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PROCEEDINGS IN CASES OF CUSTOMS RULES VIOLATION IN UKRAINE

***Abstract.** In the present study, the elaboration of the place and role of proceedings in violation of customs rules proceeding in the structure of the administrative process has been further developed taking into account the latest scientific researches. The features characteristic of the proceedings in violation of customs rules has been improved. The legal nature of the compromise in violation of customs rules as a novel of sectoral legislation has been examined and the state of its implementation in practice on the basis of the analysis of statistical data on the activities of customs authorities has been determined. Attention has been drawn to problematic issues when deciding to conduct an additional audit based on the results of consideration of cases of this category on the merits. Proposals on reforming the customs legislation governing the implementation of proceedings in violation of customs rules have been formulated, in order to eliminate the shortcomings and gaps, which will enhance the protection of the rights and freedoms of citizens and economic interests of the state protected by law.*

JEL Classification: K13, K23, K42

Introduction

The general of Ukraine for the European direction of development of the economy and the state predetermines the need to implement a large number of reforms in the political, economic, social and other spheres.

For more than two decades of independence, the customs system, customs procedures and customs policy of Ukraine have evolved significantly. The adoption of the third Customs Code of Ukraine in 2012, is conditioned by the urgent need to bring sectoral legislation closer to international standards, to bring it in line with the requirements of the General Agreement on Tariffs and Trade, the International Convention on the Simplification and Harmonization of Customs Procedures, the Istanbul Convention on Temporary Importation and other acts of international law to which Ukraine has acceded.

The current Customs Code of Ukraine differs from the previous ones in the fact that it contains a number of progressive innovations in the implementation of customs procedures, including fixation of customs rules violations, proceedings in violation of customs rules, bringing to administrative responsibility, which, naturally, require scientific research.

An important means of ensuring the customs policy of the state remains the implementation by the customs authorities of a set of measures aimed at the timely detection of violations of the customs legislation of Ukraine and the fulfillment of international obligations in this area. Under such circumstances, the opening of proceedings in customs rules violations should be considered in the context of a positive result of customs control by authorized customs officials. Despite the fact that the procedure for carrying out proceedings in violation of customs rules, as well as the legal status of their subjects, are determined by a separate section of the Customs Code of Ukraine; the impact of the legislation of Ukraine on administrative offenses on these legal relations remains significant.

The relevance of the theoretical and legal study of proceedings in violation of customs rules in the modern period is due to the need, firstly, to conduct modern scientific and theoretical research in the field of customs and legal regulation of social relations; Secondly, it is necessary to perform the most complete settlement of the administrative and jurisdictional activities of the customs authorities in order to create a system of procedural legislation that would be aimed at implementing the constitutional provision on the priority protection of the rights and freedoms of citizens; Thirdly, there is a necessity to improve the organization and functioning of the State Fiscal Service of Ukraine, excluding the unacceptable arbitrariness and subjectivity of their officials in the process of bringing to administrative responsibility for violation of customs rules due to insufficient procedural regulation.

1. The concept of proceedings in cases of violation of customs rules and its place in the structure of the administrative process

Transformation of customs policy into an effective mechanism for protection of the economic interests of the state inevitably requires the creation of equally effective instruments of an appropriate control level. The implementation by the customs authorities of a set of measures aimed at the timely detection of Ukrainian customs rules violations and the fulfillment of international obligations in this area remains an important means for ensuring the customs policy of the state. Under these circumstances, the opening of proceedings in customs rules violation should be considered in the context of a positive result of customs control by authorized customs officials.

The customs authorities have been repeatedly reformed in the course of administrative reforms. By the Decree of the President of Ukraine of December 24, 2012 No. 726/2012, the Ministry of Incomes and Fees was formed in the course of reorganization the State Customs Service and the State Tax Service. Currently, in accordance with the Resolution of the Cabinet of Ministers of Ukraine dated May 21, 2014 No. 160, the Ministry of Revenues and Fees was reorganized by transformation into the State Fiscal Service.

Therefore, this study uses the terms "customs authority" and "State Fiscal Service" in the corresponding number and case.

