GENESIS OF LEGAL REGULATION OF ADMINISTRATIVE AND LEGAL PRINCIPLES OF COMBATING CUSTOMS OFFENSES

POLIANSKA Ye. - PhD-student of Sumy State University
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The article is devoted to the investigation of the development of administrative and legal basis which are used for the combating of customs offences. First of all, the administrative custom responsibility is provided by the Custom Code of Ukraine. However, the legal basis of administrative responsibility is provided by the Code of Ukraine on administrative offences. Moreover, the development of the resistance actions against customs offences are depended on the historical changes in the legal authorities, which authorized to combat and prevent offences. Also, the regulation of the combating of customs offences is depended on the historical development of the Custom Code of Ukraine. It has been changes three times. The new third addition of the Custom Code of Ukraine implement the regulations, which are more appropriate for modern custom relationship. But it still needs changes, especially according to the European standards. Ukrainian legal custom authorities always underwent changes, which had a significant impact on the prevent custom policy. The creation of the State Customs Service is an important step for improving the process of combating the customs offences. But, as it was investigated, using only administrative responsibility to combat custom offences does not reflect the situation of modern relationship and does not response the requirement of European association. During the investigation the author also highlight the main principles of the prevention the custom offences, which was prepared in the process of development of custom relationship. In this legal field Ukraine should take as ranted the administrative and legal tools for combating the custom offences, which are used by the neighboring countries, for example Romania. In the article the author researched the Romanian experience in the prevention measures of combating custom offences. As a result, the conclusion was made, that the genesis of the administrative legal actions which are used for combating and preventing the custom offences are depended on the state of the development of legal relationship and the impact of international law system.

Keywords: custom offences, custom regulations, custom authorities, administrative responsibility, means of combating customs offences, prevention measures, prevention of customs offenses, international experience.

Statement of the problem

Customs legislation is constantly being improved and changed. First of all, this concerns the improvement of legal provisions on combating offenses in the customs sphere. In particular, the problem of improving customs legislation is determined by the fact that customs offenses have a significant impact on the normal functioning of the state economy and the legal sphere. A clear definition of customs offenses and ways to counteract them is an important factor in compliance with customs legislation. However, it is a common fact that law changes with the change of legal relations, it is not a static category. Therefore, the principles of combating customs offenses, as well as administrative and legal regulation itself, are subject to constant legislative changes. It is important to analyze the emergence and improvement of the administrative and legal framework for combating customs

offenses, which is an understanding of the genesis of the legal struggle against violations of customs control rules.

The state of research of the problem

At the current stage of development of science and doctrine of law, the study of the genesis of legal regulation of administrative and legal principles of combating customs offenses has not received due attention. However, scientific works pay attention to the general principles of administrative liability for customs offenses and ways to counteract customs offenses. In particular, we can highlight the works of the following scholars who have studied these issues: Herchakivska O., Hrianka G., Dopilka V., Yenina A., Kapitanets S., Suhak O., Khomutianskyi V. and others. At the same time, the authors study more about customs offenses, liability for their commission and counteraction or prevention of their commission.

The purpose of the article is to clarify the peculiarities of the genesis of legal regulation of administrative and legal framework for combating customs offences as a basis for further improvement of customs legislation with a view to preventing customs offences.

Presentation of the main research material

The definition of a customs offense is contained in the current Customs Code of Ukraine. According to Part 1 of Art. 458 of the Customs Code of Ukraine, violation of customs rules is an administrative offense, which is an illegal, culpable (intentional or negligent) action or inaction that encroaches on the order of movement of goods, commercial vehicles across the customs border of Ukraine established by this Code and other acts of Ukrainian legislation , presenting them to customs authorities for customs control and customs clearance, as well as carrying out operations with goods under customs control or the control of which is entrusted to customs authorities by this Code or other laws of Ukraine, and for which administrative responsibility is provided by this Code [7]. Thus, the concept of a customs offense contained in the Customs Code of Ukraine quite clearly defines the ways of choosing the principles and methods of countering the commission of customs offenses, since the definition characterizes problematic aspects.

Violations of customs rules cause damage to the state, which is why it is a problem that requires the selection of appropriate administrative and legal ways to counteract it. Therefore, the counteraction is expressed in the formation of a separate group of special legal levers of influence on public relations. These levers consist of administrative and legal methods and forms of counteracting offences in the field of customs activities, which depend on the state of development of public relations [9, p. 108].

