

PREVENTION OF CORRUPTION RISKS WHEN PERFORMING CUSTOMS PROCEDURES: TYPES AND CONCEPTS

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Annotation. The aim of the work is involves clarifying the theoretical and practical problems of preventing corruption risks in the implementation of customs procedures, the peculiarities of its definition of the essence and concept, and the selection of separate criteria for their classification within the limits of its customs and legal provision. The methodological basis of the study used a set of scientific research methods such as dialectical, formal-legal, systemic, hermeneutic, comparative-legal, empirical, etc. The content of individual categories “corruption”, “corruption risk”, “procedure”, “legal procedure”, “customs procedure”, “customs formalities” was clarified, the constituent elements of customs procedures were revealed. A proper definition of “corruption risk in the field of customs procedures” is proposed. It has been established that the customs procedure is a set of requirements that are determined by the implementation of customs control and customs clearance of goods and the peculiarity of paying taxes and customs payments, and the conditions of their implementation depend on a certain customs regime (that is, on the purpose, form and conditions of the movement of goods). It was determined that the institution of prevention of corruption risks in relation to violations of the established procedure for the implementation of customs procedures has its own specificity of legal support and is a separate subject of research in the science of customs law. It was found that the prevention of corruption risks in the implementation of customs procedures is a component of the prevention of corruption risks in the public administration of state customs affairs and is a separate part of the prevention of corruption in this area. It was concluded that the corruption risk in the field of customs procedures is legal, organizational and other factors and reasons that generate, encourage (stimulate) corruption in the implementation of customs control procedures, customs clearance procedures, as well as tax and customs payment procedures and their order implementation. According to the prevalence, it is proposed to highlight the following corruption risks in the implementation of customs procedures in the activities of customs officials, namely: dishonesty of customs officials, the occurrence of a conflict of interests among customs officials, lack of control by the management of customs authorities, the presence of discretionary powers of customs officials etc.

Key words: prevention of corruption, state customs affairs, customs control, customs clearance, settlement of customs payments, classification, administrative and legal support.

1. Introduction.

Manifestations of corruption in the sphere of state customs affairs in Ukraine remain one of the acute problems for the citizens of the country and society as a whole. Citizens and business entities face corruption to some extent in every field of activity. This problem also exists in the field of customs procedures. Corruption during the implementation of customs procedures, in turn, causes damage to the financial, food, and environmental security of Ukraine, hinders the development of foreign economic activity and the state's partners in trade relations [1, p. 33]. The anti-corruption program of the State Customs Service of Ukraine for 2020-2022 defines the results of the assessment of corruption risks in the activities of the bodies of the State Customs Service of Ukraine during this

period [2] in particular, separate lists of corruption risks during customs procedures are provided for. Therefore, the need to optimize the legislation on the implementation of effective measures to prevent corruption risks during customs procedures remains an urgent problem. It emphasizes the relevance of the fact that the research of the Institute for the Prevention of Corruption Risks regarding violations of the established procedure for the implementation of customs procedures has its own specificity of legal support and is a separate subject of research in the science of customs law.

2. Analysis of scientific publications.

Such scientists as E.V. Dodin, S.V. Kivalov, I.M. Reznik, B.A. Kormych, V.Ya. Nastyuk, V.V. Chentsov, O.M. Shevchuk, M. G. Shulga and others. In particular, some scientists studied the specifics of carrying out customs examinations regarding the customs control of goods moving across the customs border of Ukraine (the authors classified them as methods of customs control of goods) [3], investigated the features of electronic declaration of goods moving across the customs border [4], prevention of corruption crimes committed during customs procedures [1], the specificity of corruption risks of the activities of persons authorized to perform the functions of the state [5] etc. However, separate issues of defining the concept and types of prevention of corruption risks during the implementation of customs procedures in the modern conditions of the development of customs law have not been investigated.

3. The aim of the work involves clarifying the theoretical and practical problems of preventing corruption risks in the implementation of customs procedures, the peculiarities of its definition of the essence and concept, and the selection of separate criteria for their classification within the framework of customs and legal protection.

