

THE EXPEDIENCY OF PRESENCE OF THE LAW ENFORCEMENT BODIES IN THE AREAS OF CUSTOMS CONTROL

Today's complex conditions, caused by the development and growth of globalization processes, political and legal transformations, informatization and digitalization of many processes related to the transformation of economic systems, there is an urgent need for an adequate and prompt response of the state to the challenges of modernity. Taking into account the essential circumstance that today most of such challenges are converted into clear or, even worse, latent threats to the national economy, there is an objective need for the existence of an effective administrative and legal mechanism for the systematic provision of the economic security of the state.

The article is devoted to the issues of highlighting the peculiarities of the organization of interaction between customs and law enforcement agencies in the process of customs control. It is emphasized that one of the main tasks assigned to customs authorities is, among other things, prevention and counteraction to smuggling, combating violations of customs rules throughout the customs territory of Ukraine. It is emphasized that the law enforcement agencies with which the customs authorities actively interact in the process of performing the tasks assigned to them by law include: the national police, the Security Service of Ukraine, the prosecutor's office service and others. The main powers of law enforcement agencies enshrined in the Customs Code of Ukraine are systematized. The legal nature of the competence of law enforcement agencies in cooperation with customs authorities has been studied. The content of the concept of law enforcement agencies is investigated on the basis of scientific researches and normative legal acts. The main features of law enforcement agencies and their functions are highlighted. The main feature of the concept of law enforcement is its functional purpose – a certain area of activity, tasks, competence and possession of special powers to protect human rights and freedoms, as well as the interests of society and the state. There are also a number of characteristics, that are inherent in law enforcement.

Key words: customs authorities, customs control, interaction, powers, law enforcement agencies, fight against smuggling, customs offenses.

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Introduction

In the conditions of further globalization of world relations, the confirmation of the direction of Ukraine's movement towards decentralization and deconcentration of authority creates new challenges and threats. The development of international trade involves the simplification of customs formalities. One of the ways is to organize on a single window basis and conduct a preliminary documentary control by the customs authority. A clear division of powers, the identification of a technology for joint actions and responsibility for their improper performance. All this makes the system predictable and transparent. The need to respect to protect their own national interests emphasizes the leading role of customs authorities in the process of organizing and conducting customs control and clearance of goods in accordance with the chosen customs regime. The issue of counteracting international crime in the economic sphere, preventing terrorist acts and so on is possible only in close cooperation with other state authorities, their coordination and elimination of duplicate functions.

The main thrust of public administration as a function of the state's implementation of a managerial process to meet the tasks, functions and interests of the state (according to Article 3 of the Constitution of Ukraine the rights and freedoms of the person and their guaranteed determine the content and direction of the state activity) is the system of public administration in general and in its separate components (branches) that depends on clear hierarchical definition and normative fixing of boundaries competences of each level of government.

Problem statement. During the study of issues related to the theory of public administration, the supplying of the national security system, the introduction of the latest technologies we are faced with attempts to mechanize the transfer of experience or hopes and wishes of officials in various areas of public administration. It causes contradictions or conflicts of interest in the implementation of various bylaws, which may not comply with the laws for which they are adopted, and not to be in accordance with the aims their acceptance is declared. In our opinion, the example of such a premature policy is the Cabinet of Ministers of Ukraine Resolution No. 479 “On the implementation of a pilot project to create conditions for avoiding customs tax evasion” dated June 20, 2018. The extreme politicization of issues related to the implementation of customs clearance, the desire to implement reforms for the sake of reforms, or the need to report on the implementation of reform played a cruel joke with the government.

Analysis of recent research and publications. The essence of state regulation is considered in the works of Averyanov V., Bityak Yu., Koval L., Komzyuk A., Lukyanets D., Starikov Yu. and others. The problems of the implementation of customs formalities, harmonization of customs procedures in accordance with international standards are considered in the works of Garmash Ye., Berezhnyuk I., Mazura A., Prymachenko D., Tereschenko S. and others.

