	1	29	7	38	0	28	10
Abuse in the privatization process	0	0	0	0	0	0	0	4	3	0
Conclusion of a restrictive agreement	0	0	0	0	0	0	0	0	3	17

² Report of the Statistical Office of the Republic of Serbia, No. 192, Vol. LXV, 15/07/2015, Justice Statistics, available at <https://publikacije.stat.gov.rs/G2015/Pdf/G20151192.pdf> on date 28.10.2019.

³ Report of the Statistical Office of the Republic of Serbia, No. 189, Vol. LXVI, 15/07/2016, Justice Statistics, available at <https://publikacije.stat.gov.rs/G2016/Pdf/G20161189.pdf> on date 28.10.2019.

⁴ Report of the Statistical Office of the Republic of Serbia, No. 194, Vol. LVII, 14/07/2017, Justice Statistics, available at <https://publikacije.stat.gov.rs/G2017/Pdf/G20171194.pdf> on date 28.10.2019.

⁵ Report of the Statistical Office of the Republic of Serbia, No. 193, Vol. LXVIII, 07/16/2018, Justice Statistics, available at <https://publikacije.stat.gov.rs/G2018/Pdf/G20181193.pdf> on date 28.10.2019.

⁶ Report of the Statistical Office of the Republic of Serbia, No. 192, Vol. LXIX, 16/07/2019, Justice Statistics, available at <https://publikacije.stat.gov.rs/G2019/Pdf/G20191192.pdf> on date 28.10.2019.

* Number of adult perpetrators criminally charged.

** Number of adult perpetrators criminally sentenced.

Receiving bribes in conducting business activities	0	0	0	0	0	0	0	0	10	17
Giving bribes in conducting business activities	0	0	0	0	0	0	0	0	1	1
Causing False Bankruptcy	3		5	1	4	0	9	1	4	0
Causing Bankruptcy	19	5	13	2	7	3	3	0	9	0
Damaging Creditors	52	22	50	23	60	11	63	15	61	31
Illegal Production	35	5	87	25	65	64	72	37	57	68
Illegal Trade	226	90	410	181	447	243	370	251	385	189
Smuggling	98	72	155	95	121	108	96	78	27	36
Preventing Control	6	0	10	2	9	3	6	4	12	0
Unauthorized Use of Another's Company Name	80	24	111	32	97	24	69	32	73	54
Damaging Business Reputation and Credit Rating	2	0	6	1	9	0	5	5	3	0
Disclosing a Business Secret	3	1	5	0	2	0	4	0	8	0
Counterfeiting Money	119	70	178	68	213	74	276	91	136	55
Forging Securities	9	2	2	3	9	3	6	4	28	21
Forgery and Misuse of Credit Cards	503	88	397	101	305	114	232	97	196	87
Counterfeiting of signs, seal for marking goods, scales and objects of precious metals	3	2	13	0	14	2	48	0	3	3
Forging Value Tokens	102	2	21	5	6	1	5	0	6	0
Making, Acquiring and Giving to Another of Means for Counterfeiting	6	3	3	3	6	4	7	4	3	0
Money Laundering	9	2	14	2	13	11	13	1	32	7
Deceiving Buyers	25	4	15	3	23	5	5	5	7	0
Issuing of Uncovered Checks and Use of Uncovered Credit Cards	169	133	172	82	109	36	74	30	75	9
Abuse of Monopolistic Position	7	5	3	0	3	0	1	0	4	0
Abuse of Authority in Economy	396	230	352	183	312	166	247	126	139	47

Looking at Table 1, we can see that, according to the number of reported perpetrators of criminal offenses, illegal production is in the 10th place, with 316 reported perpetrators out of the total number of reported perpetrators of criminal offenses against economic interest in the last 5 years in the Republic of Serbia. Illegal trade is ranked 3rd in this criterion, with 1838 perpetrators (just behind the criminal offense of tax evasion and abuse of authority of the responsible person). Also, when it comes to the number of sentenced persons, the criminal offense of illicit manufacturing is in 9th place, with 199 convicted persons out of the total number of convicted perpetrators of crimes against economic interest in the last 5 years in the Republic of Serbia, while the criminal offense of illegal trade on the same criterion ranks 3rd, with a total of 954 sentenced perpetrators (just behind the criminal offense of tax evasion and abuse of authority of the responsible person).