Administrative and procedural activities of the customs authorities and their officials, the content of which is to solve the task of monitoring compliance with the legislation of Ukraine on customs matters, monitoring compliance with the rules for transferring currency values across the customs border of Ukraine, smuggling and customs regulations violation prevention, is one of the most important aspects of the State Fiscal Service of Ukraine. This activity of the customs authorities is carried out not only by monitoring compliance with customs regulations, but also by implementing preventive, precautionary effects, the termination of offenses committed or prepared to be committed, as well as the application of relevant legal regulations in violation of certain customs regulations.

Regulatory settlement of administrative and procedural activities of customs authorities, aimed at solving problems, is normally carried out, within the framework of proceedings, which, in accordance with Article 486 of the Customs Code of Ukraine [1], is referred to as "Proceedings in violation of customs rules". We share the position of those researchers who believe that the concept of "production" is one of the most important categories of the administrative process [2, p. 211] and has a purely theoretical value [3].

Proceedings in violation of customs rules is a complex legal phenomenon, which can be characterized in various links and relationships. It is clear that when formulating the concept of these proceedings, it is impossible not to take into account how the most studied type of administrative proceedings - the proceedings in administrative offenses - is determined in administrative procedure theory. As for the latter, the points of view are widespread, according to which the proceedings act either as an integral part of the administrative procedural law, or as the actual proceedings, which are formed by the system of procedural actions and procedural relations as a result of solving specific individual cases. Taking into account precisely these positions, we can analyze the proceedings in violation of customs rules. Considering the first point of view, the proceedings in violation of customs rules can be defined as an independent type of proceedings in administrative offenses and analyzed from the standpoint of the static purpose of its legal basis - the system of administrative procedural norms that form it. According to the second point of view, these norms are considered in the dynamics of their actual impact on public relations in the field of customs and legal regulation as a result of their implementation and practical application. In this sense, the proceedings on cases of violation of customs rules are characterized in action as a specific form of activity and relationships (relations) of various subjects, participants of these proceedings in specific tort legal relations [4, p. 187].

In the framework of ongoing proceedings in violation of customs regulations, customs authorities solve specific tasks of a jurisdictional nature. Their activity is regulated by the norms of the Customs Code of Ukraine, and in the part that is not regulated by it, in accordance with the legislation of Ukraine on administrative offenses.

The norms of the sectoral code, which is the Customs Code of Ukraine, have the main features inherent in procedural norms, regulating any procedural forms of activity: procedural nature, establishing the proceedings procedure, forms and methods of of proceedings participants' activities and bringing to justice; regulate relations developing in the process of combating various unlawful encroachments on the interests of an individual, society and the state; regulate the jurisdictional activities of the relevant state bodies and their officials related to the application of penalties to the perpetrators of the offense.

The norms of proceedings in customs offenses also have specific properties: they regulate the social relations in the field of public administration that are formed in the process of dealing with a specific type of offenses - customs offenses, are less dangerous than, for example, crimes; for the purpose of this struggle, they establish more simplified procedures than the criminal and civil procedure, the forms and methods of the customs authorities and their officials. The main function of the administrative and procedural standards of proceedings in cases of violation of customs rules is to regulate: a) the tasks and principles of proceedings; b) the procedural status of the parties to the proceedings, their functions and tasks; c) evidence in proceedings; d) measures of procedural influence and ensurance of proceedings; e) the procedure, time limits for initiating cases and sending them according to jurisdiction; e) the procedure and terms of consideration of the case; e) the procedure for appealing and appealing the decision; g) guarantees of the observance of legality and validity of the decisions taken and the proceedings performed; h) the order of execution of decisions; i) rules for reimbursement of expenses related to the performance of legal proceedings. Therefore it is expedient to note that the main purpose of the procedural norms of the proceedings being studied is to fully and comprehensively regulate the application of the substantive norms of the Customs Code of Ukraine on liability for customs offenses.

Taking the above into account, it can be stated that the proceedings in violation of customs regulations as an independent type of proceedings in administrative offenses is a system of procedural rules governing public relations, the procedure, forms and methods of jurisdictional activities of customs authorities and their officials and related to administrative responsibility for the violation of customs regulations.

