

Primljeno:				
Org. jed.	Jed. klas. znak	Redni broj	Prilog	Vrijednost
13	88	82		

Translation from the Ukrainian language

Case category No.

766/25009/19

: undetermined

Sent by the court on 15/10/2020. Registered on 16/10/2020. Published on 20/10/2020.

Date of entering into force: 12/10/2020

Court proceedings number: 1-кк/766/8822/20

Criminal proceedings number in Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations: 12019230000000385



Case No. 766/25009/19

н/п 1-кк/766/8822/20

## DECISION

## IN THE NAME OF UKRAINE

12 October 2020

Kherson

The Investigative Judge of Kherson City Court in Kherson Oblast O. L. Chernysh with the participation of the Secretary of judicial session R.V. Nehliadiuk, the Investigator V.I. Olefirenko, and the Prosecutor P.A. Kaminskyi having considered a motion of the Senior Investigator for Especially Important Cases of the Department of the Criminal Investigation Division of the Headquarters of the National Police of Ukraine in Kherson Oblast V.I. Oliferenko agreed with the Prosecutor of the Department of the Prosecutor's Office of the Kherson Oblast P.A. Kaminskyi for grant of permission and handing over of the evidence to be processed, -

## HAS ESTABLISHED THE FOLLOWING:

The Investigator has lodged the abovementioned motion wherein he asked: to grant permission in criminal proceedings No. 12019230000000385 dated 12/12/2019 into a criminal offence under part 2 of Article 268, parts 1, 4 of Article 358, and part 2 of Article 364 of the Criminal Code of Ukraine for handing over of the material evidence to the technological processing, namely the waste sand having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, for a total weight of 3 870 494 kg and being stored in the open storage area No. 3, which is situated in the territory of State Enterprise "Kherson Sea Trade Port" at the address: Kherson, vul. Potiomkinska, 5.

The materials of consolidated pretrial investigation No. 12019230000000385 pursuant to part 2 of Article 269, parts 1, 4 of Article 358, and part 2 of Article 364 of the Criminal Code of Ukraine are examined by the Headquarters of the National Police of Ukraine in Kherson Oblast.

The pretrial investigation has established that PERSON\_1 being appointed to the position of the Executive Director of Production Company "Firm "Arka" (YEDRPOU code: 21561915) according to Order No. 05/к dated 27/05/2013, for the period from 30/07/2019 to 13/12/2019 committed the acts aimed at the illegal importation of the waste sand for a total weight of 3 870 494 kg having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, and

being classified among a dangerous waste into the territory of Ukraine under the following circumstances.

The Executive Director of Production Company "Firm "Arka", PERSON\_1, being well aware of the prohibition on importation of a dangerous waste into the territory of Ukraine in violation of the requirements of Paragraphs 6 – 33 of the Regulation on the Control of Transboundary Transportation of Dangerous Waste Products and their Utilization/Disposal and Yellow & Green Listings of Waste Products, based on Agreement No. 89/19 dated 30/07/2019 "On Rendering Services for Waste Burial" concluded between LLC "Trading House "Itaka" and Production Company "Firm "Arka" as well as Contract No. 2368 dated 04/09/2019 concluded between VALGO MONTENEGRO and Production Company "Firm "Arka", imported the waste sand for a total weight of 3 870 494 kg having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, and being classified among a dangerous waste into the territory of Ukraine.

Thus, PERSON\_1 with a view to obtaining permission for transboundary transportation of dangerous waste on 05/09/2019 turned to the Ministry of Energy and Environmental Protection of Ukraine, which gave an answer No. 8/7/5833-19 dated 04/10/2019 about the refusal to grant permission because the waste sand may fall in the category of dangerous waste included in a Yellow List and pointed out the need for submission of the relevant Laboratory Conclusion as to the waste safety.

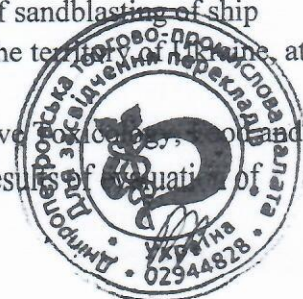
Continuing the implementation of his criminal intent aimed at the illegal importation of the waste sand having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, the Executive Director of Production Company "Firm "Arka" PERSON\_1, in order to obtain a report according to the results of evaluation of the level of waste hazard necessary for granting permission for transboundary transportation of the waste sand, on 09/09/2019, submitted consciously forged Certificate of Radiation Quality of Raw Materials and Building Materials issued on 28/07/2019 by State Enterprise "O.M. Marzieiev Institute for Hygiene and Medical Ecology of the National Academy of Medical Sciences of Ukraine", which had not been issued by this Institution, to L.I. Medved Scientific Center for Preventive Toxicology, Food and Chemical Safety under the Ministry of Health of Ukraine.

