

EUROPEAN EXPERIENCE IN PREVENTING AND COMBATING CRIME BY CUSTOMS AUTHORITIES AND POSSIBILITY OF ITS USE IN UKRAINE

EXPERIENCIA EUROPEA EN LA PREVENCIÓN Y LUCHA CONTRA LA DELINCUENCIA POR PARTE
DE LAS AUTORIDADES ADUANERAS Y LA POSIBILIDAD DE SU USO EN UCRNIA

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Abstract: Nowadays, quite effective systems have been formed in the world to combat and prevent customs crimes in general and by customs authorities, however, the experience of not all states is positive. The article, based on the analysis of the scientific views of scholars, summarizes the experience of the leading European countries (on the example of Great Britain, France, Germany) in the field of preventing and combating crime by customs authorities. Both positive and negative aspects of the experience in the field of combating crime in these countries are singled out. The analysis of foreign experience in preventing and combating crime by customs authorities made it possible to formulate the following points that should be used by the domestic legislator: firstly, a high level of material, technical and financial support of the customs authorities, which makes it possible to more quickly respond to existing challenges; secondly, the customs authorities of the vast majority of countries have a wide range of powers in the context of the

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implementation of intelligence operations; thirdly, a high level of interaction and exchange of information between the EU countries in the framework of combating customs crime; fourthly, an important aspect of combating and preventing customs crime is the professional training of customs personnel; fifthly, on the example of foreign countries in Ukraine, it was expedient to strengthen administrative and criminal liability for violation of customs legislation; sixth, a high level of social and financial support for customs employees.

Keywords: Customs Authorities, Crime, Offence, Combating, Prevention, Customs Crime.

Resumen: *En la actualidad se han conformado en el mundo sistemas bastante efectivos para combatir y prevenir los delitos aduaneros en general y por parte de las autoridades aduaneras, sin embargo, la experiencia de no todos los estados es positiva. El artículo, basado en el análisis de las opiniones científicas de los académicos, resume la experiencia de los principales países europeos (en el ejemplo de Gran Bretaña, Francia, Alemania) en el campo de la prevención y lucha contra la delincuencia por parte de las autoridades aduaneras. Se destacan aspectos tanto positivos como negativos de la experiencia en el campo de la lucha contra el crimen en estos países. El análisis de la experiencia extranjera en materia de prevención y combate a la delincuencia por parte de las autoridades aduaneras permitió formular los siguientes puntos que deberían ser utilizados por el legislador interno: en primer lugar, un alto nivel de apoyo material, técnico y financiero de las autoridades aduaneras, lo que hace posible responder más rápidamente a los desafíos existentes; en segundo lugar, las autoridades aduaneras de la gran mayoría de los países tienen una amplia gama de poderes en el contexto de la implementación de operaciones de inteligencia; en tercer lugar, un alto nivel de interacción e intercambio de información entre los países de la UE en el marco de la lucha contra la delincuencia aduanera; en cuarto lugar, un aspecto importante para combatir y prevenir la delincuencia aduanera es la formación profesional del personal de aduanas; en quinto lugar, en el ejemplo de los países extranjeros en Ucrania, era conveniente fortalecer la responsabilidad administrativa y penal por violación de la legislación aduanera; sexto, un alto nivel de apoyo social y financiero para los empleados de aduanas.*

Palabras clave: *Autoridades aduaneras, delito, infracción, combate, prevención, delito aduanero*

Summary. I. Introduction. II. The purpose and objectives of the study. III. Results and discussion. IV. Conclusions. References

I. INTRODUCTION

Ensuring law and order is a key condition without which the development of the state is impossible. The current pace of life gives rise to new types of offenses, and therefore effective counteraction to this phenomenon is an important task for the national law enforcement system. The mechanism of counteraction to offenses is implemented by a significant number of entities, the vast majority of which are state bodies with appropriate powers and special legal status (Vasyliiev, 2018, p. 10). Each country has its own customs and other legislation to prevent the illegal movement of material objects across the border. Such work became especially relevant after the armed aggression against Ukraine and the actual reduction of the flow of goods through our territory (Panov, 2021, p. 31).

The challenges faced by the Ukrainian state today are unique in their historical origins and nature, as no modern socially oriented and democratic European country has faced such problems since World War II. At the same time, today Ukraine continues to pursue a decisive and consistent course towards integration into the highly developed community, and the issue of active study of leading foreign experience in the organization and functioning of major state and public institutions is becoming especially relevant. Undoubtedly, this includes the customs sphere, cooperation in which is discussed in a number of international treaties of Ukraine (both bilateral and multilateral).

