

ASSESSING THE NORMATIVE LEGAL PRINCIPLES AND NORMS OF ADMINISTRATIVE LAW IN THE SYSTEM OF COMBATING CRIME IN THE CUSTOMS SPHERE IN UKRAINE

AVALIAR OS PRINCÍPIOS LEGAIS NORMATIVOS E NORMAS DE DIREITO ADMINISTRATIVO NO SISTEMA DE COMBATE AO CRIME NO ÂMBITO ADUANEIRO NA UCRÂNIA*

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Abstract: The commission of crimes is not an exception irrespective of the field where these crimes are being committed. The tendency remains that when it comes to financial management in a country, there is always the misappropriation of funds by those persons in the states as preserving the financial might of the society. It, therefore, becomes the responsibility of the administrative officials is in ensure that those who mismanaged the resources of the country should be prosecuted for such an offense. This article articulates that, it's the responsibility of the regulatory bodies and officials of the State of Ukraine in making sure that they combat those offenses committed in the customs sphere of the country. In attaining this objective place, it becomes worrisome is asking whether those who were supposed in ensuring the combat of crime in the customs area of the country are doing what they are supposed to do as specified by the laws of the country. In answering the above research question a

* Artigo recebido em 10/09/2022 e aprovado para publicação pelo Conselho Editorial em 20/09/2022.

research method that is dialectic in nature by assessing whether there is a development in the legal principles in Ukraine when dealing with combatting crime in the customs sector of the country. From the finding of this method, it is held that there is some degree of inefficiency at the level of the administrative law when combatting crimes in customs in the country, as there is still an increase in crimes in the customs sector. It is therefore on this note that research was considered necessary.

Keywords: Normative. Legal Principles. Administrative Law. Combatting Crime. Custom.

Resumo: A prática de crimes não é uma exceção, independentemente do campo onde esses crimes estão sendo cometidos. A tendência permanece: quando se trata de gestão financeira em um país, há sempre a apropriação indevida de fundos por aquelas pessoas nos Estados como preservando o poder financeiro da sociedade. Torna-se, portanto, responsabilidade dos funcionários administrativos garantir que aqueles que geriram mal os recursos do país sejam processados por tal ofensa. Este artigo articula que, é responsabilidade dos órgãos reguladores e funcionários do Estado da Ucrânia em assegurar que eles combatam as ofensas cometidas na esfera aduaneira do país. Ao atingir este lugar objetivo, torna-se preocupante perguntar se aqueles que deveriam assegurar o combate ao crime na área alfandegária do país estão fazendo o que deveriam fazer, conforme especificado pelas leis do país. Ao responder à pergunta acima, um método de pesquisa que é dialético por natureza, avaliando se há um desenvolvimento nos princípios legais na Ucrânia ao lidar com o combate ao crime no setor alfandegário do país. A partir da descoberta deste método, considera-se que existe algum grau de ineficiência no nível da lei administrativa quando se trata de combater crimes no setor alfandegário do país, pois ainda há um aumento dos crimes no setor alfandegário. Portanto, é sobre esta nota que a pesquisa foi considerada necessária.

Palavras-chave: Normativo. Princípios legais. Direito Administrativo. Combate ao Crime. Costume.

1. INTRODUCTION

Crime has always occupied one of the first places among the most acute problems that concern public opinion. In the second half of the twentieth century, in different states, it was put in second or third place in terms of importance. As a rule, everyone speaks about the problem of a high level of crime, believing that this problem is quite obvious. Most politicians seeking power, first of all, promise to put an end to rampant crime. Speeches of politicians, public figures, and media materials are always perceived with keen interest. This is understandable since vital issues that affect every person are addressed (Dolgoва, 2005).

Financial security is the state's ability to react adequately and immediately to internal and external negative financial influences in peacetime and emergencies, in particular in the context of a hybrid war. Proper protection of the financial security of the state against internal and external threats is possible only in case of quality management of the financial and economic sphere, first of all, this is the identification of threats to the financial security of the state, conducting of financial control, and counteraction and combating against financial and economic crimes, which is the task of law enforcement agencies (Reznik et al., 2022).

A special role in this process is given to domestic law enforcement agencies, which is explained by the purpose, tasks, functions, and competence of the latter. These entities are empowered to counter a wide range of threats (the legalization of criminal proceeds, corruption, funds fraud, misappropriation and (or) embezzlement of property, etc.) since the probable consequences of manifesting them in some cases can have a very negative impact on the normal course of a considerable number of economic processes (Garust, Melnyk, 2019). At the same time, crime prevention and combating is a complex process in its nature and content, and therefore its implementation is virtually impossible without an appropriate regulatory and legal basis.