II. Incrimination of the criminal offense of illegal production according to the Criminal Code of the Republic of Serbia

The criminal offense of Illegal production is prescribed by Article 234 of the Criminal Code of the Republic of Serbia (Criminal Code of the Republic of Serbia ("Official Gazette of RS", No. 85/2005, 88/2005 – amended, 107/2005 – amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016). The aforementioned article prescribes two basic forms of this criminal offense, one of which, according to the prohibited sentence, is lighter (paragraph 1) and the other more aggravating (paragraph 2).

The first, by prescribed punishment, the lighter form of this criminal offense is reflected in the unauthorized production or processing of goods, whose production (processing) requires the approval of the competent authority (Article 234 paragraph 1 of the CC). This is an easier form of this criminal offense, primarily because in this case, is about the production or processing of goods requiring the approval of the competent authority is considered by the legislator to be a minor violation of the regulations, if the production or processing was carried out without the prescribed authorization (Simonović, 2010:848). Alternatively, a fine or imprisonment of up to two years is prescribed for this form of crime.

The second, by prescribed punishment, is a more severe form in the production or processing of goods despite the prescribed ban (Article 234, paragraph 2 of the CC). In this form, the qualifying circumstance is a serious breach of the regulations, which is reflected in the fact that the production or processing, the production or processing of which is prohibited, is carried out. Thus, despite the ban, the production or processing of a certain type of goods is considered by the legislature as a serious violation of regulations, and therefore, prescribed by another, a more serious form of this criminal offense.

Any natural person can be the active subject of this crime. Both forms of this offense can only be committed with intent. So, there is need for existing of an intent which must encompass that produces or processes goods without the approval of the competent authority (paragraph 1) or goods the production or processing of which is prohibited (paragraph 2). When it comes to both form of criminal offence, their existence depends on the regulations governing the production and processing of certain goods, so it can be said that in this respect it is a criminal offense of illegal production of blanket character.

The question arises as to whether the (more severe) form referred to in paragraph 2 should be interpreted as constituting an absolute prohibition, since there are very rare cases where such an injunction exists and its violation constitutes another offense (eg., such is criminal offense from Article 377, Illegal production, trafficking and possession of weapons which use is prohibited). It should be noted that this is a prohibition against which very restrictive exceptions are allowed, in such a way that, under certain conditions, only certain entities may be allowed to manufacture or process certain goods (eg. production of narcotic drugs or weapons). In contrast, goods subject to the committing of criminal offense of the form referred to in paragraph 1 may be manufactured and processed by all entities that satisfy certain prescribed conditions, subject to the approval of the competent authority (eg. production of medicines) (Stojanović, 2017:760). Therefore, in the case of the act referred to in paragraph 1, it is not a violation of the prohibition but the performance of a particular economic activity without the approval of the competent authority, while the offense referred to in paragraph 2 is a violation of the prohibition of production or processing of certain goods.

The law also prescribes a security measure for the compulsory seizure of illicitly manufactured or processed goods, as well as the means by which those goods are manufactured or processed. (Article 234 (3) CC). The prosecution of these forms of this criminal offense shall be undertaken *ex officio*.

III. Methodology of detecting, prosecuting and proving the criminal offense of illegal production

The basic way of knowing about the existence of this crime is through the police's own-initiative operational work. Namely, the police's own-initiative operational activity may result in the police officers find out directly or indirectly about the preparation or existence of this crime (Ivaović & Ivanović, 2013:56). Immediate knowledge of the existence of the criminal offense of illegal production through self-initiated operational police work can be obtained by police officers as follows: through in-direct insight through criminal control and through persons hired as informants, or through a so called "network of cooperants".

Knowing by direct insight through criminal control is one of the ways in which police, through their own-initiative operational activity, obtain information about the existence of a criminal offense of illegal production. Namely, during regular activities, increased vehicle control, raids, or during work on detecting, lighting and proving criminal offenses (during searches or investigations), police officers may find that at that moment a known or unknown person committed a crime illicit production, of which existence police officers were unaware until that moment (eg., illegally producing or remodeled goods were found whose production or processing requires the approval of the competent authority or whose production or processing strengthening prohibited, and means of production of such goods.).