Thereafter, PERSON\_1, being well aware of the fact that the waste sand had been formed as a result of sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, repeatedly, namely on 08/10/2019, turned to the Ministry of Energy and Environmental Protection of Ukraine with a view to obtaining permission for transboundary transportation of the waste sand, by which, on 18/11/2019 under No. 10/7/6574-19, he was refused for a second time.

In order to complete his criminal intent aimed at the illegal importation of the waste sand into the territory of Ukraine, PERSON\_1, in order to ensure carrying out customs formalities and its passage through the customs border of Ukraine, emailed consciously forged letter of the Ministry of Energy and Environmental Protection of Ukraine No. 8/7/5833-19 dated 04/10/2019 "as to transboundary transportation of silicon dioxide" and letter of guarantee from Kherson Mayor No. 3-4-5933 dated 28/10/2019 with the information containing therein failing to correspond to reality, to the ship agent, PERSON\_2.

For the period from 12/12/2019 to 13/12/2019, with the permission of Chornomorska Customs of the State Customs Service, the employees of Kherson Sea Trade Port discharged dangerous the waste sand for a total weight of 3 870 494 kg having formed as a result of sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, in the territory of Kherson Sea Trade Port at the address: Kherson, vul. Potiomkinska, 5.

According to the report of L.I. Medved Scientific Center for Preventive Toxicology, Food and Chemical Safety under the Ministry of Health of Ukraine, according to the results of evaluation of



the level of waste hazard No. 3/8-4-4818-19 dated 16/01/2020, in the samples of the waste sand having formed as a result of sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, was established the excess of zinc content by 16.5 times as compared with US EPA Standards, by 2.7 times as compared with EU Standards, by 3.8 times as compared with the Standards of DSTU 4944:2008, copper content by 171 times as compared with US EPA Standards, by 14 times as compared with EU Standards, by 9 times as compared with the Standards of DSTU 4944:2008, and lead content by 1.3 times the Standards of DSTU 4944:2008, that is the waste sand contains dangerous components in quantities, which may cause its dangerous properties and accordingly come under the Yellow List in accordance with Order of the Cabinet of Ministers of Ukraine No. 1120 dated 13/07/2000 "On Approval of the Regulation on the Control of Transboundary Transportation of Dangerous Waste Products and their Utilization/Disposal and Yellow & Green Listings of Waste Products".

Besides, the Executive Director of Production Company "Firm "Arka", PERSON\_1, for the purpose of the illegal importation of the waste sand having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, for the period from 09/09/2019 to 08/12/2019 continually used consciously forged documents, namely:

- letter of the Ministry of Energy and Environmental Protection of Ukraine No. 8/7/5833-19 dated 04/10/2019 "as to transboundary transportation";
- Certificate of Radiation Quality of Raw Materials and Building Materials drawn up on 28/07/2019 by State Enterprise "O.M. Marzieiev Institute for Hygiene and Medical Ecology of the National Academy of Medical Sciences of Ukraine" and valid before 28/07/2020;
- letter of guarantee from Kherson Mayor No. 3-4-5933 dated 28/10/2019 under the following circumstances.

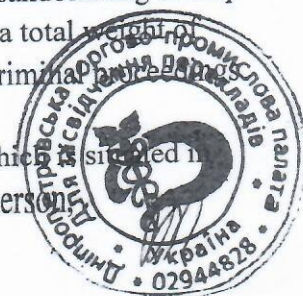
PERSON\_1 used the abovementioned documents with a view of unhindered importation of dangerous waste under the guise of safe waste supposedly coming under a Green List Waste in accordance with Order of the Cabinet of Ministers of Ukraine No. 1120 dated 13/07/2000 "On Approval of the Regulation on the Control of Transboundary Transportation of Dangerous Waste Products and their Utilization/Disposal and Yellow & Green Listings of Waste Products".