A number of leading Ukrainian and foreign lawyers have studied some of the problematic issues related to the study of foreign experience in the field of crime prevention and counteraction. However, despite the considerable amount of scientific achievements, scientists have in fact left out the issue of foreign experience in the field of crime prevention and counteraction by customs authorities.

The scientific novelty of the article is that the work is one of the first attempts to conduct a comprehensive analysis of the experience of leading European countries in the field of crime prevention and counteraction, as well as to study the possibilities of its use in Ukraine.

II. THE PURPOSE AND OBJECTIVES OF THE STUDY

The purpose of the article is to summarize the experience of leading European countries (on the example of Great Britain, France and Germany) in the field of crime prevention and counteraction by customs authorities and to offer opportunities for its implementation in Ukraine. In order to achieve this purpose, it is necessary to solve the following tasks: to analyze the customs legislation of Great Britain, Germany and France, the rules of which are aimed at regulating issues related to the prevention and counteraction of crime by customs authorities; to develop proposals on the possibilities of implementing the relevant experience in domestic realities.

III. RESULTS AND DISCUSSION

In developed European countries, the customs system is primarily a catalyst for legal and fair trade of business structures, protection of the state and its citizens from fraudulent transactions or dangerous products. And then we are talking about ensuring fair and objective taxation of foreign economic activity, which protects the interests of both the national economy and business in particular, as well as meets European standards (Melnyk, Todoshchuk, Adamiv, 2018, p. 39).

In our opinion, it is most expedient to start a scientific study with the experience of Great Britain. Her Majesty's Revenue & Customs (hereinafter - HMRC) is a public authority "without a ministerial portfolio", created by an Act of Parliament in 2005 as a new body that replaced the Internal Revenue Service and the Customs and Excise Service. The Treasury (Ministry of Money) directs and develops the tax policy strategy, HMRC is responsible for its implementation. Among the main tasks of HMRC should be singled out: ensuring the receipt of funds to the budget; facilitating legitimate international trade, protecting the UK's fiscal, economic, social and physical security; administration of the tax system in the most simple, client-oriented and efficient way; administration of social payments. In the structure of HMRC, among the 72 departments actually "customs" only 25: 1) Customs Department; 2) Customs Transformation Department (Savarets, 2017).

Interestingly, in contrast to the United States, where the main task of the Customs and Border Protection is to protect citizens from external and internal threats, and the fiscal function is secondary, in the UK as in China, the main goal of the State Tax and Customs Service it is the filling of the budget, and the National Crime Agency is responsible for protecting people in this country from external threats. Along with it, similar functions to the

US Border Patrol are performed by the British Border Troops, namely - to carry out immigration and customs control, fight smuggling, collect customs duties. But, unlike the United States, this body is not a separate ministry, but part of the Ministry of the Interior, similar to the People's Republic of China. Thus, the UK sees the main threats to customs security as the financial loss of the budget and the security of its subjects from terrorist activity. That is why all the bodies that ensure the customs security of the United Kingdom are faced with the task of fiscal security (Popivniak, 2018).

In 2014, HMRC aspired to become a more efficient organization focused on digital technologies. In addition, the goal was to reduce operating costs by £ 235 million per year, while maintaining the same results for answering phone calls and processing mail. Organizations were partially hampered by its size and geographical constraints. With more than 70,000 employees in 170 offices, collaboration between teams was usually limited to office location.

To address this issue, Restore provided a dedicated Digital Mailroom outsourced environment for four months. The uniqueness of this solution was the need not only to scan mail as a traditional digital e-mail box, but also to carry out large routing of physical mail, which was fully automated using Optical Character Recognition (OCR) Technology. At the same time, all digitized documentation had to comply with the BS10008 standard and the strictest security measures due to the nature of the work performed by customs. HMRC Digital Postal Service now processes more than 35,000 postal items per day under the SLA from 36 to 48 hours. In total, it processes 5-6 million scanned images per month.

The partnership resulted in 95% automatic classification of document type, subject and customer ID. This ensures "correct routing" of mail to the designated HMRC recipient without the need for manual intervention. Strategically, the digital postal service has enabled HMRC to consolidate five major regional post offices into one and has improved customer service by significantly improving the care of valuable documents with full transparency and traceability. Working closely for more than six years, Restore is now part of HMRC's ongoing digital transformation strategy, supporting the government body in its efforts to further optimize its work.

Of particular note is the experience of the UK Border Agency in detecting, preventing customs offenses and developing ways to modernize the service. The existence of an institute of independent inspections, which guarantees the effectiveness of further modernization of the service, is one of the indicators of success in the fight against customs offenses. The results of inspections are presented in the form of reports with conclusions in the form of recommendations for further action. The reports are publicly

available and posted on the website www.independent.gov.uk. Intelligence is an important means of preventing and detecting customs offenses in the UK. The possibility of applying preventive measures aimed at preventing the implementation of illegal actions is a key element of the scheme to combat customs offenses (Yaromii, 2017).