Violation of customs rules is the most common type of offence in the field of customs. And the mechanism of preventing and combating violations of customs rules is gaining relevance in the process of forming Ukraine as a legal and social state. The process of implementing a comprehensive fight against these torts in the customs sphere is a prerequisite for the integration of our country into the European space [3, p. 191]. Since Ukraine continues to carry out reforms before joining the European Union, the legal regulation of the administrative and legal framework for combating customs offences is under constant improvement.

The relevance of the problem of administrative and legal regulation of combating customs offences is growing with the deepening of the phenomenon of open borders, free trade, and unimpeded access to border crossing by goods, which leads to the fact that customs offences are among the most frequent.

In most cases, customs offences are subject to administrative liability, but there are a number of offences that result in criminal liability. According to Art. 2 of the Code of Ukraine on Administrative Offences, the Customs Code of Ukraine regulates the issues of administrative liability for violation of customs rules [6].

Usually, administrative coercion is a means of exercising administrative responsibility. However, among the number of administrative coercive measures, in particular: customs control, administrative detention, seizure of goods and documents, only administrative penalties serve as punishment and only their application entails administrative liability [4, p. 24].

It is the provisions of the Customs Code of Ukraine that provide for administrative liability

for violation of customs rules, however, administrative liability arises if the committed customs offence does not contain signs of a criminal offence.

Thus, it is difficult to disagree with the scientist's opinion that the mechanism of administrative and legal support for the protection of customs law and order, implemented through the institution of administrative liability, manifests itself independently, individually, along with other means of its legal protection. However, administrative liability for violation of customs rules is a legal obligation of a citizen or a specific official, determined by the customs law, to be aware of their guilty, illegal actions in the field of customs law enforcement and, if there are sufficient grounds for this, to be punished in the form of an administrative penalty imposed by the customs authority or court [2, p. 107]. This statement emphasizes that administrative liability is personalized and can have an impact on the offender, but not on the general public.

Thus, in this regard, the legal literature used to believe that an effective means of counteracting the commission of certain offences, including customs offences, is the application of the institution of responsibility. That is, when a person is responsible for the act committed, the function of re-education is carried out. In addition, there was an opinion that a person who was necessarily held liable for the act would not commit another offence in the future. However, with the development of social relations, more attention has been paid to educational influence and prevention in order to prevent the commission of customs offences at the stage of their preparation or long before by other persons, as evidenced by foreign experience. In particular, such a counteraction approach will help to avoid the negative consequences of the offence and will inspire trust and respect for the state authorities that perform the functions of combating customs offences. The task of ensuring a preventive impact on society is directly entrusted to the state authorities that perform these functions and to a conscious civil society.

In addition, when studying the changes in the administrative and legal framework for combating customs offences, it is worth paying attention to the legal status of the authorized entity that combats and counteracts customs offences. In particular, its name and powers are constantly being changed at the legislative level. For example, between the end of 2012 and the end of 2014, the subordination and name were changed four times - the Department for Combating Smuggling and Customs Offences of the State Customs Service of Ukraine, the Department of Customs of the Ministry of Revenue and Duties of Ukraine, the Department for Combating Smuggling and Customs Offences of the Main Operational Department of the Ministry of Revenue and Duties of Ukraine, the Department of Risk Analysis and Counteraction to Customs Offences of the SFS of Ukraine, and in early 2018, the main entity responsible for combating violations [10, c. 103].

Currently, the State Customs Service has a Department for Combating Smuggling and Violations of Customs Rules, which is available on the official website of the State Customs Service of Ukraine.

An important factor in understanding the administrative and legal framework for combating customs offences is to identify the principles underlying the activities and powers of the authorized bodies to combat customs offences. They are the principles of combating violations of customs rules that remain unchanged over time, however, their content may be partially changed to comply with modern legal relations. Thus, among the principles of the administrative and legal framework for combating and preventing customs offences, we will consider the following:

- Inevitability of liability for offences committed. This principle is enshrined in the provisions of the Constitution of Ukraine as the law of the highest legal force. In particular, Art. 61 of the Constitution of Ukraine provides that no one may be held legally liable twice for the same offence [3, p. 193]. The principle of inevitability of liability has a significant preventive effect and counteracts the commission of customs offences. In particular, this is due to the fact that in the future similar offences will not be committed by the same persons and other persons, since awareness of the possibility of negative consequences is a deterrent.

- Control. Another principle of combating customs offences that is subject to administrative and legal regulation. This principle means the

strict observance of laws and other regulations, which is under constant control of public authorities and the public. Importantly, this principle is directly responsible for verifying compliance with legislation by both customs authorities and other entities.

- Combination of protective and preventive measures to combat customs offences. Thus, the administrative and legal principles of combating violations of customs rules can be used both to prevent the commission of a customs offence and to stop it. The Code of Ukraine on Administrative Offences provides for the means of terminating customs offences.