Purpose of the work. To investigate the state of affairs that developed after the adoption of the Cabinet of Ministers of Ukraine Resolution No. 479 “On the implementation of a pilot project to create conditions for avoiding customs tax evasion” dated June 20, its impact on the work of customs authorities and units of the national police.

Presenting main material

The need to respond to the challenges of today, the desire to show the reform process, the understanding of the inconsistency of existing management models, the ability to emphasize their own significance and influence on the processes of public administration led to the implementation of a pilot project, legal assessment of which and expected results from the implementation of which nobody tried to conduct and evaluate. By the Cabinet of Ministers of Ukraine Resolution No. 479 “On the implementation of a pilot project to create conditions for avoiding customs tax evasion” dated June 20, the participation of law enforcement agencies during the customs inspection was introduced.

Rights of law enforcement agencies within the framework of this Resolution:

– Police have the right to stay 24 hours a day in customs control zones at the state border crossing and in other places of the customs territory of Ukraine, in which the bodies of the State Fiscal Service (SFS) carry out customs formalities (hereinafter – customs control zones), in order to detect the facts of the violation customs rules;

– Police officers and officers of the Ministry of Interior have the right to access the Automated system of customs registration (ASCR) “Inspector-2006”.

Thus, on the site of the State Tax Administration, an algorithm of actions and access of the National Police to the customs control zones (CCZ) was published in the framework of the access of law enforcement to the customs control zones.

The mechanism contains two blocks: the access procedure and the round-the-clock stay of representatives of the Ministry of Interior in the areas of customs control and the possibility of using the Automated system of customs registration “Inspector-2006”.

The essence of the first section is as follows.

Officials of state bodies, in this case it is about representatives of the National Police, are in the customs control zones in accordance with the regime of the zone and with the written permission of the head of the customs post, and at the points of entry through the state border – also in agreement with the Chief with appropriate body of the State Border Service.

The national police will inform the customs in writing (the coordinator will be assigned for each one) about the availability of operative information on possible cases of movement of goods in violation of the legislation.

The basis for conducting an inspection (re-inspection) of goods, vehicles is a written order in the framework of criminal proceedings (an exhaustive list of grounds is enshrined in the decree of the Cabinet of Ministers of Ukraine dated May 23, 2012 No. 467).

Means of photo and video fixation will be applied during the inspection (re-inspection) on the initiative of law enforcement authorities.

The act about the inspection (re-inspection) will contain information about the persons who were present at the time of the inspection and their signatures.

As for the second block of the algorithm of action, an agreement on granting access to the Automated system of customs registration “Inspector-2006” is concluded between the State Fiscal Service and the Ministry of Interior.

In addition, the fiscal service has already received a list of officials of the National Police, which will be granted the right to be in the customs control zones.

Consequently, the mechanism of joint action involves responding exclusively within the framework of the current legislation. The actions of law enforcers will not hinder customs registration and will not lead to unreasonable delays. All decisions will be aimed at detecting violations of customs rules and smuggling.

Nowadays the management of the SFS has directed the List of National Police staff of the Department of National Economy of the National Police of Ukraine to the Customs. The list provides access to the ASCR Inspector and unhindered round-the-clock access to the customs control zone for each Customs SFS separately.

During this “pilot project” policemen have the right to stay 24 hours a day in customs control zones at checkpoints across the state border and elsewhere in the customs territory of Ukraine, in which the bodies of the State fiscal service carry out customs formalities, in order to identify the violation of customs rules.

It is clearly defined in Article 19 of the Constitution of Ukraine that public authorities, their officials are obliged to act only on the basis, within the limits of authority and in the manner provided for by the Constitution and laws of Ukraine (the provision in part two of Article 19 is given an official interpretation in accordance with the Decision of The Constitutional Court of Ukraine of 16 April 2009 7-rp / 2009).

