

По-шосте, загалом адміністративно-правові заходи як комплексне утворення впливають як на порядок здійснення митного контролю та митного оформлення товарів, переміщуваних через митний кордон України, так і на відповідальність юридичних та фізичних осіб, які вчинили порушення митного законодавства, крім того, на охорону правопорядку, впорядкування суспільних відносин, заснованих на праві й законності, вихованні та профілактичній роботі.

По-сьоме, вважаємо за доцільне зробити висновок про те, що забезпечення правоохоронної діяльності митних органів потрібно розуміти як власне аспект адміністративної діяльності таких органів, так і дієвий механізм створення умов для реалізації та охорони прав і свобод людини та громадянина.

По-восьме, ми пропонуємо розглядати адміністративно-правове забезпечення правоохоронної діяльності на етапі виявлення порушень митного законодавства в двох площинах, які умовно можна поділити на макро- та мікро-рівні. Перша з них полягає у створенні органом законодавчої влади базису адміністративно-правового забезпечення правоохоронної діяльності митних органів – норм права, які будуть належним чином урегульовувати адміністративні відносини зазначеного характеру між їх суб'єктами та учасниками з чітким визначенням прав та обов'язків останніх, забезпечувати законність правовідносин. Інша площина матиме за основу власне діяльність митних органів з практичної реалізації нормативно визначених заходів

адміністративно-правового забезпечення їх правоохоронної роботи, тобто як виявлення, так припинення й попередження ознак порушень митного законодавства та проступків, які посягають на інші сфери суспільних відносин.

По-дев'яте, залишається актуальним розроблення та побудова моделі адміністративно-правового забезпечення правоохоронної діяльності митних органів на стадії виявлення та фіксації правопорушення, заснованої на адміністративному примусі.

**Висновки.** Отже, на нашу думку, розв'язання порушених нами питань носить як суто теоретичне, так і практичне значення, має за основу вирішення проблематики нормативного впорядкування правоохоронної діяльності митних органів, що надасть змогу визначити їхню роль та місце в системі суб'єктів забезпечення національної безпеки, підвищити рівень ефективності виконання поставлених перед митною службою України завдань у правоохоронному напрямку через механізм адміністративно-правових заходів.

Перспективними стосовно подальшого розгляду й вивчення даної проблематики залишаються такі її аспекти, як можливість розширення переліку форм митного контролю за рахунок включення до їх числа заходів, які мають суто правоохоронний характер та покликані забезпечити виявлення порушень митних правил, розроблення й законодавчого визначення статусу, прав та обов'язків підрозділів митних органів, які протидіють порушенням митного законодавства.

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## ADMINISTRATIVE-LEGAL SUPPORT OF LAW-ENFORCEMENT ACTIVITY OF CUSTOMS AUTHORITIES AT THE STAGE OF DETECTION OF VIOLATIONS OF THE CUSTOMS LEGISLATION

### АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ПРАВООХОРОННОЇ ДІЯЛЬНОСТІ МИТНИХ ОРГАНІВ НА ЕТАПІ ВИЯВЛЕННЯ ПОРУШЕНЬ МИТНОГО ЗАКОНОДАВСТВА

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This scientific article explores the content of the administrative-legal support of law-enforcement activity of customs authorities and the measures of its practical implementation at the stage of detection of violations of the customs legislation, focuses attention on the phenomenal importance of the latter in the mechanism of the law-enforcement activity of customs authorities and a special place of the tasks and functions of law-enforcement orientation, entrusted to the customs service of Ukraine.

**Key words:** juridical (legal) support, law-enforcement activity, administrative-legal support, administrative-legal measures, customs authorities.

У даній науковій статті досліджується зміст адміністративно-правового забезпечення правоохоронної діяльності митних органів та заходів його практичної реалізації на етапі виявлення порушень митного законодавства; зосереджується увага на феноменальному значенні останнього в механізмі правозастосовчої діяльності митних органів, особливого місці при реалізації покладених на митну службу України завдань та функцій правоохоронного спрямування.

**Ключові слова:** юридичне (правове) забезпечення, правоохоронна діяльність, адміністративно-правове забезпечення, адміністративно-правові заходи, митні органи.

В данной научной статье исследуется содержание административно-правового обеспечения правоохранительной деятельности таможенных органов и мероприятий его практической реализации на этапе выявления нарушений таможенного законодательства; концентрируется внимание на феноменальном значении последнего в механизме правоприменительной деятельности таможенных органов, особом месте при реализации возложенных на таможенную службу Украины задач и функций правоохранительной направленности.