We believe that the point of view about the need to study the proceedings in violation of customs rules as an independent type of proceedings in administrative offenses seems to be reasonable and tru and this should be reflected in the definition of the concept of this procedural phenomenon.

In this context, it requires clarification of the place of proceedings in violation of customs rules in the system of administrative procedure law. However, first of all, it is primarily necessary to understand what "procedural proceedings" and "process" mean and what the interconnection and interrelation between them is.

“Proceedings” and “process” in the sphere of legal regulation are purely legal concepts that objectively reflect the structure, degree of organization and delimitation of regulatory material between procedural phenomena within the same branch of law. It should be noted that these concepts have not only narrow sectoral meaning, but also the general theoretical one. Therefore, their analysis and evaluation must be approached from the general theoretical position.

Without going into discussions on the definition of approaches to the formulation of the concept, content, essence and boundaries of the administrative process, it should only be noted that all views on the category of administrative process in the theory of administrative law were concentrated in the form of “jurisdictional” and “management” concepts [5, p. 158].

Supporters of the "jurisdictional" concept, on the one hand, identifying the administrative process with the jurisdictional proceedings, primarily with the proceedings in administrative violations, on the other hand, recognize the activities of executive bodies that do not belong to the administrative process [6, p. 11]. The set of views of administrators on the administrative process as a legal category, covering the activities of the executive bodies of law-making, law-enforcement and jurisdictional nature, forms the basis of the “managerial” concept [7, p. 13].

The adoption in due time of normative acts, the subject of legal regulation of which is the sphere of administrative-tort relations, stopped the discussion, which for a long time continued in the administrative-legal science about the relationship between the concepts of "administrative process" and "administrative proceedings".

In the modern theory of administrative law, the relationship between the concepts "process" and "proceedings" is defined as the ratio of the general and the particular. Proceedings is a type of process; a process is a combination of proceedings. At the same time, if the process is a broad concept that encompasses the legally significant activities of public administration, proceedings is already an activity associated with the solution of a certain, relatively narrow group of homogeneous cases. We agree with A.V. Kuzmenko’s position, who believes that in the practice of application it is necessary to consistently and clearly distinguish between the concept of "process", "proceedings", "stage", as well as distinguish the use of these terms in the regulatory acts [2, p. 210].

The administrative proceedings, should be understood as the normatively regulated procedure for carrying out procedural actions that ensure the legal and objective consideration of individual administrative cases united by a common subject [8, p. 386]. A common point of view is that by administrative proceedings, we mean a part of the administrative process that unites a group of homogeneous procedural relations that differ in subject characteristics, for consideration and solution of which a certain procedure is established, which is completed by formalizing the results in relevant documents [9, p. 423].

Most scientists, distinguish administrative proceedings as a type of administrative process and recognize that the administrative process as a complex structural phenomenon encompasses various types of administrative proceedings. Each type of proceedings has specific features, due to the nature of specific cases solved with its help, peculiarities of the administrative-procedural relations arising in this process.

We share the position of M.Ya. Maslenikova, who notes that the procedural actions of law enforcement agencies on the application of all administrative coercive measures provided by law are not “inscribed” in one proceeding. In order to distinguish appropriate procedural actions in a separate proceeding, it is necessary to take into account not only the external “similarity” of these actions, but also the content and character, the specifics of such actions, peculiarity, atypicality compared with the usual procedural actions [10].

Administrative proceedings as part of an administrative process constitute a legal procedure for resolving homogeneous, individually specific cases. The structure of the administrative process, is built in accordance with various criteria, described by a large number of modifications, reflecting the series-parallel connection of proceedings. Essential for the inclusion of proceedings in the administrative process system is the simultaneous presence of at least two points: the recognition of the special nature of individual cases to be resolved and the secluded normative fixing of the procedure for resolving these cases.