Article 8 of the Customs Code of Ukraine states that the state customs is carried out on the basis of the exclusive powers of the bodies of revenue and duties of Ukraine. It is emphasized by Article 318 that customs control is carried out exclusively by the bodies of revenue and duties so the legislator directly prohibits persons who are admitted to the customs control zone to interfere with officials of the customs (customs post) who carry out customs control and customs registration as well to take any actions as for the goods, vehicles, and also other persons who are in the zone of customs control, unless otherwise provided by law.

In accordance with Article 320 of the Customs Code of Ukraine, the forms and volumes of control sufficient to ensure compliance with the legislation on state customs matters and international treaties of Ukraine in the customs registration are selected by customs (customs posts) on the basis of the results of the system’s application risk management. It is not allowed to determine the forms and volumes of customs control by other state authorities, as well as the participation of their officials in the implementation of customs control. Article 336 of the Customs Code of Ukraine defines customs registration as one of the forms of customs control. In accordance with part five of Article 338 of the Customs Code of Ukraine, except the cases specified in parts two and four of this article, inspection (re-inspection) of goods, vehicles of commercial purpose may be carried out if there is sufficient evidence to consider that the movement of these goods, vehicles through the customs border of Ukraine is carried out outside customs control or with concealment from customs control, including in the case of obtaining relevant official information from law enforcement agencies. An exhaustive list of sufficient evidence is determined by the Cabinet of Ministers of Ukraine. The list of evidence was approved by the decision of the Cabinet of Ministers of Ukraine dated 23.05.2012 N 467 “On approval of an exhaustive list of evidence for the inspection (re-inspection) of goods, vehicles of commercial purpose by the customs authorities of Ukraine”. Item 14 of the exhaustive list approved by this resolution, the basis for conducting inspection (re-inspection) of goods, vehicles of commercial purpose, determined receipt in accordance with the established procedure from law enforcement agencies information on the movement of goods and vehicles of commercial purpose in violation of the requirements of the legislation on the state customs. In accordance with Articles 482, 483 of the Customs Code of Ukraine, information received from law enforcement agencies must be such that it allows its recording, identification and processing; it must contain data sufficient to form the conclusion about the movement of certain goods, vehicles with signs of violations customs rules. In accordance with Article 332 of the Customs Code of Ukraine, movement through the borders of the customs control zone and within this zone by the officials other than customs, territorial bodies of the central executive authority, which ensures the formation and implementation of state tax and customs policy, as well as officials state bodies which do not carry out the types of control specified in the first paragraph of Article 319 of the Customs Code of Ukraine shall be adhered to with the regime of the customs control zone and shall be allowed only

with the written permission of the head of the relevant customs (customs post) or the person performing his duties, and in zone customs control located at the points of entry through the state border of Ukraine – in addition, in agreement with the head of the relevant body of state border guard. Each decision on admission to the customs control zone should have an individual character and one-time action.

The Laws of Ukraine “On the Security Service of Ukraine”, “On National Police”, “On Operational Investigative Activity”, “On the Organizational and Legal Foundations of Combating Organized Crime” do not provide the direct involvement of personnel of the bodies whose activities are regulated by these laws carrying out customs control and registration. In accordance with Article 1 of the Law of Ukraine “On Organizational and Legal Foundations of Combating Organized Crime”, organized crime refers to a set of crimes committed in connection with the creation and operation of organized criminal groups. The types and crime signs, as well as criminal measures against the perpetrators of such crimes, are established by the Criminal Code of Ukraine. In accordance with article 12, paragraph 4 (a), when carrying out the fight against organized crime, members of special units under the written order of the head of a special unit have the right to enter checkpoints across the state border of Ukrainian customs upon presentation of the service official identification. The above rule relates solely to the implementation of measures aimed at combating organized crime and does not provide for the right to enter and stay in customs control zones. Section XXI, paragraph 3, of the Customs Code of Ukraine “FINAL AND TRANSITIONAL PROVISIONS” stipulates that the Laws of Ukraine, acts of the Cabinet of Ministers of Ukraine, normative acts of the central executive body, which ensure the implementation of the state policy in the field of state customs, and other central executive authorities, adopted in pursuance of the laws of Ukraine on the issues of state customs matters before the entry into force of this Code, and normative legal acts that are used in applying the norms of laws on state customs (including acts of legislation of the USSR), are applied in a part that does not contradict this Code until the adoption of corresponding acts in accordance with the requirements of this Code. Paragraph 9 of the same Section stipulates that changes to the Customs Code of Ukraine may be introduced only by the laws on amendments to the Customs Code of Ukraine, namely, amendments introduced only by the Verkhovna Rada of Ukraine, and not by any Resolution of the Cabinet of Ministers of Ukraine. In accordance with part 1 of Article 30 of the Customs Code of Ukraine, officials and other employees of the bodies of revenue and duties who have taken unlawful decisions, committed wrongful acts or afford omissions, including for personal mercenary purposes or in favour of third parties, bear criminal, administrative, disciplinary and other liability in accordance with the law.