Separate problematic issues related to the legal regulation of the sphere of prevention and combating crime were considered by many scientists in their scientific works. However, despite the considerable number of scientific achievements, studies devoted to the characterization of the legal principles of the prevention and combating of crime and the establishment of administrative law norms among them are of great importance.

However, it should be noted that the existing regulatory, organizational, personnel and logistical support does not allow fully ensure the economic security of the state. The result and natural consequence of this is the loss of confidence in the law enforcement system by the population of Ukraine and the international community. The insufficient level of economic security in Ukraine raises several problematic questions for specialists and scientists in finding the best ways to improve the administrative and legal foundations of the subjects' activity, which should provide by the legislation of our country (Garust, Melnyk, 2019).

2. PURPOSE AND OBJECTIVE OF THE STUDY SCIENTIFIC NOVELTY OF THE STUDY

The purpose of the article is to establish the place of the norms of administrative law in the system of legal principles of preventing and combating crime in the customs sphere Ukrainian. To achieve this goal, it is necessary to solve the following tasks: to analyze the norms of the current legislation governing the relevant sphere of public relations, depending on their legal force; to establish what constitutes administrative and legal regulation in the field of combating and preventing crime in the customs sphere.

The scientific novelty of the article lies in the fact that the scientific opinion that the norms of administrative law occupy a key place in the system of legal principles of preventing and combating crime in the customs sphere received further substantiation in the article. The

problem here is not just looking at this objective in question, but rather ensuring that the so-called administrative law put in place by the State of Ukraine in Combating crimes in the customs sector is effective. The situation is whether those who are supposed to ensure the proper management of the customs sector when combatting financial crimes are doing what the law asked them to do. We do know that one thing for sure is putting in place laws, and the other thing is in ensuring the implementation of these laws. Of what use will there be laws in the country when there is still an increase in crimes in the customs sphere, it, therefore, means that there is a problem somewhere that needs to be handled for its combatting.

3. METHODOLOGY

The article is based on a set of methods. In particular, the dialectical method is based on the principle of development of the norms of administrative law. The author also widely used the comparative method - a comparison of various legal acts in the field of combating customs crime, that is, legislation that forms the basis for ensuring the integration process of Ukraine in the customs sphere.

Considering the specifics of the topic and goals, the following materials were used when writing the article: scientific works (articles, book chapters, analytical materials, reports, etc.), and legal acts (laws and by-laws).

In the course of the study, a comparative analysis of legal ambushes and norms of administrative law regarding combating crime in the customs sphere was carried out. First of all, a study of administrative legislation was carried out, the norms of which are included in the system of ambushes for combating crimes in the customs sphere. In addition, scientific works of scientists were used, the object of study of which were problems related to combating crime in the customs sphere. Truly there is more to talk about when dealing with the combatting of the customs sector as it becomes and will always be the responsibility of the administrative sector or law in ensuring that there should be effective when dealing with the custom sector in Ukraine. When we look at other systems in the world, we discover that the only way the Custom sector can survive is by the administrative authorities ensuring the proper administration of laws to effectively combat crimes related to the customs area. The case of Ukraine is not an exception to this principle and there needs to ensure by taking the appropriate measures in combatting this crime.

4. RESULTS AND DISCUSSION

The globalization of economic relations and the computerization of all spheres of life create favorable conditions for the commission of economic crimes, which is a problem not only of a national level but also an international one. The reasons for the growth of economic crimes at the international level have been: insufficient level of security of organizations, which allows cyber-attacks without any problems; inefficiency of the law enforcement system that does not meet the modern challenges of economic crime; informatization of public spheres; lack of effective methods to combat economic crimes; technical progress; socio-economic inequality; access of market relations to the international level; Internet users are constantly increasing. (Nestor, Lytvyn, Yarosh, Denysyuk, Rozhkova, 2020).

EU customs law has developed enormously since the entry into force of the Common Customs Tariff on 1 July 1968. The move away from issue-by-issue directives towards more generally applicable regulations heralded greater control at the EU level over matters such as inward processing, ensuring more uniformity in the customs territory of the then Community which had started to resemble a Swiss Cheese because of national policies concerned to attract business. The logical next step was the development of a single Community Customs Code, subsequently replaced by the somewhat ill-fated Modernised Customs Code. Both have now been succeeded by the Union Customs Code (UCC).