Considering the above, we believe that issues related to the proceedings in customs offenses should be investigated in the context of the general administrative procedure theory. Consequently, the proceedings in violation of customs rules must be considered as a separate legal phenomenon in the system of administrative proceedings. The recognition of such a relationship between these processes is of great theoretical and practical importance. Firstly, the study is thus limited - not the entire volume of legal material, but only a part of it, is subject to analysis. Secondly, recognizing the dependence between "proceedings in violation of customs rules" and "administrative proceedings" has a certain value for the codification of procedural legislation - it is not necessary to codify the entire amount of administrative procedural norms, but only their specific part governing activities related to bringing to administrative responsibility for offenses in the field of customs. Thirdly, the recognition of this proceedings as a special type of administrative proceedings means that all those system features inherent in the latter are inherent in it.

Recognition of proceedings in violation of customs rules as a specific type of proceedings in administrative offenses, does not mean complete identification with the latter. This proceedings is an independent procedural phenomenon, which has specific features, characteristics and peculiarities that distinguish it from other administrative proceedings. The main differences of proceedings in violation of customs rules relate primarily to the object of the offense, the characteristics of the subjects authorized to make state-power decisions in the case, and the content and nature of the individual stages and procedural actions of which the studied proceedings consist.

This idea is confirmed by the content of Article 487 of the Customs Code of Ukraine, which states that the proceedings in violation of customs rules are carried out in accordance with the Customs Code of Ukraine, and only in part, not regulated by them - in accordance with the legislation of Ukraine on administrative offenses. Thus, the place of proceedings in violation of customs rules in the hierarchical system of administrative process in general form can be represented as follows: "administrative process" - "administrative proceedings" - "proceedings in administrative offenses" - "proceedings in violation of customs rules". Taking into account the subject of the research, it is more relevant to find out the correlation between "proceedings in violation of customs rules" and "proceedings on cases of administrative offenses." Procedural norms contained in the Customs Code of Ukraine regulate the procedure for bringing to justice for customs offenses, and were defined by some scientist as "customs procedure" [11, p. 171]. At the same time, the analysis of their legal nature testifies to their administrative and procedural character, although they reflect the peculiarities of proceedings in violation of customs rules in comparison with other varieties of proceedings in violation of customs rules.

We fully agree with S.V. Kivalov's position, who explains this state of legal regulation by the fact that proceedings in violation of customs rules are based on general principles stipulated by the Administrative Offenses Code of Ukraine and, finally, on principles of the administrative process [12, p. 81-82]. The legal norms contained in the Code of Ukraine on Administrative Offenses of Ukraine constitute the normative basis for administrative and procedural activity on bringing to responsibility for violation of customs rules. Undoubtedly, the idea of separating the proceedings in violation of customs rules into an independent type of administrative proceedings has the right for existence. After analyzing the current Customs Code of Ukraine, there is every reason to assert that there are a number of differences and peculiarities in the proceedings in violation of customs rules as compared with a more generalized type of administrative proceedings - proceedings in administrative offenses. For example, a different system of procedural action or measures to ensure the proceedings. At the same time, the differences existing in the proceedings in violation of customs rules only emphasize the universality of proceedings in administrative offenses. The implementation of jurisdictional activities by various executive bodies, including customs authorities, in accordance with administrative procedural principles leads to the unification of the procedure for bringing a guilty person to legal responsibility for administrative torts in various branches of public law. For a more complete picture of the content of the proceedings concept in violation of customs rules, it is expedient to consider the doctrinal definitions of this concept. So under the proceedings in violation of customs rules procedural actions, are implied which are carried out by officials of customs authorities, in the proceedings of which there is violation of customs rules, about which the relevant procedural documents are drawn up [13, p. 207]. However, this definition is rather one-sided, since the proceedings are identified in it only with the conduct of the procedural actions and do not include direct consideration, making the decision and its execution.

According to S.V.Kivalov, proceedings in violation of customs rules is a complex of interrelated and interdependent procedural actions aimed at timely, comprehensive and objective identification of the circumstances of each case, resolving it in strict accordance with the law, ensuring the execution of the decision, and identifying the causes and conditions, contributing to the commission of administrative offenses, the prevention of offenses, the education of citizens in the spirit of compliance with laws, consolidation of legality, which are carried out by specially authorized customs officials in order to perform the tasks of customs regulations protection [12, p. 100].

