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Illegal production, storage, transportation, and sale of excisable goods: Their environmental impact and criminal liability

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Abstract

The purpose of this study was to identify promising ways to improve the criminal legal framework for criminal liability for illegal production, storage, sale, or transportation of excisable goods with a purpose of their sale. To fulfil this purpose, various scientific methods were employed, namely: system-functional, logical-dogmatic, modelling, classification, formal-logical, formal-legal, comparative legal analysis. The study provided a detailed overview of excise taxation and control measures taken by the tax authorities in relation to excisable goods, including alcohol, tobacco, and other products. Examples from the existing law enforcement practice were provided, which demonstrate violation of the economic interests of the state under martial law and negative impact on the environment. The study emphasised the significant fiscal role of excise taxes in generating state budget revenues and regulating markets and analysed their significance in the context of environmental pollution. At the same time, the study criticised the lack of legal clarity and effectiveness of criminal penalties for illegal actions related to excisable goods under the current Criminal Code of Ukraine. It was emphasised that the current legislation does not contain a definition or interpretation of the category of “turnover of excisable goods”, as well as

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the relevant rules governing these legal relations. The study argued the expediency of removing the phrase “ethyl alcohol, alcohol distillates, alcoholic beverages, beer, tobacco products, tobacco, industrial tobacco substitutes, fuel, etc.” from Part 1 and Part 2 of Article 204 of the Criminal Code of Ukraine and consolidating the definition of the subject matter of criminal offences relating to crimes involving excisable goods. The study also proposed to amend Part 1 and Part 2 of Article 204 of the Criminal Code of Ukraine by introducing the concepts of large and especially large amounts for excisable goods. The practical significance of this study lies in the fact that its findings can be used by legislators to improve criminal law provisions, by law enforcement agencies to strengthen the fight against illicit trafficking in excisable goods, and by academics for further research in the field of criminal law

Keywords: counterfeit alcohol; ethyl alcohol; counterfeit tobacco products; tobacco smoke; modern technologies; fiscal role of taxes

Introduction

Criminal liability for the illegal production, storage, transportation, and sale of excisable goods is particularly relevant in the context of martial law in Ukraine, when there is an increase in such offences (Statistics from the Office of..., n.d.). Illicit trafficking in excisable goods such as alcohol, tobacco, and fuel causes major losses to the state budget and poses threats to the country's economic security. These offences have negative consequences for the environment, as the state does not receive the necessary funds to compensate for environmental damage. The lack of effective legal regulation complicates the fight against these crimes, which requires improvement of the criminal law framework and strengthening of control over the circulation of excisable goods.

The relevance of this study is conditioned by the adverse environmental impact of illegal trafficking in excisable goods, especially under martial law. Illegal production and trade in excisable goods, such as alcohol and tobacco, cause environmental damage that is not compensated for by the shortfall in government revenues from excise taxes. This increases environmental risks, reducing the state's ability to finance environmental protection and restoration. Therefore, improving legal mechanisms to combat these offences is

essential not only for economic security, but also for maintaining ecological balance and protecting public health.

Many researchers have focused on the issues of criminal liability for acts involving excisable goods. At the same time, there are currently no comprehensive studies devoted to this issue, considering the updates to legislation, martial law, and current trends in law enforcement practice.

Thus, T. Baranovska (2023) analysed the development of sanctions in the national criminal legislation for offences against the economic system. A. Osintseva and V. Shapovalov (2024) investigated the work of operatives of the Bureau of Economic Security of Ukraine who expose criminals who illegally produce counterfeit alcohol and propose to improve the methodology for investigating crimes under Article 204 of the Criminal Code of Ukraine (2001), specifically by establishing the circle of victims, appointing forensic medical and forensic drug examinations, determining the level of damage to the victims' health and compensation for treatment costs.

V. Andrusiv (2023), O. Dudorov and E. Pysmenskyi (2024), and A. Savchenko (2023) noted that the social danger of illicit trafficking in excisable goods extends beyond fiscal losses, as

it includes damage to the established procedure for the production and sale of such goods, promotion of the expansion of the shadow economy, reduction of the country's investment attractiveness, strengthening of organised crime, and negative impact on human health. Admittedly, the offence under Article 204 of the Criminal Code of Ukraine (2001) is also a manifestation of unfair competition, which discredits the brands of legal producers of excisable goods and reduces their sales through dumping pricing. A decrease in tax revenues from law-abiding producers due to a shrinking tax base also leads to losses for the state budget (Voloshyna, 2022; 2023). These problems are compounded by the complexities in distinguishing this crime from related offences and administrative offences, as well as the instability of the practice of qualifying this crime in conjunction with other crimes.

O. Mamotenko (2019) conducted a comprehensive study of criminal law means of combating illicit trafficking in goods in the field of excise taxation, particularly by identifying the principal reasons for criminalising such actions. At the same time, O. Vorobyov and O. Dontsova (2022) emphasised the need to investigate the illegal trade in excisable goods via the Internet, which is a separate problem that concerns not only the State Fiscal Service, but also the Verkhovna Rada Committee on Finance, Taxation and Customs Policy, as well as legal producers whose products are counterfeited and sold to consumers.