**Ключевые слова:** юридическое (правовое) обеспечение, правоохранительная деятельность, административно-правовое обеспечение, административно-правовые мероприятия, таможенные органы.

**Introduction.** With the development of modern society and the sustainable globalization, global challenges and upheavals one of the priorities of authorities gave their law enforcement component.

It is no exception to this and the Customs Service of Ukraine, units which by direct involvement in the control over international supplies of goods oppose attempts by illegal movement across the customs border of Ukraine and commercial vehicles.

By implementing administrative and legal measures oversight function, the customs authorities also raise enforcement mechanisms not only in the realm of purely legal customs, but in different spheres of social relations – economic, business and trade, circulation of items excluded from the free civilian traffic (drugs, psychotropic substances, their analogues or precursors, weapons and ammunition) and others.

The importance of the issue of administrative and legal support enforcement activity of customs bodies increases significantly in clarifying the practical absence of the organization to combat smuggling and customs violations of customs authorities, in contrast to the customs department, effective and standard fixed forms and measures to detect and prevent Customs offenses.

Thus, we consider it necessary to emphasize the urgency of the problems of administrative and legal support to law enforcement activity of customs bodies on stage detection of customs offenses not only management, but also from a practical point of view, especially in the process due to the formation of the Ministry of Ukraine of income and fees and related 'associated with the reorganization of the State Customs Service of Ukraine.

**Problem.** The purpose of this paper is to clarify the place, role and status of the development issues of administrative and legal framework and measures for its implementation in the customs law enforcement agencies as part of the national system of protection of rights and freedoms of man and citizen at the stage of violations of customs legislation.

**Results.** The provisions of the Basic Law of Ukraine among the main responsibilities and functions of the state is ensuring human rights and freedoms, economic security of Ukraine [1], which is part of its national security.

In turn, the Law of Ukraine of 19.06.2003 № 964-IV «On National Security of Ukraine» The concept of national security as the protection of the vital interests of human and civil society and the state, which provided sustainable community development, early detection, prevention and neutralization real and potential threats to national interests, including in the area of customs policy [2].

Adopting 13.03.2012 Customs Code of Ukraine, the legislator, in accordance with Article 544 of this law, determined by the destination customs service of Ukraine to create favorable conditions for the development of foreign trade, social security (my discharge – AL), customs protection of interests of Ukraine [3].

In general, this Act codified among the main tasks performed by the customs service of Ukraine in the implementation of customs policy of Ukraine, provides protection of

economic interests through fiscal and control functions, in particular by: ensuring the correct application of strict observance and prevent non-compliance with the legislation of Ukraine on Civil customs; enforcement of obligations under international treaties of Ukraine on Civil customs, awarded in accordance with the law, ensuring the collection of customs duties, the control accuracy of the calculation, timeliness or completeness of their payment, the application of measures for their enforcement within the powers set out in this Code, Tax Code of Ukraine and other legislative acts of Ukraine.

Along with that paragraph 10 of Part 2 of Article 544 of the Customs Code of Ukraine of particular importance in the activity of customs bodies of Ukraine given the task of preventing and combating trafficking, the fight against customs legislation throughout the customs territory of Ukraine [3], ie law enforcement.

That the legislation of Ukraine on Civil customs operated by terms such as «software», and Regulation of the State Customs Service of Ukraine, approved by the Decree of the President of Ukraine from 12.05.2011 № 582/2011, provides a direct link to this use of the central executive authority in field of customs measures for prevention, detection, suppression, detection of smuggling and customs violations [4], which is a prerequisite for our consideration questions of administrative law enforcement activity of customs authorities, and thus measures for their implementation, as well as 'clarify the existence of these institutions of administrative law at all.

Continuing research, we note that the concept of administrative reform in Ukraine, approved by the President of Ukraine from 22.07.1998 № 810/98, presents detailed analysis and prospects for the establishment and further development of the means of administrative reform, including that of their constituents, as legal support. Yes, it was noted that a key place in the legal provision of administrative reform takes administrative law. This fundamental branch of Ukrainian Public Law organically linked with the executive, representing, on the one hand, its legal basis, and the other – an important tool, a tool for its implementation [5].

It should be noted that the provision of law enforcement activity of customs bodies can be seen in various aspects, such as: organizational, managerial, legal, human resources, financial, economic, scientific, educational, preventive and more. Thus the importance of each of these determinants and their complex effect on the administrative-law relationship cannot be overemphasized. However, absolute, in our opinion, are the following: administrative and legal framework for enforcement of customs work is core, backbone element and one of the types specified kind of legal enforcement.