The authors of the textbook "Customs Law of Ukraine" define proceedings in violation of customs rules as a type of proceedings in administrative offenses, consisting of a series of consecutive actions of jurisdictional bodies, which, according to the norms of administrative and customs legislation, carry out activities aimed at bringing offenders to justice and ensuring the execution of the decision [14, p. 252].

We believe that the proceedings in violation of customs rules is a sub-type of proceedings in administrative offenses, which is carried out in accordance with the principles of the administrative process, taking into account the specifics of customs relations, regulated by the norms of administrative and customs law. The studied proceeding have all the features inherent in the proceedings in administrative offenses, as well as a number of specific features enshrined in the sectoral code - the Customs Code and other regulations, which provide a more complete and effective implementation of administrative responsibility in the field of customs and legal regulation of public relations.

Thus, taking the above into account, we can formulate the definition of proceedings in violation of customs rules, subordinate to the customs authorities of Ukraine. It is a complex of interrelated and interdependent procedural actions carried out by specially authorized customs officials, aimed at timely, comprehensive, complete and objective clarification of the circumstances of each case, resolving it in accordance with current legislation, ensuring the execution of the decision, identifying the causes and conditions, that facilitated customs offenses, taking measures to eliminate them, prevent wrongdoings, to strengthen law and order in the field of customs [15, p. 7].

2. Features of proceedings on cases of violation of customs rules

Being a type of proceedings in administrative offences, the proceedings in violation of customs regulations have certain features characteristic of them only. The availability of such features is stipulated both by the specificity of customs-tort legal relations (unlike the general proceedings), and by the reformation of national legislation in the customs sphere.

The adoption of the customs code of Ukraine in 2012 reflects the desire of the legislator to bring the current legislation of Ukraine closer to international standards. The formation of new institutions in the customs legislation, one of which is a compromise in violation of customs rules is particularly associated with it.

O. V. Burtseva had made proposals on the introduction of a “customs compromise” as a way to humanely and promptly resolve conflict situations in violation of customs rules even before the adoption of the Customs Code of Ukraine in 2012 [16, p. 36]. T. V. Ruda also considered a compromise as an element of improving the customs system in the economic aspect [17, p. 52-54]. Only the adoption of the Customs Code of Ukraine in 2012 brought the country's customs policy closer to European standards to a certain extent, in particular due to the humanization of responsibility for the offenses committed. The manifestation of the latter is not only the decriminalization of the sphere of responsibility for violation of customs rules, but also the prediction of the possibility of applying a settlement agreement between the offender and the customs authority before a decision is made on bringing him to justice. This became possible in connection with the emergence of the powers of the customs authorities stipulated by international customs acts.

Thus paragraphs 20-21 of the Special Annex H Section 1 of the International Convention on the Simplification and Harmonization of Customs Procedures give the customs authorities a possibility of an administrative settlement of a customs offense, which is discovered by them and considered to be insignificant [18, p. 80].

The given international legal norm found its expression in part 1 of Article 521 of the Customs Code of Ukraine, according to which, in the absence of the signs of a criminal offence in actions of the person who committed the violation of customs rules, the proceedings in this offense can be terminated by compromise.

The compromise is in conclusion of a settlement agreement between the said person and the customs authority. Despite the fairly successful use of this tool by most European countries in the practice of their customs authorities, Ukraine provided for it in the Customs Code only in 2012. Thus, the content of Part 1 of Article 521 of the Customs Code of Ukraine affords an opportunity to exempt a person from administrative responsibility in case of termination of proceedings in violation of customs rules by compromise if there are no signs of a crime in the actions of the offender and subject to compliance with the relevant terms of the amicable agreement.

As indicated above, the legislator has determined that the sole condition for the commencement of the implementation of the mechanism for applying the compromise in the case of customs rules offence is the absence of signs of a criminal offense in the actions of the offender. The specified compromise is executed in the form of a settlement agreement. In the future, the fulfillment of the conditions of such a settlement agreement is the release of a person from administrative responsibility for violation of customs regulations. The provisions of part 4 of Article 521 of the Customs Code of Ukraine stipulate that the person who committed a violation of customs regulations appeals to the head of the customs authority with a request in an arbitrary form to terminate the case of this violation of customs regulations by compromise. However, the legislator does not determine the period during which the offender must make such a statement.