The police can also find out about the existence of this criminal offense through a person who were hired as an informant, ie through the so-called network of collaborators. This type of knowledge is an indirect way in which the police obtain information on the existence of a criminal act of illegal production through their own-initiative operative or criminal information activity. In addition, citizens' reports, both

anonymous and pseudonymous, may appear as a source of knowledge about the criminal offense of illegal production, and in certain cases initial information about the existence of this criminal offense may be obtained through public rumors.

In the criminal investigation of this criminal offense, it should first be determined whether the specific case involves the unauthorized production or processing of goods for which production or processing requires the approval of the competent authority, or goods whose production or processing is prohibited. So, it is necessary to determine what kind of goods it is, which authority is responsible for granting approval for its production or processing, or by which regulation it is prohibited its production or processing. After establishing these facts, it is necessary to determine the time, place and manner of execution, from which raw materials or materials such goods were made, or which goods were unauthorized processed, by which means they were made or processed, from whom the funds and raw materials were obtained for unauthorized production of such goods etc. Found unauthorized goods should be confiscated, together with the means of production or processing of such goods.

In detecting and proving this criminal offense, certain operational and tactical actions and measures, such as gathering notices, checking, monitoring, observing, ambushes etc., should be undertaken in order to obtain information indicating in which facility or location, performs unauthorized production. Based on the information collected, it is necessary to set up the versions, in order to ensure the factual situation by applying the indicative method, which is the basis for undertaking a search investigation which will also provide material evidence in relation to the criminal activity of a certain person/persons (Bošković & Jovičić, 2002:242). During the finding and seizing goods manufactured, that is, processed goods, materials and means for their production, certain persons who participated in the illegal production of the given goods can also be found, thus providing sources of personal evidences.

In proving this criminal offense, the key evidence is mainly the material evidence in the form of found and seized goods that were manufactured, unauthorized materials and the means from which they were produced. The provision of evidence is done through the use of investigative search activities, temporary seizure of items and expert evaluation. In this regard, it is very important that these actions be conducted in accordance with tactical and procedural rules, so that the validity of the evidence is not called into question in the further follow of criminal proceedings.

IV. Incrimination of the criminal offense of illegal trade according to the Criminal Code of the Republic of Serbia

Illegal trade belongs to the group of offenses whose forms and perpetrations are highly susceptible to the changes that socio-economic development and daily life experience entail. These changes are constantly leading to new manifestations of this crime, and to inconsistency and inequalities in case law. (Miladinović, 1971:210).

It is a criminal offense committed in the field of trade, ie. in the domain of traffic of goods and provision of trade services. This incrimination aims to protect trade as an economic activity. Trade is regulated by certain regulations defining its term (Law on Trade "Official Gazette of RS", No. 52/2019) and which, which is especially important for this crime, prescribe under what conditions a natural or legal person may to perform this activity. Indirectly, the state budget is also protected by this incrimination because by committing of this criminal offence, as a rule, denies sales

tax on goods. The offense of illegal trade is prescribed by Article 235 of the Criminal Code of the Republic of Serbia. This offense has several forms, namely three bases (paragraphs 1, 2 and 3) and one more aggravated or qualified form (paragraph 4).

The first form of this crime is committed by whoever is not authorized to trade, procures goods or other items of greater value for the purpose of sale, or who is unauthorized and to a greater extent engaged in trade or intermediation in trade or engaged in the representation of organizations in internal or foreign trade, goods or services (Article 235, paragraph 1 of the CC). By analyzing the incrimination, we can determine that the action of this form is determined alternatively and can be performed:

- by purchasing goods and other items of greater value for the purpose of sale;
- engaging in trade or brokering on a larger scale;
- engaging in the representation of organizations in domestic or foreign trade of goods and services on a larger scale.

The purchasing goods and other objects of greater value for the purpose of sale as the first way of committing this form of criminal offense of illegal trade consist in undertaking those activities which, on some legal basis, lead to goods or objects, such as buying, tramping, taking on loan etc. Acquisition within the meaning of this offense cannot be considered unlawful acts such as theft. Also, collecting abandoned items cannot be considered as procuring in terms of this offense. An essential element of this form of the criminal offense of illicit trafficking is "the acquisition of goods of greater value for the purpose of sale", not "the acquisition of goods in greater quantity for the purpose of sale", as was the case in earlier legal solutions of this crime. Also, in order for this form of illicit trade to exist, goods or items need to be procured for sale. It means that the executor of this part already at the moment of purchase of goods or objects intended to sell them, or that he purchased them for this purpose. The question of the existence of such an intention is a factual question that is established in each case.