4. Review and discussion.

The Law of Ukraine "On Prevention of Corruption" in 2014 introduced the category "corruption risk" into legal circulation for the first time [6]. The Law of Ukraine "On Prevention of Corruption" also provides for defining the concept of "corruption". The legislator understands this category as "the use by a person specified in Part 1 of Article 3 of the Law of Ukraine "On Prevention of Corruption" of official powers or opportunities related to them for the purpose of obtaining an undue benefit or accepting such a benefit or accepting a promise/offer of such a benefit for himself or other persons or, accordingly, a promise/offer or giving an undue advantage to the person specified in part the first article 3 of the Law of Ukraine "On Prevention of Corruption", or at its request to other natural or legal persons with the aim of inciting this person to unlawfully use the official powers granted to him or the opportunities related to them" (Article 1) [6]. In the state customs sphere of Ukraine, there are stable corruption-inducing factors of different nature and degree of deterministic influence on the consciousness and will of customs officials. Some of them are formed in the field of organization and management of state customs affairs, others arise from abuse of power and official position by officials of customs bodies and violations of the established procedure for carrying out customs procedures. The corruption factors of these two spheres are correlated as general and special, they are interconnected and interdependent [1, p. 18]. That is, the prevention of corruption risks in the implementation of customs procedures is a component of the prevention of corruption risks in the public administration of state customs affairs and is a separate part of the prevention of corruption in this area.

The category "legal procedure" in legal science is defined as a system that is focused on achieving a specific legal result and acts as a means of implementing the main, main legal relationship for it [7, p. 8]. Thus, the procedure determines the procedure for the implementation of legally significant actions by the subjects of legal relations, the totality of which constitutes a legal process [8, p. 15]. A customs procedure is a set of customs formalities and the procedure for their implementation determined by the purpose of moving goods across the customs border

of Ukraine (Clause 21, Part 1, Article 4 of the Customs Code of Ukraine) [9]. According to Clause 29, Part 1, Art. 4 of the Customs Code of Ukraine, customs formalities are a set of actions to be performed by relevant persons and customs authorities in order to comply with the requirements of the legislation of Ukraine on state customs matters [9]. So, the basics of customs affairs, in particular, the legal status of customs authorities, the customs territory and customs border of Ukraine, procedures for customs control and customs clearance of goods moving across the customs border of Ukraine, customs regimes and conditions of their application, prohibitions and/or restrictions on import into Ukraine, export from Ukraine and movement through the territory of Ukraine by transit of certain types of goods, conditions and procedures for making customs payments, customs benefits are determined by the Code of Ukraine and other laws of Ukraine (Part 3, Article 7 of the Code of Ukraine) [9].

Regarding the understanding of the term as “corruption risk” and the definition of the legal construction “corruption risk in the field of customs procedures”, the latter term is not defined in customs law. In particular, in accordance with the order of the National Agency for the Prevention of Corruption of Ukraine dated December 28, 2021 No. 830/21, the term “corruption risk” is defined as the probability of committing a corruption or corruption-related offense that will negatively affect the organization’s activities [10]. For example, the definition of “corruption risks for the provision of administrative services and control and supervision activities” is proposed by some researchers to be understood as legal, organizational and other factors and reasons that generate, encourage (stimulate) corruption in the spheres of providing administrative services and control and supervision activities of the state [11]. Other researchers believe that corruption risk is a relevant fact (action, state) that creates conditions for the commission of corruption offenses by persons authorized to perform the functions of the state and local self-government [12, p. 39]. Taking into account the above, the corruption risk in the field of customs procedures is the legal, organizational and other factors and reasons that generate, encourage (stimulate) corruption in the implementation of customs control procedures, customs clearance procedures, as well as tax and customs payment procedures and their procedure implementation.