V. Bondarchuk (2023) focused on the characteristics of crimes that harmfully affect the environment. The study emphasised the need to create an international database of judicial practice in cases against persons who have committed criminal acts against the environment, which can be an effective way to identify and counteract such crimes. According to K. McCauslanfa *et al.* (2021) and S. Cnossen (2022), excise taxes allow reflecting the actual cost of consuming these goods,

including their adverse impact on health and the environment. This encourages consumers to make more informed consumption choices and can help reduce the harmful environmental impacts associated with the illegal production, storage, transportation, and sale of excisable goods.

Despite the existence of legislation that regulates liability for these crimes, the effectiveness of their application often stays low. Most studies focus on the legal aspects, leaving aside the issue of effective implementation of the legislation in practice. Therefore, the purpose of this study was to identify promising ways to improve the criminal legal framework for criminal liability for the illegal production, storage, sale, or transportation of excisable goods for their sale.

Materials and Methods

Criminal liability for the illegal production, storage, transportation, and sale of excisable goods is a crucial aspect of ensuring law and order and economic stability of the state. The research examined legislation to evaluate the current state of the issue and devise solutions. To comprehensively understand and substantiate the matter, the study scrutinised the provisions of various legal instruments, including the Criminal Code of Ukraine (2001), the Tax Code of Ukraine (2010), the Law of Ukraine No. 481/95-BP "On State Regulation of Production and Circulation of Ethyl Alcohol, Alcohol Distillates, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes and Fuel" (1995), the Law of Ukraine No. 1264-XII "On Environmental Protection" (1991), the Customs Tariff of Ukraine (Groups 01-49) (Annex to the Law of Ukraine..., 2022). Along with this, the study examined individual cases of law enforcement practice: decisions of the national courts of Ukraine in cases No. 750/3335/16-к (2018), No. 569/17844/20 (2022), No. 553/5783/22 (2023), No. 577/1105/24 (2024).

The problem was investigated using the following methods. The system-functional method provided a comprehensive assessment of the effectiveness of existing criminal legal means of combating the illegal production, storage, transportation, and sale of excisable goods. The study analysed the law enforcement practice and statistical data, which enabled the assessment of the current state of criminal prosecution for the offences under Article 204 of the Criminal Code of Ukraine (2001).

The application of the systemic-functional method to the study of criminal liability for the illegal handling of excisable goods facilitated a comprehensive understanding of the issue and enabled the development of recommendations for enhancing the effectiveness of law enforcement in this domain. The application of the logical and dogmatic method, together with other methods, allowed for innovative conclusions regarding some established criminal law provisions. Specifically, this method helped to make clearer not only what the subject matter is about and what it includes, but also what the crime is aimed at, as described in Article 204 of the Criminal Code of Ukraine (2001). Authors used the comparative legal analysis method to compare how things are defined, what the parts of the crime are, what the punishments are, and how the movement of excisable goods is controlled.

The modelling method was used to create some criminal law constructs, specifically, the updated corpus delicti of the offence of illicit trafficking in excisable goods, the draft of the relevant criminal law provision on liability for these actions, and the relevant Article of the Criminal Code of Ukraine (2001) reflecting these constructs. When applying the method of classification of phenomena, the mandatory requirement of compliance with certain criteria was met, namely: systematic, objective, relevant, comprehensive, scientific, and practical significance.

The formal legal method allowed for a detailed analysis of current legislation, court practice, and international standards in this area. This method helped to identify gaps in legislation, assess the effectiveness of law enforcement practice, and develop proposals for its improvement. At the same time, the formal logical method helped to establish cause-and-effect relationships between different elements of the phenomenon under study. Logic diagrams were used to model various scenarios and predict the consequences of illicit trafficking in excisable goods.

The application of these methods in the context of the study of criminal liability for the illegal production, storage, transportation, and sale of excisable goods gave a deeper understanding of the structure and content of criminal law provisions, as well as the development of recommendations to improve the effectiveness of law enforcement in this area.

Results

The economic policy of each country is aimed at securing financial resources, creating conditions for regulating the economy, and influencing inequality in the market of relations and income levels of the population. One of the oldest and most significant tools for achieving these goals is taxes, specifically excise duty. The fiscal function of taxes has been crucial at all stages of society's history. They are the primary source of budget financing needed to provide government functions, including excise taxes. These payments are mandatory according to the legislation, and their purpose is to raise financial resources for the state.

The control and supervisory activities of the tax service in relation to excisable goods include supervision of the circulation of alcohol, alcoholic beverages, and tobacco products from the point of production to the end consumer. This includes the issuance of licences, wholesale and retail trade, the establishment of excise posts, the

maintenance of a register of excise tax stamps and control over their use, as well as verification of the legality and compliance with the rules of circulation.