Thus, on 09/09/2019, PERSON\_1, in order to obtain a report according to the results of evaluation of the level of waste hazard, submitted consciously forged document, namely a copy of Certificate of Radiation Quality of Raw Materials and Building Materials issued on 28/07/2019 and valid before 28/07/2020 by State Enterprise "O.M. Marzieiev Institute for Hygiene and Medical Ecology of the National Academy of Medical Sciences of Ukraine" certified by his signature and by an impress of a seal of Production Company "Firm "Arka", which had not been issued by this Institution, to L.I. Medved Scientific Center for Preventive Toxicology, Food and Chemical Safety under the Ministry of Health of Ukraine. Based on the documents submitted by PERSON\_1, the officers of Chornomorska Customs of the State Customs Service began the customs clearance procedure of cargo and granted permission for discharge of the waste sand in the territory of Ukraine at Kherson Sea Trade Port at the address: Kherson, vul. Potiomkinska, 5.

On 07/05/2020, PERSON\_1 was informed of suspicion of commission of a criminal offence stipulated by part 2 of Article 268 and part 4 of Article 358 of the Criminal Code of Ukraine.

On 19/12/2019, the waste sand (silicon dioxide) having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, for a total weight of 3 870 494 kg were recognized as material evidence in the abovementioned criminal case according to the cargo customs and shipping documents.

At present, the waste sand is stored in the open storage area No. 3, which is situated in the territory of State Enterprise "Kherson Sea Trade Port" at the address: Kherson



vul. Potiomkinska, 5; the customs formalities as to this cargo are not completed, and the cargo customs clearance is not performed.

The letters from State Enterprise "Kherson Sea Trade Port" (No. 18-26/54 dated 05.02.2020, No. 18-26/79 dated 19.02.2020, No. 18-26/107 dated 12.03.2020, No. 18-26/181/1 dated 07.05.2020, No. 18-26/215 dated 01.06.2020, and No. 18-26/352 dated 24.09.2020) as to the settlement of question concerning the predestination of the material evidence - the waste sand having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, for a total weight of 3 870 494 kg, continually arrive at the address of the Criminal Investigation Division of the Headquarters of the National Police of Ukraine in Kherson Oblast. Thus, according to the letters, the abovementioned waste is stored in the open storage areas, which are not intended for a long-term storage of the cargo of this type, and thus State Enterprise "Kherson Sea Trade Port" cannot provide adequate conditions for its storage. The placement of this cargo in the storage areas actually prevents the enterprise from carrying out economic activity and result in the impossibility to accept and accumulate other cargoes by State Enterprise "Kherson Sea Trade Port". Moreover, the cost of storage of the abovementioned waste increases day after day (as of 30/04/2020, the cost was 1 020 624 89 UAH).

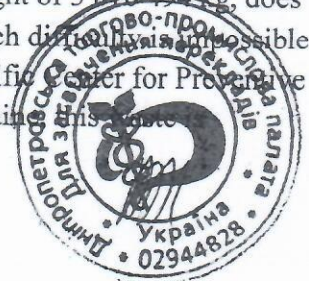
According to the report of L.I. Medved Scientific Center for Preventive Toxicology, Food and Chemical Safety under the Ministry of Health of Ukraine, according to the results of evaluation of the level of waste hazard, 3/8-4-4818-19 dated 16/01/2020, in the samples of the waste sand having formed as a result of sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, was established the excess of zinc content by 16.5 times as compared with US EPA Standards, by 2.7 times as compared with EU Standards, by 3.8 times as compared with the Standards of DSTU 4944:2008, copper content by 171 times as compared with US EPA Standards, by 14 times as compared with EU Standards, by 9 times as compared with the Standards of DSTU 4944:2008, and lead content by 1.3 times the Standards of DSTU 4944:2008, that is the waste sand contains dangerous components in quantities, which may cause its dangerous properties and accordingly come under the Yellow List in accordance with Order of the Cabinet of Ministers of Ukraine No. 1120 dated 13/07/2000 "On Approval of the Regulation on the Control of Transboundary Transportation of Dangerous Waste Products and their Utilization/Disposal and Yellow & Green Listings of Waste Products".

Under such circumstances, during pretrial investigation there arose a need for the settlement of question concerning the predestination of material evidence - the waste sand having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, for a total weight of 3 870 494 kg.

On 26/05/2020, with the participation of specialists – the Inspectors of the State Ecological Inspection in Kherson Oblast, there was carried out an inspection of the waste sand after sandblasting of ship bottoms for a total weight of 3 870 494 kg (the material evidence), and its storage area was examined with the use of video recording.