There are no single criteria for classification in scientific sources of both corruption risks and “customs procedures” in customs law. In particular, in the legal literature, “customs procedures” are understood as regulated by the norms of customs law, the procedure for the activities of officials of customs authorities within the limits of their powers, which is aimed at implementing the norms of customs law and complying with the requirements of the legislation of Ukraine on state customs affairs in the process of solving specific cases. related to the movement of goods, vehicles and other objects by citizens across the state border. For example, A. Brachuk suggests that the elements of customs procedures include: customs control, customs clearance, settlement (payment) of customs payments and the procedure for their execution [13, p. 248]. Other scientists propose to understand the definition of “customs procedure” in both a broad and a narrow format. In a broad sense, “customs procedure” is a normatively established system that is internally structured by legal relations, is oriented towards achieving a specific legal result, and consists of relevant customs elements that successively replace each other. V. V. Dudchenko in a narrow format suggests that “customs procedures” be considered as a set of norms that determine for customs purposes the requirements and conditions of possession, use and (or) disposal of goods in the customs territory of the customs union or outside its borders. According to the author, each customs procedure is a set of requirements determined by the order of customs control of goods, customs clearance of goods and the peculiarity of making (payment of) customs payments, the conditions of which depend on the purpose, form and conditions of their movement (that is, a certain customs regime) [14, p.61]. So, the customs procedure is a set of customs formalities and the procedure for their execution determined by the purpose of moving goods across the customs border of Ukraine. In fact, the customs procedure is a set of requirements that are determined by the implementation of customs control and customs clearance of goods and the specifics of paying taxes and customs payments, and the conditions for their implementation depend on a certain customs regime (purposes, forms and conditions of their movement).

There are no criteria for the classification of corruption risks in the implementation of customs procedures in scientific works. Thus, in the legal literature corruption risks are classified on different grounds. In the first case, the approaches, for example, Yu. Dmitriev, propose to divide

corruption risks into two types: (1) institutional and (2) overall systemic. The first group are factors that negatively affect the behavior of a civil servant, turning it into corruption, and the elimination of which belongs to the competence of the administrative body in which such an official works (or is headed). The second group is the risks associated with the general shortcomings of the creation and functioning of the public administration, analyzed only in terms of the level of corruption in the preparation, adoption and implementation of management decisions [5]. For example, in the clarifications of the Ministry of Justice of Ukraine dated April 12, 2011, it is indicated that the following corruption risks in the activities of civil servants should be identified by prevalence: dishonesty of civil servants, conflict of interests, lack of control on the part of management, the presence of discretionary powers [15].

We will present a separate scientific approach to the classification of customs procedures, namely according to the following criteria, namely: (1) according to the means of movement of goods (customs procedures on air, rail, road, sea and river, pipeline transport and power lines, as well as customs procedures for mixed cargo transportation); (2) according to the method of movement of goods (customs procedures applicable to hand luggage, unaccompanied baggage, customs procedures for international postal and international express transportation); (4) according to the type of customs regime in which the goods are transferred across the customs border; (5) procedures of customs control, customs clearance, and ensuring the settlement of customs payments (control of correctness of calculation and completeness of payment) [16]. In addition, we note that most scientists believe that the structure of customs procedures consists of three main elements, namely: customs control procedures; customs clearance procedures; procedures for payment of taxes and payments provided for by law [17, p.34]. That is, taking into account, it is possible to distinguish three groups of prevention of corruption risks in the researched area, namely: (1) prevention of corruption risks during the implementation of customs control procedures; (2) prevention of corruption risks during customs clearance procedures; (3) prevention of corruption risks in the implementation of tax and customs payment procedures and the procedure for their execution.

5. Conclusions.

Corruption risk in the field of customs procedures is legal, organizational and other factors and reasons that generate, encourage (stimulate) corruption in the implementation of customs control procedures, customs clearance procedures, as well as tax and customs payment procedures and the procedure for their execution. In order of prevalence, the following main corruption risks in the implementation of customs procedures in the activities of customs officials should be distinguished, namely: dishonesty of customs officials, the occurrence of a conflict of interests among customs officials, lack of control by the management of customs authorities, the presence of discretionary powers of customs officials organs, etc.

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