Following these and marking practical importance of administrative law enforcement activity of customs authorities, indicates that Article 201, 305 of the Criminal Code of Ukraine provides for liability for torts, which include those caused by illegal movement of certain categories of goods across the customs border of Ukraine. [6]

This objective side of crime, which include those formalized in these articles, is moving across the customs border of Ukraine outside the customs control or concealment from cus-

toms control, that action lawful procedure of taking and enforcement are regulated by the Customs Code of Ukraine and a number of normative legal acts on civil customs, ie sources of administrative law.

Next, we note that in the 2011-2012 period there were changes in the criminal (the decriminalization of commodity smuggling) and criminal procedure (abolition of customs status as of the inquiry in cases of contraband) legislation of Ukraine. The mentioned trends significantly influenced the forms, methods and means of enforcement activity of customs authorities, largely limiting the powers of the last functional, but also greatly increased the role of legal and administrative measures in the structure of the fight against customs laws and legal support.

Currently, according to the current value of the criminal procedure law departments of customs authorities (customs clearance of anti-smuggling and customs violations) is to take measures to preserve trace pictures and information relevant pre-trial investigation of the signs of a wrongful act (sending accordance with Article 214 of the Criminal Procedural Code of Ukraine reported committed a criminal offense). [7]

Despite the fact that under the final provisions of the Criminal Procedure Code of Ukraine of 20.11.2013 year go into effect the provisions of paragraph 1 of Article 41 and paragraph 6 of Article 246 of the Code regarding inclusion of the State Customs Service of Ukraine to the operational departments, statutory investigative (detective) actions and covert investigative (detective) action in criminal proceedings will be carried out by the customs authorities only on the written instructions of the investigator, prosecutor.

Professor E.V. Dodin, considering the function of customs law enforcement agencies, said that law enforcement agencies such have significant features that distinguish it in a specific type of law enforcement. In particular, one of these signs was attributed versatility and variety of forms, methods, measures and means of implementing Customs Enforcement [8, p. 82].

Co-author of the textbook «Customs Law of Ukraine» AV Mazur said that through administrative and legal remedies prescribed by law, the customs authorities shall ensure order across the customs border of Ukraine, objects and vehicles carrying out customs regulations associated with the establishment and collection of taxes and duties of customs control and clearance, the fight against customs violations, which is the main directions of their activity. They also perform other actions to implement customs policy, such as the fight against smuggling and the verification of certificates of origin [9, p. 27].

Finally, we have analyzed the current legislation of Ukraine on the subject of such conceptual apparatus as «administrative and legal measures», following which clarified the following.

Article 1 of the Law of Ukraine of 26.12.2002 № 374-IV «On counter-intelligence activity» provides for this type of special activities in support of state security using the administrative and legal measures [10].

In accordance with paragraph 5 of Article 3 of the Law of Ukraine of 05.11.2009 № 1710-VI «On Border Control», border control is provided, including by providing administrative and legal measures [11].

According to the decision of the National Security and Defense Council of Ukraine of 15.02.2008 «On the Concept of reforming the Security Service of Ukraine,» it is about improving the administrative and legal measures for the protection of national independence and the fight against terrorism. [12]

In contrast to this, the Customs Code of Ukraine and other normative legal acts on state customs data directly categorical apparatus does not operate.

Along with the said Customs Code of Ukraine provides indirect reference to the administrative and legal measures by the use of terms that are administrative and legal nature, namely, measures to prevent and combat smuggling, use of coercive measures against violators regime of customs control measures enforcement of customs duties, measures of cus-

toms and tariff and non-tariff regulation of foreign economic activity, taking measures to prevent the movement across the customs border of Ukraine, which established prohibitions and / or restrictions and so on.

The above provides a reasonable basis to believe that the administrative and legal framework for enforcement of customs there, but remains a problematic measures for its implementation, which has not received a proper system of normative content: gaps in settlement of rights and duties of customs authorities in law enforcement, clear definition of customs departments that perform law enforcement functions, the distribution of powers between the use of certain administrative and legal measures to ensure law enforcement and proper classification of these events and more.

Unfortunately, the development of the aforementioned problems remains in customs solely on theoretical and scientific level that cannot hold us in the present.

It is clear that, despite the foregoing, the leading position among the elements of law enforcement activity of customs authorities at the stage of violation of customs regulations occupies most of the administrative and legal component.

The practical aspect of customs work suggests that administrative and legal measures of enforcement activity at the stage of violations of customs legislation characterized the settlement on the basis of the administrative, customs, tax, financial and international law. However complex nature of these measures does not imply the existence of a proper regulatory enforcement activity of customs authorities at the stage of implementation of the measures is the administrative suspension.