Excisable goods under excise taxation are subject to taxation according to the established list of goods included in tax liabilities. This special term is used in tax legislation for their legal regulation. Legislation relating to the classification of goods as excisable is based on their economic characteristics, especially their designation as consumer goods, which are usually used once and cannot be restored to their original condition, thus ensuring stable demand for them. This also applies to goods that are in high demand regardless of economic conditions and consumer purchasing power, and their cost allows for relatively low prices, minimising the negative economic impact of the inclusion of excise tax in their price (Tax Code of Ukraine, 2010).

According to the Tax Code of Ukraine, excisable goods are defined as goods with codes according to the Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA) to which excise tax rates are applied (Tax Code of Ukraine, 2010). The key criteria for their classification as excisable goods include their legal recognition only under Ukrainian law and the inclusion of excise tax in their price component. Excisable goods include a variety of goods, including ethyl alcohol and other alcoholic distillates, alcoholic beverages, tobacco products and tobacco, e-cigarette liquids, fuel, passenger cars, motorcycles, passenger transport vehicles, freight transport vehicles, and electricity (Law of Ukraine No. 481/95-BP, 1995).

From the standpoint of lexical analysis, the circulation of excisable goods can be considered as the process of exchange of goods defined by law, which include excise duty in their price when buying and selling and moving goods (products) in society. However, this definition does not cover all aspects of these social relations in the legal context. The current legislation lacks a clear

definition or interpretation of the term “turnover of excisable goods” and the relevant rules governing these legal relations. Applying the principles of the scientific theory of state and law, which make provision for the possibility of applying the statutory analogy or analogy of law in cases where concrete legal relations are not regulated by special rules, it is advisable to apply the analogy to the categories used by the legislator in the relevant regulations, namely the Criminal Code of Ukraine (2001), the Tax Code of Ukraine (2010), the Laws of Ukraine “On State Regulation of Production and Circulation of Ethyl Alcohol, Alcohol Distillates, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes and Fuel” (1995) and “On Environmental Protection” (1991).

For instance, the definition of “illicit trafficking of ethyl alcohol, cognac, fruit, grain distillate and other excisable goods” includes the import, export, transportation, storage, and trade of such goods and e-cigarette liquids in violation of the requirements of the legislation governing these issues. The term “trafficking” covers various aspects, including these actions with excisable goods (Annex to the Law of Ukraine..., 2022).

The Criminal Code of Ukraine (2001) prescribes liability for illegal operations with excisable goods in Article 204 “Illegal manufacture, storage, sale, or transportation for the purpose of sale of excisable goods”. However, the legal structure of this provision complicates its effective application and limits the ability of law enforcement agencies to combat destructive actions. This provision was introduced in 2018 without proper substantiation. The Explanatory Note to the Draft Law of Ukraine No. 9190 “On Amendments to the Criminal Code and the Code of Criminal Procedure of Ukraine on Ensuring Consumer Rights to Product Safety” (2011) stated the need to ensure budget revenues and perform Ukraine’s international obligations to the European Union in 2019. However, the lack of a proper analysis of the

effectiveness of the previous version of this provision and the lack of substantiation for the proposed changes created legal instability and the possibility of inadequate application of the law (Explanatory note to the Draft Law..., 2018). This allowed the legislators to limit themselves to general wording, which complicates the prospects for the enforcement of this provision. Thus, the current version of Article 204 of the Criminal Code of Ukraine (2001) needs to be revised and supplemented with scientifically sound arguments to ensure its effective application in law enforcement.

The next drawback of the wording in Part 2 of Article 204 of the Criminal Code of Ukraine (2001) is the use of the term “illegal manufacture of...”. In the sectoral legislation regulating the legal basis of operations with excisable goods, this wording is practically not used. Specifically, sub-item 14.1.281 of the Tax Code of Ukraine (2010) defines “production of excisable goods (products)” as a technological process, including mixing, which leads to the production of excisable goods by changing the form, properties, or composition of raw materials, semi-finished, or finished products.

Article 1 of the Law of Ukraine No. 481/95-BP (1995) provides a detailed definition of the illegal production of excisable goods, such as ethyl alcohol, cognac, and fruit distillate, as well as ethyl rectified grape alcohol, etc. According to this law, it is illegal to produce these goods without a licence for this type of business activity. Since the above goods are excisable, there is reason to believe that the illegal production of excisable goods means their production without a proper licence, which is required by legislation. Even when specific groups of excisable goods are concerned, it is important to understand that this definition may also apply to other groups of excisable goods. Therefore, it is proposed to consider the illegal production of excisable goods as a process that results in the production of excisable goods by changing the form, properties, or composition of

raw materials, semi-finished, or finished products without a proper licence for such business activity. Considering this, it would be logical to use the term “illegal production of excisable goods” in Part 2 of Article 204 of the Criminal Code of Ukraine (2001), as well as to replace the term “manufacture” with “production” in the title of this provision.