However, today it should be stated that the systematic mistakes of British customs officers allowed criminal groups to deceive the European Union in the amount of at least 2 billion pounds sterling in just four years, plus another billions of lost VAT, said the EU anti-fraud office OLAF. The agency noted that customs and excise disruptions cost at least €5.2 billion euros (£4.5 billion pounds) in unpaid duties and VAT. Losses are associated with clothing and footwear, which are exported mainly from China. An HMRC spokesman said his experts did not accept OLAF's assessment.

The next state we will pay attention to is the German Republic. In Germany, on January 1, 2016, a new model of customs administration was introduced, which is now headed by the Generallzolldirektion as the highest federal body. In order to ensure customs security, federal law imposes a wide range of powers on German customs authorities. In addition to collecting customs duties and controlling the movement of goods across the border, the powers of the customs authorities include the fight against smuggling of drugs, tobacco and alcohol, weapons and ammunition, and the prevention of financing and cessation of terrorist financing.

Recently, the fight against illegal labor, the work of mobile customs teams to detect these activities, as well as the detection of counterfeit goods while trying to import into the European Union (Petrova, 2019, p. 123). It should be noted that the fight against smuggling of drugs, weapons, cigarettes, tobacco and pharmaceuticals, money laundering, crimes in foreign trade, violations of the Law on Control of Military Weapons, piracy of brands and products, fraud with subsidies, tax evasion, and also the financing of terrorism is also the task of customs, which can not only be provided within the control. In addition to customs control, large-scale criminal investigations can be conducted, such as arrests, interrogations, searches, seizure and evaluation of evidence, surveillance, telecommunications monitoring, the use of undercover investigators, and more.

Such investigations, often also in the framework of international cooperation, follow successful control measures and patrol officers of the customs and police, but often lead to such successful inspections and arrests only at the end of mostly large investigations. Open and secret collection of information in the Customs Investigation Service takes place not only

through the evaluation of inspections and investigations (Die Kriminalpolizei des Zolls).

The German Customs Investigation Service consists of the Customs Criminal Police Office and eight subordinate customs investigative agencies. It deals with crimes from moderate to organized customs crime. The main work is carried out in the customs inspection bodies, for example, they monitor the smuggling of cigarettes and drugs. As a central office, the Customs Criminal Police Office coordinates the activity of customs investigative bodies. This also includes the management of the so-called Customs Investigation Information System (INZOLL). An electronic system in which customs authorities store data on customs crimes committed. The Customs Criminal Police Office only initiates its own investigation when it comes to particularly serious crimes, such as the proliferation of weapons of mass destruction.

In the case of investigations, the Customs Investigation Service has all the powers enshrined in the Code of Criminal Procedure. Therefore, intensive interventions can be performed during data collection. For example: eavesdropping on telephone conversations and apartments, surveillance, photo and video shooting of victims, as well as the use of undercover investigators. These funds can be used in agreement with the prosecutor's office if there is a primary suspicion of committing a particularly serious crime. In addition, the Customs Investigation Service also has broad powers to process personal data in the so-called customs threat prevention area. This means that the authorities not only investigate the crimes committed, but can also take measures in advance of the suspicion of a crime. The basis is the Law on the Customs Criminal Police Office and Customs Investigation Office, in short: Customs Investigation Service Act (ZFdG).

German law provides for up to five years in prison for smuggling. According to the German Criminal Code, smuggling is the import and export of materials used to produce service certificates (paper, plates, forms, clichés, forms of service certificates, etc.). According to Art. 275 of the German Criminal Code punishment in the form of imprisonment for a period of two years or a fine is provided. Thus, § 275 of the German Criminal Code establishes liability for smuggling in and out of: 1) plates, forms, printing sets, clichés, negatives, matrices or similar devices suitable by their nature for committing an act; 2) paper similar to paper intended for the production of service certificates and in a special way protected from forgery, or paper that can be confused with the real one; 3) forms of service certificates. The sanction of this criminal law norm provides for punishment in the form of

imprisonment for up to 2 years or a fine (Deutsches Strafgesetzbuch, 1871; Babikov, 2021).