- Exercising the right to appeal against decisions, actions or omissions of entities that counteract customs offences. In particular, in order to protect their interests, entities whose customs rights are violated may apply administrative and judicial remedies to protect their violated rights.

- Stimulation of legal behaviour of subjects of customs legal relations. This principle directly reveals the nature of administrative and legal means of combating customs offences. Subjects of combating customs offences should use all possible means to prevent and counteract illegal behaviour and compliance with customs legislation.

- Imperative. This principle reflects the intrinsic nature of administrative and legal regulation, in particular the application of peremptory norms. Thus, only clearly authorized entities can apply means and measures to counteract customs offences.

- Objectivity. This principle most clearly reflects the genesis of administrative and legal regulation of legal means of combating customs offences. In particular, it provides for the compliance of the application of countermeasures with the laws of development of customs offences and their impact on the economic, political and social indicators of the state development in a certain period. Since relations are constantly evolving and changing, the nature of customs offences is also changing, so the means of counteraction must objectively correspond to the problem.

- Economic feasibility. This principle is responsible for studying the quality of the application of measures to counteract customs offences, i.e. whether the applied measures meet the purpose and whether they satisfy these legal relations at a certain stage of their development. This is confirmed by the postulate that 'the economic situation of the state dictates its own rules for planning and developing measures to regulate customs relations'.

- An active civil society that interacts with the authorities empowered to combat customs offences. Such interaction is an extremely important indicator of a highly developed state, since public involvement is an effective manifestation of the implementation of any state policy. Combating customs offences should be the task not only of the authorized bodies, but also of society [10, p. 70-75].

For the effective implementation and ensuring the effectiveness of measures to counteract customs offences, it is necessary to follow the principles analyzed above, as they form the basis for building the state policy on the administrative and legal framework for counteracting customs offences and correspond to the level of development of customs legal relations that give rise to customs offences. That is why they are a vector for combating customs offences.

Ukrainian legislation is constantly changing, primarily due to the reform and preparation of legislation to meet European requirements. The legal provisions providing for combating customs offences in administrative law are no exception. In particular, the problem of combating customs offences lies in the area of developing effective mechanisms of customs control, using the latest technical and special means of searching for and identifying contraband, and applying motivational mechanisms for customs services to minimize corruption risks. Such tasks can be implemented through the implementation of standards and regulations that have been developed and implemented for decades at the level of international conventions, declarations, directives, regulations, and standards in the national legal field [1, p. 142].

The institution of combating and counteracting customs offences has existed for a long time, dating back to the times of Kievan Rus. However, the main period of formation of the modern administrative and legal framework for combating customs offences was during the period of Ukraine's independence, as the bodies tasked with combating violations of customs rules and legislation began to be clearly formed.

The main legal act defining the administrative and legal framework for combating customs offences is the Customs Code, but throughout the period of independence, other legal acts have also been used to regulate the legal framework. For example, the Law of Ukraine of 04 November 1991 № 1777-XII «On the State Border of Ukraine», the Law of Ukraine of 21 January 1994 № 3857-XII «On the Procedure for Exit from Ukraine and Entry into Ukraine of Citizens of Ukraine», the Law of Ukraine of 5 November 2009 № 1710-VI «On Border Control», as well as resolutions and orders of executive authorities. However, we will focus on the genesis of the Customs Code of Ukraine.

Thus, 1991-2002 are considered to be the years of formation of the institution of liability for violation of customs rules, as the first Customs Code of independent Ukraine was adopted, which contributed to the formation of a market economy and foreign economic activity. The next version of the Customs Code of Ukraine was adopted in 2002 and came into force on 1 January 2004. On 1 June 2012, the new Customs Code of Ukraine came into force, and this was its third version, which significantly changed the customs legislation, simplified the customs clearance procedure and expanded the powers of the customs authorities in conducting inspections. With regard to liability for customs offences, the presumption of innocence of the declarant was introduced, and it was established that the decision on confiscation is made exclusively by the court, while warnings and fines remain within the competence of the customs authorities, and liability for certain offences was increased.

Currently, the Customs Code of the third edition, i.e. 2012, is in force, but it is constantly being amended.

It is worth agreeing with the above opinion that national legislation should comply with the norms and standards of international law, especially given the rapidly developing European integration processes in Ukraine. Therefore, many of the provisions, including the means of combating customs offences regulated by the administrative and legal provisions of national legislation, originate from international treaties and conventions. The international legal acts that define the means of counteracting customs offences at the international level include the following: The International Convention on Mutual Administrative Assistance in the Prevention, Investigation and Suppression of Violations of Customs Law, the International Convention on the Harmonized Commodity Description and Coding System of 1983 (Ukraine acceded in 2002), the Convention on Temporary Admission (Istanbul Convention of 1990) (Ukraine has been a party since 2004), the International Convention on Administrative Assistance in Customs Matters of 27.06.2003 (Johannesburg Convention) [1, p. 143].