Engaging in trade or brokering on a larger scale is another way of committing this form of illegal trade. Engagement involves permanent activity, so this form of illicit trade involves undertaking more trade activities (buying and selling, brokering etc.). It should be noted that there is an opinion that from the execution of only one trade activity, it can be concluded that the perpetrator "engages" in trade or mediation in trade, if all circumstances indicate that he would continue with such activities. In order for this form of crime to exist, it is necessary that the dealing with trade, ie mediation in trade, be carried out on a larger scale. The existence of a "larger volume" must be taken into account by the amount and value of the trade or brokerage activities performed.

Engaging in the representation of organizations in domestic or foreign trade of goods and services on a larger scale is the third way of committing this form of illicit trafficking. Representation in the sense of this criminal offense means acting on behalf of and for the account of a domestic organization whose activity is the trade of goods and services, and may manifest itself in various ways, in the form of tendering, acceptance of tenders, conclusion of contracts etc. The basic element of this form is that the perpetrator "deals" with it, ie. it does more often, and that it does so on a "larger scale".

For this form of criminal offense of illegal trade to exist, it is necessary to perform these activities unauthorized, that is, contrary to special regulations that stipulate who and under what conditions may engage in trade.

Any person who commits any of the aforementioned activities without proper authorization may be an active subject of this form of criminal offense of illegal trade.

From the aspect of mental element, intent is needed. Alternatively, a fine or imprisonment of up to two years is provided for this form of crime.

Another form of this offense exists when one deals with the sale of goods which he or she has illegally organized (Article 235, paragraph 2 of the CC). By analyzing the incrimination, we can determine that the action of this form is determined alternatively and can be performed:

- engaging in the sale of goods, which production is illegal organized;
- by organizing a network of resellers or brokers.

Unlike the previous form, which deals only with the unauthorized trade of goods, that is, items that can be produced by anyone, a person organizing the production here appears as the organizer of the trade too. It is about the same person unauthorized organizing the production and sale of goods. Therefore, for this form of crime to occur, it is necessary that the offender previously organized the production of certain goods and then sell those goods. The organization of production, as the action of this criminal offense, means any activity that enables the production of goods intended for sale. The offender may be any person who illegally organizes the production of goods and also sells those goods without authorization. To this form of criminal offence illegal trade, it is necessary for perpetrator to "dealing" with sales. With respect to guilt, it is essential that the intent of the perpetrator exists. This form of crime is punishable by imprisonment for a term between three months and three years.

A third form of this criminal offense exists when the unauthorized sale, purchase or exchange of goods or items whose trade is prohibited or restricted is doing (Article 235, paragraph 3 of the CC). The main difference from the previous forms of illicit trade relates to the goods and objects that are the object of the action of execution. In this case, these are goods or items under a special regime, ie. they are not in traffic or its trafficking is limited. The object of this form of crime may not be every commodity or object whose trade is prohibited or restricted, as the placing on the market of certain objects is particularly criminalized. In this connection, this criminal offense will exist only if its execution did not lead to any other criminal offense which also has the object of placing on the market of goods which cannot be in circulation.

The fourth form of this offense is a qualified or more aggravated form that exists when the first, second or third form of the criminal offense of illicit trafficking is committed by a person who has organized a network of resellers or brokers, or has obtained a pecuniary gain exceeding four hundred and fifty thousand dinars (Article 235, paragraph 4 of the CC). By analyzing the incrimination, we can determine that the action of this form is determined alternatively and can be performed:

- by organizing a network of resellers or brokers in illegal trade;
- acquisition of property gain, illegal trade, the amount of which exceeds four hundred and fifty thousand dinars.

For the purposes of this criminal offense, a network of resellers or brokers exists when more persons in the wider area procure goods or other objects for the purpose of selling or carrying on other commercial activities, including mediation in them, for the account of the offender. The existence of this circumstance should be encompassed by the intent of the offender, since the act concerned is qualified by a special circumstance. Also, in order for this form of crime to exist, the network of resellers or brokers should be organized in such a way that it carries out its activity for the perpetrator of the crime and not sell or buy goods with each other so that it cannot be considered that there is an organized network of resellers or brokers if

more perpetrators are unauthorized to sell or buy goods and within the framework of their independent actions, and each one of them acts unlawfully on their own behalf and for their own benefit.