Implementation of international cooperation is a specific attribute in combating violations of customs regulations, allowing for effectively collecting the evidence base for the commission of offenses and skillfully applying it in practice. The reasons for the increase in the commission of offenses in the customs sphere are the fact that this activity has become one of the main sources of earnings for a large part of the citizens of Ukraine, a powerful element of the economic basis of the activities of organized groups, which widely apply schemes of evasion from taxation and payment of customs payments. The cooperation of State bodies and other institutions in the field of combating violations of customs regulations should be substantive, which should generate specific forms of joint managerial, administrative, social, and other activities (Nina, 2019). Customs posts interact with other entities in the performance of such functions as fiscal, law enforcement, service, etc. The Customs Code of Ukraine and by-laws regulating the activity of a specific customs post are administrative and legal principles for the interaction of customs posts of the State Fiscal Service of Ukraine with other state authorities and citizens (Sidorenko, 2019).

The legal basis for preventing and combating crime should be understood as a system of normative legal acts of different legal forces, the norms of which are aimed at regulating legal relations arising in the process of implementing activities to combat and prevent crime in the customs sphere on the territory of Ukraine. In this context, first of all, attention should be paid to the Constitution of Ukraine (June 28, 1996). The latter is the Fundamental Law of the State, the norms of which are the basis of the legal regulation of all legal relations arising in the life of Ukrainian society without exception. It does not contain any practical principles for combating and preventing crime, at the same time, the Constitution of Ukraine is about the principles, the fundamental immovable foundations, and regular functioning of the state, which in a certain way direct the mechanisms of law enforcement influence.

For example, Article 8 of the Constitution stipulates that the principle of the rule of law is recognized and applied in Ukraine. The Constitution of Ukraine (June 28, 1996) has the highest legal force. Laws and other normative legal acts are adopted based on the Constitution of Ukraine and must comply with it. The norms of the Constitution of Ukraine are norms of direct effect. Addressing the court to protect the constitutional rights and freedoms of a person and a citizen directly based on the Constitution of Ukraine is guaranteed. The legal order in Ukraine is based on the principles according to which no one can be forced to do what is not provided for by law. State authorities and local self-government bodies, and 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.

Thus, the Constitution of Ukraine (June 28, 1996) is the key normative legal act of the state, which establishes the most important principles of the functioning of society. As for the issues presented, the significance of the Fundamental Law lies in the fact that its regulations enshrine: the key principles of state policy in the field of combating and preventing crime; the basics of work of authorized subjects in the field under study, etc.

In the 21st century, crime increasingly acquires a global, transnational character and goes far beyond the territory of our state, which, of course, cannot fail to be noted by the world community. This spread of crime contributed to the formation of a supranational legal basis for its prevention and counteraction, which consists of a massive number of international legal documents. The United Nations (*hereinafter - the UN*) has made the greatest achievements in the direction of the formation of international legal frameworks for combating and preventing crime. This organization is the author of several important international documents that were issued under its authorship at different times. For example, it is worth noting the UN Convention Against Illicit Traffic in Narcotic Drugs and

Psychotropic Substances (December 20, 1988), the purpose of which is to promote cooperation between the Parties signing the document so that they can more effectively solve various problems of illegal trafficking in narcotic drugs and psychotropic substances, which have an international character. When implementing their obligations under the Convention, the Parties shall take the necessary measures, including measures of a legislative and organizational nature, by the main provisions of their internal legal systems.

The Convention provides for the provision of mutual legal assistance in investigations, prosecutions, and judicial proceedings, which are carried out in the form of requests to collect evidence or testimony; familiarization with the materials of the trial; conducting searches and arrests; examination of objects and places; providing information and evidence; providing originals or certified copies of relevant documents and materials, including banking, financial, company or commercial documents; determining or revealing income, property, funds or other things for evidentiary purposes.

The Convention against Transnational Organized Crime (November 15, 2000), adopted to promote cooperation in more effective prevention of transnational organized crime and fight against it, plays an important role in the system of international legal acts of the UN in the field of combating and preventing crime. The document became one of the first to establish a general definition of an organized criminal group:

A structured group of three or more persons, existing for some time and acting in concert to commit one or more serious crimes or offenses established by this Convention, to obtain, directly or indirectly, a financial or another material benefit.

Another important international document is the Council of Europe Convention on Action against Trafficking in Human Beings (May 16, 2005), which was adopted to prevent and combat human trafficking while guaranteeing gender equality; protecting of human rights of victims of human trafficking, developing a comprehensive framework for the protection and assistance of victims and witnesses while guaranteeing gender equality, as well as ensuring effective investigation and prosecution; promotion of international cooperation against human trafficking; introduction of a special monitoring mechanism for the crimes provided for by the Convention. Among other international documents, the legal basis for combating and preventing corruption can also include:

International Convention for the Suppression of Counterfeiting Currency (April 20, 1929);

Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution by Others (December 2, 1949);

International Convention against the Recruitment, Use, Financing and Training of Mercenaries (December 4, 1989);

International Convention for the Suppression of the Financing of Terrorism (December 9, 1999).