At the same time, Article 23 of the Law of Ukraine “On National Police” defines an exhaustive list of police powers, among which there are no powers to “identify the facts of violation of customs rules”, which is indicated in the text of the said resolution as the purpose of police officers stay in customs control zones. In accordance with Article 24 of the same law, the execution of other (additional) powers may be entrusted to the police solely by law.

The basis for a legal conflict is stipulated by the provisions of Article 8 of the Law of Ukraine “On National Police”, which states that the police are acting solely on the basis of, within the limits of authority and in the manner prescribed by the Constitution and laws of Ukraine. A policeman is prohibited from doing criminal or explicit illegal instructions and orders. Instructions, orders and assignments of supreme bodies, executives, officials and officers, service, political, economic or other expediency can not be the basis for the police violation of the Constitution and laws of Ukraine.

Thus giving the police the right to be around the clock in the customs control zones, not defining their duties or tasks and not giving them any legal authority, in effect forcing them to take actions outside the current legislation.

One particular danger is the admission of law enforcement officers with uncertain powers to the databases of revenue and duties bodies that contain information related to the state customs. In accordance with Article 11 of the Customs Code of Ukraine, this information may be used by them solely for customs purposes and can not be disclosed without the consent of the entity, persons or the authority that provided such information, in particular, to third parties, including other public authorities, except cases determined by this Code and other laws of Ukraine.

Special attention should be paid to the Resolution of the Cabinet of Ministers itself dated June 20, 2018, No. 479.

In accordance with Article 117 of the Constitution of Ukraine and Part 1, Article 49 of the Law of Ukraine “On the Cabinet of Ministers of Ukraine” the Cabinet of Ministers issues binding acts – decrees

and orders. In accordance with paragraph 29 (2) of Chapter 1, Section 4 of the Resolution of the Cabinet of Ministers of Ukraine No. 950 dated 18 April 2007 “On Approval of the Regulation of the Cabinet of Ministers of Ukraine” Decrees of the Cabinet of Ministers are issued in the following areas: approval of the provision, statute, order, regulation, rules, methodology and others cases when public relations require legal regulation; approval, acceptance or accession to an international treaty.

Each legal act issued by public authorities must contain mandatory requisites and normative techniques. Thus, it is established by the Resolution of the Cabinet of Ministers of Ukraine dated 6 September 2005 No. 870 “On adoption of the Rules for the preparation of draft acts of the Cabinet of Ministers of Ukraine”, namely, in accordance with paragraph 11 the draft resolution consists of the title, introductory and decree and, if necessary, applications.

The title of the draft resolution should be concise and reflect the main content of the act.