Article 2 of the Criminal Code of Ukraine (2001) contains a provision on the “commission by a person who has been previously convicted under this article”, which may lead to ambiguity and uncertainty. This rule is probably aimed at increasing liability for repeated violations of the rules on illegal production of excisable goods. However, the reference to the act itself and its repeated commission does not consider the strengthening of criminal liability. Therefore, it would be advisable to legalise the liability of persons who have previously been convicted under Parts 1 or 2 of Article 204 of the Criminal Code of Ukraine (2001) in Part 3 of the same provision.

Another drawback of this provision is that the subject matter of criminal offences is defined in Part 3 of Article 204 of the Criminal Code of Ukraine (2001) as “goods specified in parts one or two of this article”. This wording may not seem logical, as it is sufficient to refer to them as “excisable goods” to cover all goods that may be the subject of unlawful actions. Adoption of the proposed wording will allow simplifying the text of Part 3 of Article 204 of the Criminal Code of Ukraine (2001), while retaining its essence. Furthermore, it is advisable to consider the use of the term “production” instead of “manufacturing” in the text of this provision and to formulate Part 3 of Article 204 of the Criminal Code of Ukraine (2001) as follows: “Actions envisaged by parts one or two of this Article, committed by a person who has previously been convicted under this Article, or illegal production of excisable goods that pose a threat to human life and health,

as well as the sale of such goods that caused poisoning or death of a person”.

A major problem with the law is that the punishment for illegally getting these goods to sell or store them is not as harsh as the punishment for illegally making them, which can land you in prison for three to five years. This does not correspond to the real social danger of such actions. Since the subject matter of criminal offences under Article 204 of the Criminal Code of Ukraine (2001) is not clearly defined, the sanctions set out in parts 1 and 2 of this Article violate the principle of justice, which requires adequate punishment depending on the nature and degree of social danger of the crime. It is considered vital to clarify the liability for illegal production of excisable goods in part 1 of Article 204 of the Criminal Code of Ukraine (2001), as well as for their acquisition with the intent to sell or storage, as well as for their sale or transportation with the intent to sell in part 2 of this article.

An additional disadvantage of the provisions of paragraphs 1 and 2 of Article 204 of the Criminal Code of Ukraine (2001) is the absence of legislative establishment of quantitative or value restrictions on the subject matter of the crime in relation to excisable goods. This approach does not contribute to the humanisation of criminal legislation, since the wording of these parts of Article 204 of the Criminal Code of Ukraine (2001)

does not prescribe severe consequences for persons engaged in the purchase, sale, transportation, or storage of excisable goods, etc.

To establish the adequate size of the excise tax stamp on excisable goods, Article 199 of the Criminal Code of Ukraine (2001) should be used, which defines the criteria for large and especially large scale violations, when the amount exceeds the tax-free minimum income of citizens by two hundred and four hundred times, respectively. Considering this, it is proposed to amend Part 1 and 2 of Article 204 of the Criminal Code of Ukraine (2001) to introduce the concepts of large and especially large amounts for excisable products.

Under current conditions, the legal construction of the current Criminal Code of Ukraine (2001), which regulates liability for illegal actions with excisable goods, has considerable drawbacks. This makes it harder to fully meet modern standards and stops us from effectively controlling illegal activities involving excisable goods. This helps the black market grow, increases organised crime, and poses a big threat to the economic stability of the country. According to statistics, Ukraine annually registers a considerable number of cases of illicit trafficking in excise taxation, which seriously violates the legal order of business, destroys the country's tax system and, in some cases, poses a threat to the lives and health of citizens (Fig. 1).

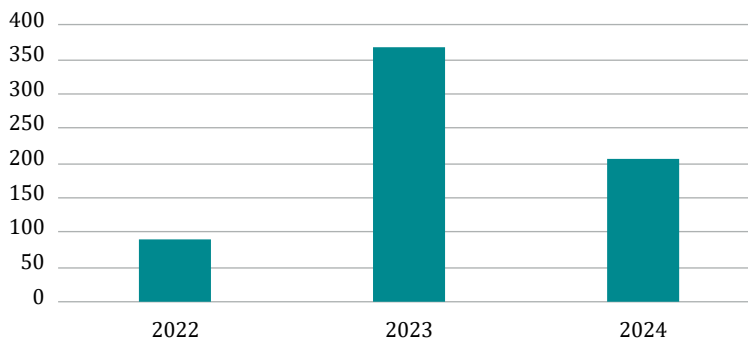


Figure 1. Statistics of recorded criminal offences under Article 204 of the Criminal Code of Ukraine
Source: Statistics from the Office of the Prosecutor General (n.d.)

According to the court statistics, Article 204 of the Criminal Code of Ukraine (2001) is the most frequently applied among all criminal law provisions set out in Section VII of the Special Part of the Criminal Code of Ukraine (2001). This Article is conventionally recognised as one of the most actively applied and includes a wide range of tasks aimed at protecting the financial interests of the state, regulating the activities of producers and sellers of excisable goods, as well as ensuring the

safety of consumers of these goods and protecting the principles of fair competition. However, the current wording of the Article in the Criminal Code of Ukraine (2001) has its drawbacks, and its practical application is fraught with challenges. Examples from judicial practice show violations of the state's economic interests under martial law, especially in the context of illicit trafficking in counterfeit alcoholic beverages, which poses a severe threat to society and public health (Table 1).