International normative acts are the basis for the formation of national legislation in all areas of legislative regulation, including the customs sphere. Therefore, in this case, it can be agreed that the above Conventions, in particular, to which Ukraine is a party, to some extent determine the genesis of legal regulation of the administrative and legal framework for combating customs offences.

In addition, the experience of foreign countries, in particular neighboring countries, also influences the formation of legal regulation of the administrative and legal framework for combating customs offences, as they have the closest cooperation, namely border cooperation, also within the border zone. This cooperation and the practice of combating customs offences in neighboring countries significantly affects the formation and development of means of combating customs offences in Ukraine. As an example, we can consider the experience of Romania, which has recently gone through the European integration process. Currently, the means of combating customs offences defined in Romania are fully compliant with European standards. Thus, the analysis of the policy of combating customs offences in Romania shows that the monitoring of the Romanian Customs Service (DGV) is successful, which provides the basis for improving the legislation. The use of data from the Romanian National Institute of Statistics for forecasting and identifying certain trends in the commission of offences is positive. The analysis of statistical data helps customs authorities to identify strategic areas of work, plan and skilfully carry out work on the prevention and detection of customs offences [5, p. 56].

Romania's experience in combating customs offences may become an impetus for the development of Ukraine's customs legislation and the expansion of administrative and legal means of combating customs offences. In particular, the use of modern technologies and, in particular, statistical data as analytical material for the study of the factors of customs offences directly on the customs territory is an element of administrative and legal regulation of measures to combat customs offences. Therefore, in this case, the Ukrainian administrative and legal regulation of the means of combating customs offences should, in addition to imposing punishment and liability, pay attention to the creation of a legal framework for conducting research on trends in customs offences and to exercise preventive influence on offenders.

An important factor in the study of the genesis of administrative and legal regulation of combating customs offences is the analysis of the present, in particular, the period of the full-scale invasion of the Russian Federation into the territory of Ukraine, which is associated with the peculiarities of border crossing by people and goods. In particular, the current customs regime during wartime is significantly simplified, especially in terms of time, which causes certain problems and violations. For example, in 2022, the Transcarpathian Customs drew up about 647 reports on violations of customs rules worth almost UAH 78 million, where the subjects of offences were vehicles; 138 cases worth UAH 54.5 million - industrial goods; 10 cases worth more than UAH 35 million - currency and precious metals; 31 cases worth more than UAH 1.7 million - food products; 31 cases worth almost UAH 3.5 million - tobacco products [8]. This number of offences indicates that the administrative liability is not sufficiently severe. Therefore, the administrative and legal methods of combating customs offences require a more detailed assessment and possibly strengthening to encourage participants in customs legal relations to behave lawfully.

Conclusions

Today, legal relations are undergoing drastic changes, which give rise to new challenges for legislation, as it is necessary to make immediate decisions regarding the settlement of relations. Customs offenses are one of the most common offenses, and in addition to their prevalence, they also cause significant damage to the economic, legal and other spheres of the state apparatus. That is why there is a need for administrative and legal regulation of combating and combating customs offenses. To be effective, combating customs offenses must comply with certain principles, which are the unchanging principles of its implementation, in particular: inevitability of responsibility, control, objectivity, economic expediency, the existence of a conscious civil society and the stimulation of legal behavior. The administrative and legal principles of regulation of combating customs offenses have a close connection in their historical development with customs and administrative legislation and, in particular, the specifics of the status of the entity responsible for combating customs offenses.

The national legislation on the issue of legal regulation of administrative and legal bases for countering customs offenses is not a constant. Thus, one of the first steps after the declaration of Ukraine's independence was the adoption of the Customs Code of Ukraine and the reorganization of customs authorities in 1991. However, in the process of development and formation of Ukraine as a democratic, social and legal state, it became clear about the shortcomings and the need for reform in the field of customs affairs. Therefore, we can distinguish three stages of such reforms corresponding to the editions of the Customs Code of Ukraine, namely: 1991-2004, 2004-2012, 2012-present. At the same time, we would like to draw attention to the fact that each edition underwent significant changes. As well as the legal regulation of administrative and legal bases for combating customs offenses in Ukraine, in addition to the Code, other normative legal acts (laws, resolutions, orders) are also carried out.