In this context, we should mention the experience of the French Republic. French customs legislation was developed almost before the creation of the EU customs union in a "natural" way, i.e. both identity and national features were preserved, while the connection with the economy based on market principles was never lost. In France, customs regulation has always been one of the important tools for implementing public policy, so when creating the legal basis of the customs union of European states, there was widespread use of experience in customs regulation in general and the application of customs regimes in particular. France entered the single European customs area. Measures to unify customs formalities have a significant impact on the procedure for customs control of import operations in France. The Financial and Trade Authorization Service (SOFICO) and the Directorate-General of Customs and Indirect Taxes (Davydovska, 2016) are important.

The functional load of the French customs service, as Chentsov V. V. notes, is standard for this authority, because they collect: taxes on oil, products of its processing, in addition to customs duties of VAT, a specific tax on petroleum products levied on entry into the domestic market; carries out fiscal control not only over importers of oil products, but also over their production and utilization. The role of customs in this issue is especially emphasized, as it is 10 % of the total budget and 1/2 of all customs revenues; special maritime excise tax to protect the industrial production of local settlements in port departments; special tax on vehicles - "tax on wheels".

At first, it was collected by the Main Directorate for Taxes and Fees, and the customs authorities - only for foreign vehicles; air transport taxes; port fees; a special tax on luxury items (precious metal products, art, collectibles, antiques); fees levied on government products by other authorities: VAT; special tax on wood, vegetable oils and oils of animal origin; an indirect tax on consumption that applies to so-called tropical goods (tea, coffee, etc.). In addition to those listed, V. V. Chentsov emphasizes, it is necessary to single out additional customs functions that are not related to the movement of goods and vehicles across the customs border. Some of them have already been mentioned above: participation in the regulation of ships, measurement of displacement, storage of marine mortgages, participation in sea rescue operations, etc. (Berr, Tremeau, 1988; Chentsov, 2017).

Due to the fact that France is particularly prone to imports of counterfeit goods (and thus to intellectual property offenses), the Minister of Economy and Finance of the country identified the main measures to

expand the fight against counterfeit products: development of a national plan and customs administration, as well as strengthening the customs organization to combat organized crime in the field of intellectual property; coordination and cooperation on actions aimed at public awareness, as well as control over tourists and consumers; taking measures to more accurately assess the damage of prosecutors; creation of a network of experts to assist companies in exercising their intellectual property rights (Bocharova, 2011; Kostyuk, 2019).

The described positive experience of the leading European countries testifies to the need to create in Ukraine customs mechanisms to protect against uncontrolled export of goods from the territory of the country and to combat the international system of illegal trade. In order to form mechanisms for the general prevention of offenses related to illegal international trade, it is necessary to develop and adopt provisions on the automatic exchange of information and documents provided for customs clearance of goods moving across the border of Ukraine.

It should also be taken into account that the customs authorities are an integral element in the implementation and further development of customs affairs, the non-political situation should become a strategic guideline for the reform of which, and the norms of the Customs Code of Ukraine should comply with the constitutional prescriptions that the assertion and provision of human rights and freedoms is the main duty of the state. Establishing the order and conditions of movement of goods across the customs border of Ukraine results in the regulation of customs rules, which must be clear to all participants in customs relations, allow debureaucratization of customs formalities, minimize their corruption, etc. (Chentsov, Mazur, 2018, p. 95).

IV. CONCLUSIONS

Concluding the presented scientific study, it should be summarized that today quite effective systems for counteraction and preventing crimes in general and by customs authorities in particular have been formed in the world. At the same time, the experience of not all states is positive. For example, in an effort to improve its own system for ensuring and combating customs crime, the actions of the British leadership and Her Majesty's customs authorities have led to an increase in crime, including customs, in a number of EU countries.

The analysis of foreign experience in preventing and combating crime by customs authorities, provides an opportunity to formulate the following aspects that should be used by domestic legislators in modern realities:

- (i) First, the high level of logistical and financial support of customs authorities, which allows to respond more quickly to existing challenges. A striking example is the United Kingdom, where most offenses can be detected using special information and technical means;
- (ii) secondly, the customs authorities of the vast majority of countries have a wide range of powers in the context of operational and investigative work. Thus, during the collection of information, the customs authorities may carry out intensive interference in the activity of a particular entity, such as: eavesdropping on telephone conversations and apartments, surveillance, photography and video of victims, as well as the use of undercover investigators, etc.;
- (iii) thirdly, it is important to note the high level of interaction and exchange of information between EU countries in the framework of combating customs crime;
- (iv) fourthly, an important aspect of combating and preventing customs crime is the training of customs officials. In addition, on the positive side, the high level of social and financial security of customs officers should be noted;
- (v) fifthly, on the example of foreign countries in Ukraine, it is advisable to strengthen administrative and criminal liability for violations of customs legislation. This will a priori be an important preventive measure to avert offenses in this area.

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