Therefore, at the international level, today there is a large number of documents ratified by Ukraine, which regulate the issue of international cooperation in combating and preventing the crime of various forms, and also contain requirements for the national legal systems of the states that have signed this or that document, regarding the implementation of agreed organizational and other measures aimed at fighting crime or at least reducing its level. The high importance and effectiveness of such documents are because they establish uniform patterns of combating and preventing criminal manifestations, which facilitates the formation of a global law enforcement system.

The following legal acts, in terms of their legal force, which establish the principles of combating and crime prevention, are various codified acts. For example, the Code of Ukraine on Administrative Offenses (December 7, 1984). By Article 6 of the Code of Ukraine on Administrative Offenses (hereinafter - the CUAO), executive power bodies and local self-government bodies, public organizations, and labor collectives develop and implement measures aimed at preventing administrative offenses, identifying and eliminating the causes and conditions that contribute to their commission, and educating citizens in the spirit of high consciousness and discipline, strict compliance with the laws of Ukraine. That is, the CUAO establishes the principles of combating and preventing crime - administrative offenses that do not carry such a public danger as crimes, however, negatively affect public order and security and are generally a determinant of crime in our country.

One of the most important normative legal acts, which enshrines the legal principles of combating and preventing crime, is the Criminal Code of Ukraine of (April 5, 2001, *hereinafter - the CCU*), which task is the legal protection of human and citizen rights and freedoms, property, public order and public security, the environment, the constitutional system of Ukraine from criminal and illegal encroachments, ensuring peace and security of mankind, as well as preventing criminal offenses. To carry out the specified task, the CCU determines which socially dangerous acts are criminal offenses and which punishments are applied to the persons who committed them.

It is also worth paying attention to the provisions of the Criminal Procedure Code of Ukraine (April 13, 2012, *hereinafter - CPC*), which determines the procedure for conducting criminal proceedings on the territory of our country. The task of the latter is to protect the

individual, society, and the state from criminal offenses, to protect the rights, freedoms, and legitimate interests of the participants in criminal proceedings, as well as to ensure a quick, complete and impartial investigation and trial so that everyone who has committed a criminal offense is brought to justice response to the extent of his guilt, no innocent person was charged or convicted, no person was subjected to unreasonable procedural coercion, and that due process of law was applied to each participant in the criminal proceedings.

In addition to the above-mentioned normative legal acts, documents have been adopted in Ukraine that establishes the foundations of preventing and countering certain types of crime. This includes the Law of Ukraine No. 3341-XI "On Organizational Legal Principles of Struggle against the Organized Crime" (June 30, 1993), which defines the main directions of national policy and the organizational and legal bases of combating organized crime. The main tasks of the Law are defined as: the creation of general legal and organizational principles in the sphere of combating organized crime, promoting its prevention and elimination; defining the system of state bodies fighting organized crime and their relationships; establishing the powers of special state bodies to combat organized crime and special measures carried out by them; establishing the duties of other state bodies in the field of combating organized crime; legal provision of financial, material and technical and other conditions necessary for the fight against organized crime; guaranteeing the rights of citizens and legal entities during the implementation of measures to combat organized crime.

It is also worth taking into account the provisions of the Law of Ukraine No. 62/95-BP "On Counteraction Measures against Illegal Circulation of Drugs, Psychotropic Substances and Precursors and Abuse of Them" (February 15, 1995), which defines the system of measures in Ukraine aimed at combating the illegal circulation of narcotic drugs, psychotropic substances, and precursors and their abuse. By the provisions of the act, countering the illegal circulation of narcotic drugs, psychotropic substances, and precursors is carried out by the National Police, the Security Service of Ukraine, the Office of the Prosecutor General, the central body of the executive power implementing the state customs policy, the central bodies of the executive power implementing the state policy in the spheres of protection the state border, the circulation of narcotic drugs, psychotropic substances, their analogs, and precursors, combating their illegal circulation and other executive authorities within the limits of the powers granted to them by law.