Also, the genesis of the administrative-legal regulation of combating customs offenses in Ukrainian legislation has a close connection with the international regulation of combating customs offenses, as well as the implementation of foreign experience, in particular of neighboring countries. However, a significant step in the development of the administrative and legal framework for combating customs offenses is the transition from purely administrative re-

sponsibility to preventive measures and prevention to prevent the commission of a customs offense and its consequences.

References

1. Герчаківська О. Я. Протидія митним правопорушенням у міжнародному та українському нормативно-правовому полі. *Електронне наукове видання «Аналітично-порівняльне правознавство»*. 2022. № 1. С. 141-146.

2. Грянка Г. В. Правові засади адміністративної відповідальності за порушення митних правил. *Право і суспільство*. 2012. № 6. С. 102-108.

3. Допілка В. О., Павловська І. Б. Теоретико-правові засади відповідальності за порушення митних правил. *Науковий вісник Ужгородського Національного Університету*. 2021. № 67. С. 190-194.

4. Єніна А. Митне регламентування порушень митних правил та відповідальності за їх порушення. *Міжнародний науковий журнал*. 2020. № 1. С. 19-28.

5. Капітанець С. В. Запобігання та протидія митним правопорушенням: аналіз закордонного досвіду. *Науковий вісник Міжнародного гуманітарного університету*. 2017. № 1. С. 55-58.

6. Кодекс України про адміністративні правопорушення: Закон України № 8073-X від 07.12.1984 року. URL: https://zakon.rada.gov.ua/laws/show/80731-10#Text.

7. Митний кодекс України: Закон України № 4495-VI від 13.03.2013 року. URL: https://zakon.rada.gov.ua/laws/show/4495-17#Text.

8. На Закарпатській митниці впродовж 2022 року склали протоколи про порушення митного законодавства на 173,5 млн грн. *Закарпаття онлайн*: веб-сайт. URL: https://zakarpattya.net.ua/News/225682-Na-Zakarpatskii-mytnytsi-vprodovzh-2022-roku-sklaly-protokoly-pro-porushennia-mytnoho-zakonodavstva-na-1735-mln-hrn.

9. Сугак О. В. Адміністративно-правова протидія правопорушенням у сфері господарської діяльності : дис. …канд. юр. наук : 12.00.07. Суми, 2020. 238 с.

10. Хомутянський В. В. Адміністративно-правова протидія порушенням митних правил : дис. … канд. юр. наук : 12.00.07. Запоріжжя 2021. 242 с.

Полянська Є. А. – аспірантка Сумського Державного університету

ГЕНЕЗИС ПРАВОВОГО РЕГУЛЮВАННЯ АДМІНІСТРАТИВНО-ПРАВОВИХ ЗАСАД ПРОТИДІЇ МИТНИМ ПРАВОПОРУШЕННЯМ

У статті досліджено історико-правові засади регулювання протидії митним правопорушенням. Розкрито правову природу поняття митного правопорушення та вплив порушень у митній сфері на нормальне функціонування державного апарату, що зумовлює у держави обов'язок боротьби із цими правопорушеннями та підготовки адміністративно-правових засад протидії митним правопорушенням. Встановлено, що без належного розуміння особливостей митних правопорушень неможливо побудувати ефективну систему протидії. Адміністративна відповідальність за митні правопорушення регулюється Митним кодексом України, що забезпечує базові засади адміністративно-правових заходів боротьби з митними правопорушеннями. Проте, із розвитком суспільних відносин, зокрема митних, застосування суто заходів адміністративної відповідальності вичерпує себе як засіб протидії митним правопорушенням. На цьому тлі виникає необхідність вдосконалення та доповнення правових механізмів протидії, що включають профілактичні та превентивні заходи.

Розглянуто історичні етапи становлення адміністративно-правових засад боротьби з митними правопорушеннями в Україні, а також проаналізовано зміни в законодавстві, які спрямовані на підвищення ефективності протидії митним правопорушенням.

У статті наголошується на важливості міждисциплінарного підходу до вивчення та регулювання митних правопорушень, що включає правові, економічні та соціальні аспекти. Зокрема, підкреслюється роль адміністративно-правових заходів у забезпеченні економічної безпеки держави та захисту її економічних інтересів. Таким чином, генезис правового регулювання адміністративно-правових засад протидії митним правопорушенням є складним і багатогранним процесом, що потребує постійного вдосконалення та адаптації до сучасних викликів і потреб суспільства.

Ключові слова: митні правопорушення, митні правила, митні органи, адміністративна відповідальність, засоби протидії митним правопорушенням, превенція, попередження вчинення митних правопорушень, міжнародний досвід.