Regarding the other way of committing this form of the criminal offense of Illicit Trade, the material gain in the amount claimed for the existence of this form of the crime should have actually been realized. This form of crime is punishable by imprisonment for a term between six months and five years.

The law also stipulates a security measure of compulsory seizure of goods and objects of illicit trade (Article 235, paragraph 5 of the CC). The prosecution of all forms of this criminal offense shall be undertaken *ex officio*.

V. Methodology of detecting, prosecuting and proving the criminal offense of illegal trade

Regarding the way of knowing about the existence of this criminal offense, everything stated in the way of finding out about the existence of the criminal offense of illegal production is valid for this criminal offence too. When detecting the criminal offense of illegal trade, the operational activity should be directed to the organizers of this type of criminal manifestation, paying attention to the warehouses where the goods intended for illicit trafficking are stored, as well as the places where such goods are placed. In this regard, detecting, prosecuting and proving this criminal offense is often linked to the activity of detecting, prosecuting and proving the criminal offense of smuggling, because smuggling is often one of the ways in which goods are obtained for illegal trade.

The criminal investigation of this criminal offense should determine the form of the criminal offense of illegal trade, and then take appropriate operational-tactical and investigative measures and actions in order to prove the essential elements of this criminal offense. The existence of this work is mainly evidenced by material evidence in the form of goods that are the subject of illegal trade and certain documentation that is mostly forged to cover the true origin of the goods, then various types of correspondence, notes, photographs, telephone directories etc. However, regardless of the fact that material evidence is emerging as the key evidence of this type of criminal manifestation does not mean that the operative activity should not be directed to finding sources of personal evidence. Since the commission of this criminal offense is often linked to the commission of the criminal offense of smuggling, a high degree of police coordination and cooperation with customs authorities, financial police, market inspection, as well as with traffic and transport companies is required in detecting, prosecuting and proving illicit trafficking, and etc., in order to obtain timely information relevant to suppressing and preventing this form of criminal manifestation.

The following operational tactical measures and actions are generally applied in detecting, prosecuting and proving the criminal offense of illicit trafficking: checking, gathering notices, observing, monitoring, enhancing surveillance, inspecting vehicles, passengers and luggage, ambushes, identification, alibi checks etc. Investigative actions include search, expert witnessing and, in certain situations, investigation of crime scene. Also, as in the work of detecting, prosecuting and proving the criminal offense of illegal trade, especially in the form reflected in the organization of the reseller network, special investigative measures and actions of actions-controlled

delivery and provision of simulated business services and the conclusion of simulated legal affairs should be applied.

VI. Conclusion

Based on all of the above mentioned, we can conclude that the criminal offense of illegal production and the criminal offense of illegal trade are among the 10 most common crimes against economic interest in the Republic of Serbia in the last five years. The criminal offense of Illegal trade is much more prevalent than the criminal offense of Illicit Manufacturing and ranks third in the total volume of criminal offenses committed against the economy in the Republic of Serbia over a five-year period.

Both parts are detrimental to the state budget and cause unfair competition in the market. Namely, the production or sale of goods whose production / sale is organized illegally avoids payment of taxes and related contributions, which threatens the economic system of the country. However, illegally produced / sold goods, in addition to taxation, are not subject to sanitary or any other technical quality control, thereby misleading buyers regarding the quality and composition of those goods, which can ultimately endanger their health. So, these acts not only leave negative consequences on the economic system of the country, but can also have a negative impact on the health of its citizens, that is, customers and users of the same goods.

Also, both parts are strongly influenced by the principle of supply and demand, and especially with the so-called, scarce goods on the market, which is why their mode of execution is characterized by a high degree of adaptation to the new socio-economic and market circumstances. All this imposes the need for a scientific approach in defining the methodology for detecting, prosecuting and proving these offenses. Also, these two parts are often closely related to the criminal offense of Smuggling, which is why in the approach to defining the methodology of countering of these offenses the tendencies in the ways of committing the criminal offense of smuggling must be taken into account too.

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