Table 1. Generalisation of court practice under Article 204 of the Criminal Code of Ukraine

Case	Brief description	Court decision
No. 569/17844/20 (2022)	In December 2019, the defendant knowingly purchased illegally produced alcoholic beverages from unidentified persons. These drinks were in 1,492 0.5-litre glass bottles. Notably, the production and circulation of alcoholic beverages in Ukraine is subject to state regulation and is carried out only under the relevant licences issued by the competent authorities.	The individual pleaded guilty to committing the offences stipulated by Part 1 of Article 204 of the Criminal Code of Ukraine (2001). According to the agreement between the parties, the individual was sentenced to a fine of 5,000 tax-free minimum incomes, which is UAH 85,000, with confiscation and destruction of the illegally manufactured goods.
No. 553/5783/22 (2023)	During the period from June 2022 to 22 September 2022, the accused committed actions that consisted of the illegal acquisition with the intent to sell and storage of illegally manufactured tobacco products for this purpose. These actions contravene the legislation of Ukraine regulating the production and circulation of ethyl, cognac, and fruit alcohol, alcoholic beverages, and tobacco products.	Having pleaded guilty to committing a criminal offence under Part 1 of Article 204 of the Criminal Code of Ukraine (2001), the defendant was fined in the amount of 5,000 tax-free minimum incomes, which is UAH 85,000, with confiscation and destruction of the illegally manufactured goods.
No. 577/1105/24 (2024)	At an unspecified time during the pre-trial investigation, but no later than 10 October 2023, the accused revealed a criminal intent to carry out illegal activities related to the sale of illegally manufactured tobacco products to make a profit from their sale. In pursuance of this criminal intent, the individual purchased illegally manufactured cigarettes without excise tax stamps at the Yunist market, known from the pre-trial investigation, without registering as a business entity and without a relevant licence, with the intention of selling them. Confirming their criminal intent, the individual transported the purchased cigarettes without excise stamps to her place of residence. In furtherance of this intent, the individual deliberately violated the law and sold two packs of Ritm cigarettes without excise stamps to other persons in an open area.	Having found the individual guilty under Part 1 of Article 204 of the Criminal Code of Ukraine (2001), the court sentenced the individual to a fine of 3,750 tax-free minimum incomes, which is UAH 63,750, with confiscation and destruction of the illegally manufactured tobacco products.

Source: extracts from national court decisions

An analysis of court practice revealed that extremely severe property and other sanctions imposed on smugglers are mostly aimed at hired guns or assistants who do not receive substantial profits from their actions. Specifically, such measures include confiscation of property, heavy fines, and other restrictions that are often disproportionate to the role of these individuals in the smuggling scheme.

This leads to several problems, including 1) ineffective measures. As the key organisers and beneficiaries of smuggling operations are left out of the loop, the fight against smuggling becomes less effective. Hired performers can be easily replaced, which does not substantially affect the smuggling business itself; 2) disproportionate sanctions, as the sanctions applied often do not correspond to the degree of guilt and the role of a particular person in the crime. This creates a situation where the perpetrators, who receive minimal profit and play a secondary role, are subject to the same or even more severe punishment than the organisers; 3) lack of justice, as such practices may be perceived as unfair by both the perpetrators and society as a whole, undermining trust in the legal system.

To address these issues, the anti-smuggling policy must be revised to include and promote the use of a case-by-case approach. Courts should consider all the circumstances of the case in detail, including the nature and extent of the offence, the role of the perpetrator in the offence, and other crucial aspects. It is equally significant that sentences be proportionate to the role and responsibility of the individual in the offence. The focus should be on the organisers and beneficiaries of smuggling schemes. Sentencing should factor in not only the offence, but also the personal circumstances of the perpetrator, including the possibility of rehabilitation, previous offences, and other social factors. Therefore, when imposing sanctions and other measures on smugglers, courts

should consider all the circumstances of the case to ensure that the sanctions imposed are proportionate and fair. In addition, parties should be encouraged to use alternative dispute resolution mechanisms that promote peaceful agreements, mediation, and reconciliation, involving criminals, victims, law enforcement officials, and the public in the active resolution of criminal matters. Thus, losses arising from violations in the production and circulation of excisable goods are incurred not only by the state, but also by legal producers of excisable goods and their consumers.

The problems associated with economic crime in Ukraine stay highly relevant. For instance, there is still illicit trafficking in counterfeit alcoholic beverages under popular brands such as vodka, whiskey, cognac, and wine (Baranivska, 2023). To address these problems and improve the effectiveness of law enforcement, it is proposed to introduce regulatory measures that increase criminal liability for violations of Part 3 of Article 204 of the Criminal Code of Ukraine (2001). Specifically, they are thinking about introducing a very harsh punishment of ten to fifteen years in prison, with the seizure of their property, including the destruction of the illegally made or bought goods and the equipment used to make them.