Obviously, it can not be unlimited, since such an appeal to the head of the customs authority after the completion of the consideration of the case will not have any legal consequences. Further, the time period during which such a statement must be coordinated remains undefined. At the same time, the provisions of part 4 of Article 521 of the Customs Code of Ukraine indicate that within one working day following the day of filing the application, the customs authority provides the applicant with a reasoned answer about the grounds for not applying the compromise procedure in the absence of legal reasons for terminating the case of customs rules violation by compromise. However, what should be done if there are no legal grounds for termination of a case in violation of customs rules by means of a compromise, and the customs authority missed the term specified by the legislator to make a decision of refusal to apply the compromise procedure? Does a person who has committed a violation of customs regulations have the right to consider this to be the tacit consent of the customs authority to conclude a settlement agreement and appeal against the actions of the officials of the said authority in administrative proceedings in the event of further failure to conclude? Taking into account the relevance of the compromise procedure in the conditions, these issues, undoubtedly, should be subject to a detailed legislative settlement.

In turn, it is reasonable to agree with Duzhenko S.A., who proposed to lay out part 4 of Article 521 of the Customs Code of Ukraine in the new edition with the purpose of proper legislative regulation and avoidance of disputes in the course of practical application of the above-mentioned novel of the customs legislation. This edition has the following content: "4. An individual who committed a violation of customs regulations, has the right, to appeal to the head of the customs authority with an application in arbitrary shape asking to terminate the case in violation of customs regulations by compromise prior to forwarding this case for consideration on the merits [19, p. 9]. The process of filing such an application is recorded in the manner specified in parts three and four of Article 264 of this Code. Such an application is subject to consideration within one working day following the day of its submission. According to the results of this consideration the head of the customs authority decides on the conclusion of a settlement agreement or, in the absence of legal grounds for the termination of a case in violation of customs rules by means of a compromise, provides the applicant with a reasoned answer about the reasons for the impossibility of its use. "

Under the terms of the settlement agreement, a person who committed a violation of customs rules, must deposit funds in the state budget in an amount equal to the amount of the fine provided for by the sanction of the relevant article of the Customs Code of Ukraine within a certain period, which can not exceed 30 days, and / or declare goods in favor of the state in refusal customs regime – particular objects of customs rules violation, and in appropriate cases also goods with specially made storages (caches) that were used for concealing particular objects of customs rules violation from the customs control, vehicles that were used to move the particular objects of customs rules violation across the customs border of Ukraine. At the same time, in the requirements of part 3 of article 521 of the Customs Code of Ukraine, the legislator provides that goods, vehicles can be subject to a

settlement agreement only under the condition that the person who committed the violation of customs regulations is the owner of these goods, vehicles or is authorized to dispose of them.

After the offender has fulfilled the above conditions, the relevant customs authority is obliged to terminate the proceedings in the case of customs regulations violation in respect of this person and to carry out customs clearance of the goods declared by him in accordance with the declared customs regime. However, the provisions of Part 6 of Article 521 of the Customs Code of Ukraine stipulate that the settlement agreement is considered invalid and the proceedings in violation of customs regulations shall be resumed if the person who committed the violation of customs regulations fails to comply with the actions specified in part 2 of Article 521 of the Customs Code of Ukraine in the period defined by the settlement, which may not exceed 30 days.

A model Settlement Agreement on the termination of proceedings on the case of violation of customs regulations with relevant annexes was approved by the order, the Ministry of Finance of Ukraine dated May 28, 2012 No. 607 in pursuance of the provisions of Part 5 of Article 521 of the Customs Code of Ukraine and in order to minimize discrepancies in the clearance of customs agreements [20].