On 06/10/2020, based on the Decision of the Investigative Judge of Kherson City Court, the samples of the abovementioned waste sand were collected for an expert study.

Thus, the abovementioned material evidence, in criminal proceedings No. 12019230000000385, namely the waste sand having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, for a total weight of 3 870 494 kg, does not bear traces of the criminal offence; its long-term storage without too much difficulties is possible due to the bulkiness as well as according to the report of L.I. Medved Scientific Center for Preventive Toxicology, Food and Chemical Safety under the Ministry of Health of Ukraine this waste is classified among a dangerous waste.



The arguments of the Parties in the court session:

In the court session, the Investigator and the Procurator supported the motion and asked the court to satisfy it on grounds stated in the motion.

The motivation of the court:

Having heard the explanations of the Parties to a trial, having studied the case, the Investigative Judge arrives at the conclusion that the motion is liable to satisfaction on the following grounds:

Pursuant to Paragraph 4 of Part 6 of Article 100 of the Criminal Procedure Code of Ukraine, the material evidence, which does not bear traces of the criminal offence, in the form of things, large lots of goods, which storage due to the bulkiness or for other reasons is impossible without too much difficulty or the expenses on the creation of special storage conditions of which are adequate to its cost as well as the material evidence in the form of perishable goods or products, are handed over for their technological processing or destroyed by decision of the Investigative Judge, a court if they are classified among the things or goods withdrawn from commerce as well as if their long-term storage poses a hazard to life, health or the environment.

Pursuant to Part 8 of Article 100 of the Criminal Procedure Code of Ukraine, the technological processing or destruction of the material evidence in cases stipulated by this Article is carried out in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

Pursuant to Paragraph 29 of the order of storage of material evidence by the Prosecution Party, its realization, technological processing, destruction, implementation of costs associated with its storage and transportation, the security of temporarily seized property during the criminal proceedings approved by Resolution of the Cabinet of Ministers of Ukraine No. 1104 dated 19/11/2012, the material evidence in the form of the things or the goods classified among the things or goods withdrawn from commerce as well as if their long-term storage poses a hazard to life, health or the environment are handed over for their technological processing or destroyed by the relevant decision of the Investigative Judge.

The Investigative Judge has established that a long-term storage of the waste sand having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, for a total weight of 3 870 494 kg poses a hazard to life, health or the environment.

The abovementioned is confirmed by the report of L.I. Medved Scientific Center for Preventive Toxicology, Food and Chemical Safety under the Ministry of Health of Ukraine No. 3/8-4-4818-19 dated 16/01/2020.

The Criminal Procedure Code of Ukraine does not contain the requirements as to the confirmation of hazard of the material evidence by definite proof, and so the abovementioned report may be considered as a proper confirmation of the hazard of sand having formed after sandblasting of ship bottoms. In accordance with the procedure determined by law, the Investigator has collected the samples for carrying out the expert examinations necessary in these criminal proceedings.

Pursuant to Article 3 of the Constitution of Ukraine, the human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. The abovementioned circumstances constitute grounds for granting permission for handing over of the material evidence for technological processing.

Based on the foregoing, being guided by Article 100 of the Criminal Procedure Code of Ukraine, -

RESOLVED:

To satisfy the motion.

To grant a permission in criminal proceedings No. 12019230000000385 dated 12/12/2019 into a criminal offence under part 2 of Article 268, parts 1, 4 of Article 358, and part 2 of Article 364 of



the Criminal Code of Ukraine for handing over of material evidence to the technological processing, namely the waste sand having formed after sandblasting of ship bottoms in the shiprepairing yard in Bijela, the Republic of Montenegro, for a total weight of 3 870 494 kg and being stored in the open storage area No. 3, which is situated in the territory of State Enterprise "Kherson Sea Trade Port" at the address: Kherson, vul. Potiomkinska, 5.

The decision is not subject to any appeal.

The Investigative Judge: O.L. Chernysh

It is hereby certified that the above is a true translation  
of the original document in the Ukrainian language.

/ Head of Translations Department of Dnipropetrovsk  
Chamber of Commerce and Industry

S.H. Bezkorovainyi

Ukraine, 49044, Dnipro, vul. Shevchenka, 4  
Dnipropetrovsk Chamber of Commerce and Industry,  
Translations Department  
Tel.: 056 374 94 26