It is also vital to consider using existing control devices and IT systems, as well as purchasing new ones. When it comes to problems that cross borders, like security, organised crime, drug dealing, and people smuggling, both countries that share a border need to work together. This includes information exchange, law enforcement coordination, and joint operations to prevent and combat crime. To achieve long-term border security, the demand for illicit goods and services, as well as internal challenges such as corruption and poor governance, must be reduced.

Illicit production of excisable goods is a severe problem that negatively affects not only the

economic and social spheres, but also the environment. According to the National report on the state of the environment in Ukraine (2021), the primary environmental risks in Ukraine include 1) air pollution, as the illegal production and storage of excisable goods, including alcohol, can release toxic substances that pollute the atmosphere; 2) water pollution. Emissions of hazardous waste and wastewater from such industries can enter rivers and water bodies, leading to water pollution and harming aquatic ecosystems; 3) soil pollution, as emissions of waste and waste materials can contaminate soil, which has long-term adverse consequences for agroecosystems and human health.

Considering this, it is necessary to analyse the effects of such actions on natural resources and the environmental situation, considering the provisions of the Law of Ukraine “On Environmental Protection” (1991). According to the provisions of the said law, environmental protection is a priority task of the state, which is obliged to ensure the conservation, rational use, and reproduction of natural resources. Illegal production of excisable goods, including alcohol, tobacco products, and fuels and lubricants, often involves the use of toxic substances and chemical components that can harm soil, water, and air. Emissions of harmful substances, uncontrolled wastewater discharge, and disposal of hazardous waste in unauthorised locations cause major environmental pollution (Law of Ukraine No. 1264-XII, 1991).

The provisions of the Law of Ukraine “On Environmental Protection” (1991) stipulate the need for environmental control and monitoring of activities related to the use of natural resources, including the production of goods. However, in the shadow economy, such measures are often ineffective or non-existent. Illegal production of excisable goods takes place without considering the environmental provisions and standards, which leads to environmental degradation and

adverse impact on public health. For example, the Judgement of the Criminal Court of Cassation in Case No. 750/3335/16-к (2018) shows that the provided samples of aqueous ethyl alcohol solution were not manufactured industrially, contain organic substances that are not typical for industrial samples of vodka and, when consumed as alcoholic beverages, pose a threat to the life and health of consumers when consumed as alcoholic beverages.

Furthermore, the law establishes requirements for liability for violation of environmental legislation. Illegal production of excisable goods may be classified as an environmental crime, which entails criminal liability. However, in practice, such violations often stay unnoticed or do not result in adequate punishment of the perpetrators, which indicates the need to strengthen control and improve enforcement mechanisms in this area. An example is the Resolution of the Znamianskyi City District Court of Kirovohrad Region in Case No. 389/1333/20 (2023), which shows that during the period from February 2019 to 6 February 2020, the organised criminal group purchased and sold illegally produced alcoholic beverages in the amount of about 15 tonnes for a total amount of about UAH 2.7 million. At the same time, the accused were released from criminal liability.

The effectiveness of detecting environmental crimes and collecting evidence depends on the prompt implementation of relevant measures by the competent authorities. To succeed in this area, it is necessary to ensure planned actions and improve cooperation between different institutions. At the national level, the number of environmental inspectors should be increased, specialisation in this area should be made mandatory for police, prosecutors, and judges, while technical means critical to solving and proving environmental crimes should be improved. Furthermore, it is vital to reduce the period between detection and collection of evidence, which will require effective

work of the competent authorities and active investigations by public prosecutors. The regular publication and updating of environmental reports, as well as the activities of non-governmental organisations, are essential to this work. This emphasises the need for a multidisciplinary approach to preventing environmental crime. The availability of adequate technical support to ensure high-quality evidence is essential for its use in criminal proceedings. Methods of storing and destroying pollution-related evidence should also be improved.

Results

Trade, as a separate type of economic activity, is a unique legal sphere, the boundaries of which are defined by international instruments and national legislation. Economic crimes affect financial institutions, cause losses to the state budget and the private sector, undermine the competitiveness of legitimate business entities, and threaten the economic security of the state. According to L. Domagalski (2023), combating economic crime through property security lies in limiting the financing of the development of illegal activities through dirty money. This, as already noted in the findings of the present study, indicates that criminal law provisions are aimed at protecting the basic legal principles in the field of trade, which contributes to a more effective suppression of illicit trafficking in goods both within the country and abroad.

According to U. Boesen (2021), legislators should direct all efforts to generate stable revenue for general budget spending priorities through broad taxation at low rates. However, it is vital to understand that excise taxes are generally not intended to increase general budget revenues, as they are narrow, non-neutral, variable, and regressive. However, they can be substantiated when there are certain negative externalities associated with the type of transactions or con-

sumption, and when they function well in establishing user payment systems.