The study of the content of the specified Model Settlement Agreement has established that it contains a condition that is not provided for by the Customs Code of Ukraine. The matter concerns the obligations of the person who committed a violation of customs regulations, to reimburse the costs of storing goods, vehicles in the event of their issuance from the warehouse of the customs authority. At the same time, the fulfillment of this condition is not specified in the act on the implementation of the settlement agreement, which is Annex 1 to the Model Settlement Agreement approved by the Ministry of Finance of Ukraine. Considering the above, the question remains open whether this condition is obligatory? In this case, in order to resolve this issue, it appears appropriate to apply the requirements of Article 19 of the Constitution of Ukraine, which stipulates that the legal order in Ukraine is based on the principles according to which no one can be forced to do something that is not provided for by law. State authorities and local governments, their officials are obliged to act only on the basis of, within the limits of authority and in the manner stipulated by the Constitution and laws of Ukraine. Under such circumstances, if the expediency of reimbursement of expenses for storage of goods, vehicles in the case of their issuance from the warehouse of the customs authority, is justified, this should be fixed at the legislative level in the Customs Code of Ukraine.

The application of the compromise procedure in cases of customs rules violation, undoubtedly, has positive consequences for the state as a whole, including the customs authorities, and for the person who has committed an offense in the customs sphere. Subject to the conclusion of a settlement agreement, the customs authorities receive an undeniable confession of the offender's guilt in committing customs rules violation and are deprived of

the need to continue proceedings in such a case, and the state gets revenues to the budget without the use of coercive measures, due to the activities of executive agencies.

The compromise has positive aspects for the offender too, because it simplifies the procedure of customs clearance to a certain extent. However, since the declarant in any case contributes funds to the state budget in an amount equal to the amount of the fine provided for by the sanction of the relevant article of this Code, such a compromise is only formal on the customs authorities' part, since it is carried out without "recording" the relevant violations, however is connected with the onset of the consequences of a legal nature for their commission. The most positive consequence of the compromise procedure for a person who committed a violation of customs rules should be considered the possibility of applying the provisions of paragraph 8 of Article 521 of the Customs Code of Ukraine, according to which in case of termination of proceedings in the violation of customs rules by compromise, the person who committed this offense is not considered brought to administrative responsibility. This allows a person who has committed a violation of customs rules to avoid in the future, such a qualifying sign of a similar violation as repetition. Obviously, the sanction for a repeated offense is more severe.

For example, obstructing a customs officer in carrying out customs control or smuggling proceedings or violating customs rules in access to goods, vehicles, documents, is punishable by a fine of one hundred non-taxable minimum incomes of citizens (Section 1 of Article 474 of the Customs Code of Ukraine). At the same time, the amount of the fine for committing the offense provided for by paragraph 1 of Article 474 by a person who has brought to responsibility for the commission of such an offense during the year entails the imposition of a fine five times more, i.e. five hundred non-taxable minimum incomes of citizens (part 2 of 474 Customs Ukraine). Despite the fact that only 5 types of offenses in the customs sphere have such a qualifying attribute as repetition, the application of the provisions of Part 8 of Article 521 of the Customs Code of Ukraine may result in the abuse of persons who intend to systematically violate customs rules using their right of entering into an amicable settlement in order to avoid a more severe punishment in the future.

In order to prevent such facts, it would be expedient to provide at the legislative level that the person who committed a violation of customs rules and entered into a settlement agreement with the customs authority previously is not entitled to the subsequent application of the compromise procedure within one year from the date of signing the act of implementing such an agreement. At the same time, it is necessary to create an appropriate electronic register containing information about the offender, information on the type of offense committed, the good faith of the amicable agreement, terms fulfillment and the like in order to keep record of the who have committed a violation of customs rules.

This will ensure that persons who have committed a violation of customs regulations at least once will continue to comply with the requirements of customs legislation in the future, and the state will receive significantly more payments to the budget due to a larger amount of penalties in the event of repeated violation of customs regulations by the same person.

The possibility for an authorized person to issue a decision on conducting an additional audit based on the results of the resolution of the case is a feature of the proceedings in violation of customs rules in comparison with the proceedings on cases of administrative offenses. Making a decision to conduct additional verification should not be identified with the return of the case for its proper execution, which can be used in the implementation of proceedings in administrative offenses. These procedures differ not only in form and content, but are also applied at various stages of the resolution of a case.