In the introductory part of the resolution: the purpose of the adoption and (or) an act of legislation, according to which or in the performance of which the resolution is adopted, is determined (in a concise form); it is stated: “The Cabinet of Ministers of Ukraine decides:”. For example: In order to improve the order of realization of military property, provision of housing for servicemen of the Armed Forces and in accordance with Article 101 of the Law of Ukraine “On the State Budget of Ukraine for 2005”, the Cabinet of Ministers of Ukraine decides:

As you can see, the Resolution of the Cabinet of Ministers of Ukraine No. 479 dated June 20, 2018 does not have an introductory part at all, which in turn violates the rules of rulemaking and the Resolution of the Cabinet of Ministers of Ukraine No. 870 dated September 06, 2015. In general, the goal of the adoption of the document and in implement of which act of law this resolution was adopted is not known.

In addition, in accordance with paragraph 14 of the Resolution of the Cabinet of Ministers of Ukraine No 870 dated September 06, 2015, the decree of the resolution must contain: legal provisions; concrete instructions to subjects of public relations in the relevant area; conditions and procedure of other resolutions (separate norms); links to attachments (if they are available); norms related to the entry into force of the resolution (separate norms). If necessary, the body (bodies) of the executive power or the official (persons) exercising control over the implementation of the resolution is determined.

However, in the Resolution of the Cabinet of Ministers no. 479 dated June 20, 2018, the following is stated in the decree: “To approve the proposal of the Ministry of Interior, the Ministry of Finance and the State Fiscal Service regarding the implementation of the pilot project on creation of conditions to avoid tax evasion from June 21, 2018 to December 31, 2018 (hereinafter referred to as the pilot project).”

That is, this regulation contains no normative provisions, as the normative provisions can be considered as new norms that regulate the new legal relations and do not contradict the provisions of the current legislation of Ukraine. But only some kind of agreement between the Ministry of Interior, the Ministry of Finance and the State Fiscal service and their proposals are mentioned.

Conclusion

Taking into account the above, we note that the adoption of the Resolution of the Cabinet of Ministers of Ukraine is premature without proper preparation, examination, discussion and substantiation. Reports of the results of the experiment were not made public, the method of their calculations is unknown. The development of the concept of reforming customs authorities can be the subject of further research.

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ДОЦІЛЬНІСТЬ ПРИСУТНОСТІ ПРАВООХОРОННИХ ОРГАНІВ У ЗОНАХ МИТНОГО КОНТРОЛЮ

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У складних умовах сьогодення, зумовлених розвитком і зростанням процесів глобалізації, політико-правових трансформацій, інформатизації та цифровізації багатьох процесів, пов'язаних із трансформацією економічних систем, постає нагальна потреба в адекватному та оперативному реагуванні держави на виклики сучасності. Враховуючи ту суттєву обставину, що сьогодні більшість таких викликів перетворюється на явні або, що ще гірше, приховані загрози національній економіці, існує об'єктивна необхідність існування ефективного адміністративно-правового механізму системного забезпечення економічного безпеки держави.

Стаття присвячена питанням висвітлення особливостей організації взаємодії митних та правоохоронних органів у процесі здійснення митного контролю. Наголошується, що одним із основних завдань, покладених

на митні органи, є, зокрема, запобігання та протидія контрабанді, боротьба з порушеннями митних правил на всій митній території України. Наголошується, що до правоохоронних органів, з якими митні органи активно взаємодіють у процесі виконання покладених на них законодавством завдань, належать: Національна поліція, Служба безпеки України, прокуратура та інші. Систематизовано основні повноваження правоохоронних органів, закріплені в Митному кодексі України. Досліджено правову природу компетенції правоохоронних органів у взаємодії з митними органами. На основі наукових досліджень та нормативно-правових актів досліджено зміст поняття правоохоронних органів. Висвітлено основні ознаки правоохоронних органів та їх функції. Основною ознакою поняття правоохоронної діяльності є її функціональне призначення – певна сфера діяльності, завдання, компетенція та володіння спеціальними повноваженнями щодо захисту прав і свобод людини, а також інтересів суспільства і держави. Існує також низка характеристик, які притаманні правоохоронним органам.

Ключові слова: митні органи, митний контроль, взаємодія, повноваження, правоохоронні органи, боротьба з контрабандою, митні правопорушення.