R. Gunawan *et al.* (2021) noted that excisable goods that are the subject of crimes under criminal law are goods whose price includes excise tax. However, this approach does not fully reflect the position of the national legislator since the Ukrainian Criminal Code does not contain a condition for recognising goods as excisable based on the inclusion of excise tax in their price. The analysis of the provisions of the Criminal Code of Ukraine (2001), specifically sub-item 14.1.4, indirectly confirms this thesis, stating that only certain types of goods (products) defined by this Code are excisable. In other words, the provisions of the Criminal Code of Ukraine only require that the goods be classified as excisable and do not require that the excise tax be included in the price of the goods.

M. Engelhart (2021), C. Tudor (2022), and Z. Zhelev (2020) concluded that extremely severe property measures and other sanctions imposed on smugglers are mostly applied to hired performers or assistants who do not profit from it. This can lead to inefficiency and disproportionality of the measures applied and requires a review of the anti-smuggling policy (Dimitrova, 2014). Therefore, it is suggested that national courts should address the fact that when applying sanctions and other measures to persons guilty of smuggling, they should factor in all the circumstances of the case, including the nature and extent of the violation committed, the role of the perpetrator in the offence, as well as other vital aspects that affect the proportionality and fairness of the sanctions applied.

The administration and analysis of tax evasion in the field of excisable goods can be effectively carried out through the implementation of supervision, inspection, and fiscal control procedures, including proposals for amendments to legislation. At the same time, according to M. Boiță *et al.* (2022), tax fraud is a consequence of imperfect legislation and reflects a lack of vision

associated with high taxes that make them unaffordable and encourage unfair practices. Therefore, it is vital to agree with L. Cobzari and N. Sargu (2021), M. Chackiewicz *et al.* (2022) that the main motive in economic crime is illegal economic and financial benefits, which primarily harm the state budget. Therefore, preventing and combating economic crime is a key principle for any state, both in terms of maintaining social order and ensuring economic stability. The process of generating revenues to the national state budget is currently mainly aimed at accumulating revenues from the real economic sector rather than from the hidden ones in the economy.

According to R. Amrullah *et al.* (2022), the factors influencing the law enforcement in the fight against excise crimes, particularly in the field of tobacco products, are legislative, law enforcement, and community facility and infrastructure factors. Agreeing with this thesis, to successfully combat tobacco excise crimes, the researchers emphasised the need to implement a non-punitive approach that reaches all social groups and promotes cultural change in relation to tobacco excise taxes and creates an infrastructure for investigating money laundering crimes.

Many criminal cases are resolved in the courts, leading to a backlog of cases that can negatively affect the judicial system. At the same time, according to A. Francescangeli (2022), none of the cases involving excisable goods or cigarettes, which are handled by the Customs and Excise Service in several regions, have reached the court. Therefore, as noted in present the study, this problem can be solved by using alternative dispute resolution mechanisms.

Reviews on various thematic issues, including the policy context, the scope of product coverage, unique traceability features, and the political and administrative challenges related to illicit trade, highlight the significance of the following approaches:

a) gradual implementation of the system and earning the trust of the industry. E. Raistenskis *et al.* (2022) suggested implementing tracking for a few products, such as tobacco, and gradually expanding to other products that are vulnerable to illicit trade;

b) use a combination of overt and covert indicators to provide additional opportunities to detect illicit products along the supply chain. It is worth agreeing with C. Sholen (2022) that visible markings that distinguish between tobacco products for domestic use and those for export are a necessary element to identify products for domestic consumption;

c) efforts at inter-agency cooperation at local and international levels enhance the effectiveness of the Track and Trace System. A particular role is played by cooperation agreements concluded between governments regarding intelligence sharing and the fight against illicit trade, specifically in cross-border areas (Munga *et al.*, 2021);

d) policy initiatives to increase fines for illicit trafficking confirm the effectiveness of the Track and Trace System (Mulyana *et al.*, 2023);

e) the review also emphasises the significance of independent estimates of illicit trade in tobacco products. Despite the overall decline in illicit trade following the implementation of the Track and Trace System, the exact volume of illicit trade, according to S. Nugroho and B. Amiq (2023), the exact amount of illicit trade stays a matter of debate based on indicators such as legal cigarette sales and tax revenues.

Z. Woźniak *et al.* (2022) emphasised that international cooperation is an essential factor in the successful fight against economic crime, which can take several forms, such as international operational activities or joint multinational investigations. However, to increase the effectiveness of crime detection, it is also critical to ensure the rapid exchange of information through digital systems (Editorial, 2022). Mutual integration of

systems and databases will influence the detection rate of crimes, including economic crime, and at the same time help reduce the losses of the State Treasury from this type of crime.

Economic crime is a social phenomenon that can be encountered on a daily basis. It affects economic market participants and threatens business security at the national and international levels. In the age of globalisation, with the free flow of goods and services and financial resources, the fight against economic crime can only be successful with a comprehensive international approach, using sophisticated methods and technologies available to specialised criminal groups.