Thus, the current Customs Code of Ukraine does not reflect the full cycle of policing in the area of customs relations, contains no rules, just right regulatory customs authorities at the stages of both detection and suppression and prevention of violations of customs inspection, by analyzing and summarizing the results of which decision will be taken about the presence or absence of signs of customs violations, misdemeanors in other areas of public relations and more.

Also revised Customs Code of Ukraine, unlike the previous one, does not contain even a mention of the customs departments of the organization to combat smuggling and customs violations that are currently operating in the Customs Service and Customs Guard units, the legal basis of Article 19 of whom were -23 Customs Code of Ukraine in 2002, this time eliminated.

Thus, a paradoxical situation where the customs departments of law enforcement unit commit an action of providing a mechanism of detecting violations of customs legislation establishing the presence or absence of reasons and grounds for legal action for violation of customs regulations of proceedings on violation of customs regulations, prevent and prevention of commission of the fact without legal basis.

Examples are additional evidence of the importance of administrative and legal support of law enforcement at the stage of detecting violations of customs legislation and measures for its implementation, which form the basis of detection of offenses, further driving force for potential criminal, criminal procedure and the basis for the renovation of administrative relationships in cases of closure of criminal proceedings.

Given the above, based on a generalized system to combat smuggling and customs violations, in our opinion, is united by a common set of intended criminal procedure and administrative and legal measures that aim at detecting and combating of customs offenses through the integrated use of available forces and facilities.

In our opinion, the above reflects the following specific aspects of administrative law enforcement activity of customs authorities.

The first, following a critical approach, to talk about is adequate and that meet the realities of our time, to ensure enforcement of customs terms of use administrative measures to detect violations of customs is not possible.

The second, in our opinion, referring to the administrative and legal framework for enforcement of customs, it is appropriate to point out the actual coincidence stages of detection, suppression and prevention of customs offenses, further highlights the importance of the first one.

The thirdly, at this time the sole and universal measures of enforcement activity of customs authorities at the administrative stage of detection, suppression and prevention of customs offenses is the use of forms of customs control under Article 336 of the Customs Code of Ukraine. In this case, «external» streamline this activity remains a problematic lack of officials from the departments of anti-smuggling and customs violations powers to the full extent provided by law forms of customs control.

The fourth, to ensure enforcement of customs work done more by exercising powers under customs control of goods and vehicles is due to interpenetration and sometimes complete coincidence control and enforcement functions of the Customs Service.

The fifth, in our opinion, the administrative and legal framework for enforcement of the customs authorities under the administrative detection is a special kind of law enforcement capacities in the past by applying under the law of measures aimed at creating an effective system of customs protection of social, economic, cultural and other legitimate rights and interests of the state, enterprises and individuals.

The sixth, general administrative and legal action as a complex formation affect both the procedure of customs control and customs clearance of goods transported across the customs border of Ukraine and on the liability of legal entities and natural persons who have committed violations of customs legislation, in addition to health order, ordering of social relations based on law and the rule of law, education and prevention work.

The seventh, we consider it appropriate to conclude that the provision of customs law enforcement authorities should be understood as a proper administrative aspect of such bod-

ies and effective mechanism to create conditions for the realization and protection of the rights and freedoms of man and citizen.

The eighth, we propose that the administrative and legal framework for law enforcement at the stage of violations of customs laws in two dimensions, which can be divided into macro and micro level. The first one is to create a legislative body basis the administrative and legal support to law enforcement activity of customs bodies – the law that will properly settle the administrative nature of this relationship between their subjects and participants with clearly defined rights and obligations latter provide legitimacy relationships. Another area will be the basis of actual activity of customs bodies of the practical implementation of established administrative and legal measures to ensure their enforcement work, i.e. identify as suspension and warning signs of customs offenses and offenses that infringe on other areas of public relations.

The ninth, it remains developing and building a model of administrative law enforcement activity of customs authorities at the stage of identifying and fixing offenses based on administrative coercion.

**Conclusions.** Thus, we believe that resolving the issues raised by us is purely theoretical as well as practical significance as a basis for a settlement of the issue of regulatory streamlining Customs Enforcement, which will enable to define their role and place in the national security entities, improve performance delivered to the Customs service of Ukraine problems in law enforcement in the mechanism of administrative and legal measures.

Promising to further consideration and study of this subject are such aspects as an opportunity to expand the list of customs forms to include in their number of activities that are purely law enforcement and are designed to ensure detection of violations of customs regulations, developing legislation and the status, rights and obligations bonds of customs departments to fight against customs offenses.

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