The Law of Ukraine No. 3739-VI "On Counteracting Human Trafficking" (September 20, 2011) establishes the organizational and legal principles for combating human trafficking, guaranteeing gender equality, the main directions of state policy, and the principles of

international cooperation in this area, the powers of executive authorities, the procedure for establishing the status of persons, who have suffered from human trafficking, and the procedure for assisting such persons. In turn, the Law of Ukraine No. 1700-VII "On Prevention of Corruption" (October 14, 2014) contains provisions that establish the legal and organizational principles of the functioning of the corruption prevention system in Ukraine, the content and procedure for applying preventive anti-corruption mechanisms, rules for eliminating the consequences of corruption offenses.

A separate group of legal acts related to the legal basis of combating and crime prevention in Ukraine is made up of legislative documents that determine the legal and organizational basis of activity of combating and crime prevention subjects in our country. An example of such legislation is the Law of Ukraine No. 580-VIII "On the National Police" (July 2, 2015, *hereinafter - the National Police*), the provisions of which state that the National Police is a central body of executive power that serves society by ensuring the protection of human rights and freedoms, combating crime, maintaining public safety and order. The tasks of the police are to provide police services in the following areas:

- 1) ensuring public safety and order;
- 2) protection of human rights and freedoms, as well as the interests of society and the state;
- 3) crime prevention;
- 4) rendering, within the limits defined by law, assistance services to persons who, for personal, economic, social reasons or as a result of emergencies, need such assistance.

Similar in content and meaning is the Law of Ukraine No. 1697-VII "On the Prosecutor's Office" (October 14, 2014), where it is noted that the Prosecutor's Office of Ukraine constitutes a single system that, in the manner prescribed by this Law, performs the functions established by the Constitution of Ukraine to protect human rights and freedoms, general interests of society and the state. The functions entrusted to the prosecutor's office include:

- 1) maintaining the state prosecution in court;
- 2) representation of the interests of a citizen or the state in court in cases defined by legislation;
- 3) supervision of compliance with the laws by bodies conducting an operational investigative activity, inquiries, pre-trial investigations;
- 4) supervision of compliance with laws in the execution of court decisions in criminal cases, as well as in the application of other coercive measures related to the restriction of personal freedom of citizens.

The same group includes other legislative acts that establish the legal status of individual subjects in combating and preventing crime on the territory of Ukraine, in particular, Laws of Ukraine "On the Security Service of Ukraine" (March 25, 1992); "On the National Anti-Corruption Bureau of Ukraine" (October 14, 2014); "About the State Bureau of Investigation" (November 12, 2015) and others.

It should be noted that the legal principles of combating and crime prevention are also represented by documents of the sub-legal regulatory level, in particular, various plans of organizational measures, strategies, concepts, and other strategically oriented acts issued to implement the provisions of the legislation of Ukraine. This includes the Strategy for Combating Organized Crime approved by the Order of the Cabinet of Ministers of Ukraine (September 16, 2020); The Concept of the State Targeted Social Program to Combat Trafficking in Human Beings for the period up to 2025 was approved by the Decree of the Cabinet of Ministers of Ukraine (July 14, 2021); Strategies for combating torture in the criminal justice system and approving the plan of measures for its implementation are legalized by the Decree of the Cabinet of Ministers of Ukraine (October 28, 2021) and so on. In addition, at the sub-legal level, some acts establish the legal basis of work and the legal status of individual subjects in combating and preventing crime, for example, the Resolution of the Cabinet of Ministers of Ukraine No. 227 "On Approval of Provisions on the State Tax Service of Ukraine and the State Customs Service of Ukraine" (March 6, 2019).

5. CONCLUSIONS

Thus, the system of legal principles for the prevention and counteraction of crime in the customs sphere is represented by a large number of normative legal acts: from the Constitution of Ukraine and international normative legal acts to by-laws issued by authorized central executive bodies. The analysis of the specified sources showed that the key place in the relevant system is assigned precisely to the norms of administrative law, with the help of which the administrative and legal regulation of the studied sphere of social relations is carried out. In turn, administrative and legal regulation is a type of legal influence, the basis of which is the norms of administrative law that regulate and organize relations in the state-power sphere, i.e., relations related to the work of state power, the legal status of subjects of power, the interaction of society and the state and so on.

Therefore, the key place of the norms of administrative law in the system of legal bases for the prevention and counteraction of crime in the customs sphere is because they

establish: the legal status of the subjects of counteraction and prevention of crime in the customs sphere with their inherent powers, including the application state coercion; peculiarities of the formation and implementation of state policy in the field of crime prevention and counteraction on the territory of Ukraine. That is, the researched legal principles give the entire process of combating and preventing crime in the customs sphere a public, official status, which involves setting clear goals for representatives of public authorities, the need to achieve relevant legally significant results, as well as the implementation of state functions in this process.

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