Conclusions

Trade as an independent type of activity occupies a special place in the legal sphere, regulated by both international agreements and national legislation. This creates a specific legal situation where criminal law provisions incriminate illegal actions in the field of trade, aimed at protecting the basic legal provisions in this area. This contributes to a more effective suppression of illicit trade both within the country and abroad.

The issue of criminal liability for the illegal production, storage, transportation, and sale of excisable goods is becoming increasingly relevant in the modern legal environment. This issue affects the fiscal interests of the state through losses in excise tax revenues and has major social consequences, such as increased illicit trafficking and possible negative impact on public health. The analysis shows that the issue of criminal liability for the illegal production, storage, transportation, and sale of excisable goods is key to ensuring law and order, fiscal stability, and consumer protection.

Ensuring the legal circulation of excisable goods plays a key role in creating fair conditions for business and consumers, which contributes to the improvement of the legal culture, and welfare of society. The analysis underlines the significance

of effective tax policy and legal regulation in the field of excisable goods to protect the fiscal and socio-economic interests of the state, producers, and consumers. A properly adjusted tax policy contributes to the effective control of the shadow turnover of excisable goods, which is critical for balanced economic development and the relevant satisfaction of social needs of society.

Ukraine faces an important task of combating the illicit trafficking of counterfeit alcoholic beverages that look like well-known brands, which requires urgent criminal liability measures. The illegal production of excisable goods, especially alcoholic beverages and tobacco products, leads to a major increase in environmental risks due to non-compliance with environmental safety standards at clandestine enterprises. Such actions are often accompanied by unauthorised emissions of harmful substances into the air, water, and soil, which causes pollution of natural resources and threatens public health. Judicial practice shows that crimes in the field of illicit trafficking of excisable goods in Ukraine continue to be a fundamental problem that requires increased liability. Despite the existing legal mechanisms, their effective application is often hampered by various factors, including corruption, insufficient control, and other organisational shortcomings.

The study had its limitations, specifically, limited access to statistical data on the factual volume of illicit trafficking of excisable goods and difficulties in assessing the effectiveness of the measures taken due to the complexity of information collection. For further research, it is recommended to focus on the use of modern technologies to increase the effectiveness of control and supervision, such as the introduction of IT solutions and remote monitoring systems. It is also important to conduct research on the effects of illicit trafficking in excisable goods on the socio-economic development of regions and develop strategies to minimise the adverse effects of this phenomenon.

These areas of research will contribute to improving legal regulation and developing practical measures to combat illicit trafficking of excisable goods in Ukraine, which will help to increase trust in the state and ensure stable economic development.

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Conflict of Interest

None.

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Незаконне виробництво, зберігання, транспортування та збут підакцизних товарів: їх вплив на навколишнє середовище та кримінальна відповідальність

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Анотація

Мета цього дослідження полягала у визначенні перспективних шляхів удосконалення кримінально-правових основ притягнення до кримінальної відповідальності за незаконне виробництво, зберігання, збут або транспортування підакцизних товарів з метою їх реалізації. Для досягнення цієї мети використовувалися різноманітні наукові методи, зокрема: системно-функціональний, логіко-догматичний, моделювання, класифікації, формально-логічний, формально-юридичний, порівняльно-правового аналізу. У дослідженні надано детальний огляд акцизного оподаткування та контрольних заходів, що здійснюються податковими органами стосовно акцизних товарів, зокрема алкоголю, тютюну та інших продуктів. Наведені приклади з наявної правозастосовної практики, які демонструють порушення економічних інтересів держави в умовах воєнного стану, негативний вплив на навколишнє середовище. Підкреслено важливу фіскальну роль акцизних податків у формуванні доходів державних бюджетів і регулюванні ринків, проаналізовано їх значення в контексті проблеми забруднення навколишнього середовища. Водночас дано критику недостатній юридичній ясності і ефективності кримінальних покарань за незаконні дії, пов'язані з акцизними товарами відповідно до чинного Кримінального кодексу України. Акцентовано, що в чинному законодавстві відсутня розшифровка або тлумачення категорії «обіг підакцизних товарів», а також відповідні норми, що регулюють ці правові відносини. Аргументовано доцільність вилучення з частини 1 та частини 2 статті 204 Кримінального кодексу України словосполучення «спирту етилового, спиртових дистилатів, алкогольних напоїв, пива, тютюнових виробів, тютюну, промислових замінників тютюну, пального або інших» та закріплення визначення предмету кримінальних правопорушень, що стосуються злочинів, пов'язаних з підакцизними товарами. Також запропоновано внести відповідні зміни до частини 1 та частини 2 ст. 204 Кримінального кодексу України, передбачивши поняття великого та особливо великого розмірів для підакцизної продукції. Практичне значення дослідження полягає в тому, що його результати можуть бути використані законодавцями для вдосконалення кримінально-правових норм, правоохоронними органами для посилення боротьби з незаконним обігом підакцизних товарів, а також науковцями для подальших досліджень у сфері кримінального права

Ключові слова: фальсифікований алкоголь; етиловий спирт; фальсифіковані тютюнові вироби; тютюновий дим; сучасні технології; фіскальна роль податків