According to Part 2 of Article 527 of the Customs Code of Ukraine, the resolution on carrying out an additional audit should contain specific subjects, tasks and deadlines for the inspection. At the same time, such actions should not violate the rights of a citizen, harm the economic activities of a legal entity. The resolution is adopted on the basis of the case consideration results in the event of detection of flaws in the submitted materials, which make it impossible to carry out its correct and objective consideration, in particular due to improper collection of evidence. However, the decision to return the case for proper processing may be the result of violations in the direction of the case file to the body authorized to consider it. Such a decision can be made only at the stage of preparing the case for consideration. It is worth noting that the practice of returning a case is fairly common, although it is not fixed at the legislative level.

The issuance of this decision allows to obtain the evidence necessary for the proper resolution of the case, as well as to ensure the elimination of deficiencies that have arisen in the first stage of proceedings. On the one hand, this contributes to the implementation of the principle of objective truth, on the other hand, it can create artificial barriers to the administration of justice, since the legislator has not established restrictions on the number of orders for additional verification. Researchers of cases in violation of customs rules, noting the positiveness of this novel, simultaneously indicate a certain uncertainty during its application. However, such problems are only theoretical in nature, because in practice they do not arise when issuing an order for additional verification. Firstly, the aforementioned ruling should not be considered as an interim result of the resolution of the case. According to the content of Part 1 of Article 527 of the Customs Code of Ukraine, making such an order is one of the types of completion of consideration of the case of violation of customs regulations. This decision is the result of customs officials' actions assessment regarding the quality and completeness of the collection of evidence necessary for the correct and objective resolution of the case. Obviously, such an assessment is negative, since after the adoption of such a decision in the case of violation of customs rules, the materials must be returned to the customs authority for revision. Secondly, the decision to conduct an additional audit should take place in the timeframe established by Article 525 of the Customs Code of Ukraine. At the same time, since its adoption, the consideration of the case is considered fully completed, since the legislator does not provide for the suspension or termination of such consideration at all.

It is absolutely obvious that the customs authority must carry out the tasks specified in the resolution within the deadline set thereby, and then return the case for further consideration to the jurisdictional authority. Under such circumstances, the authority that issues such a resolution must take into account that the additional verification must be implemented within a time limit which will provide the possibility of imposing an administrative penalty in the event that a guilty person is found guilty during the further resolution of the case. In accordance with the provisions of Article 467 of the Customs Code of Ukraine, such a period shall not exceed 6 months from the date of the commission / detection of the offense. Thirdly, the decision to conduct an additional audit in its content should not contain an assessment of the evidence established during the first stage, but only to fix their presence. The issuance of such a decision contributes to the goal of a complete, comprehensive and objective resolution of the case.

Therefore, it can be stated that the adoption of this decision indicates the absence of grounds for issuing a decision to discontinue the proceedings until the establishment of the fact of the presence or absence of certain circumstances. It should be noted that the decision to conduct additional verification differs significantly in its legal nature from the decisions to impose an administrative penalty and to discontinue the proceedings, since it has distinctive consequences and goals. There are well-founded questions on the number of orders for additional inspections that may be made in the course of consideration of a case in violation of customs rules. It is indisputable that, customs officials will perform the tasks specified in such a decree, in a proper manner and within the required period with good faith and proper attitude to their duties after which the authorized body will be able to consider the case. At the same time, there may be other cases where such instructions are not executed either due to the expiration of the established period, or due to the negligence of customs officials. According to the effective case law, in such circumstances, the decision is made to conduct an additional audit. This has certain grounds, because the adoption of any other decision will contradict the principle of objective truth, since there are no additional circumstances compared with the first decree on conducting an additional audit.

In modern legislation, there are no restrictions on the number of orders for additional checks that may be made during the consideration of a case in violation of customs regulations. The only indirect limitation on the number of such orders, which follows from the content of the customs legislation, is only the timing of bringing to administrative responsibility. The ruling on the conduct of additional verification, even under the condition of improper execution of previous similar rulings, loses its meaning after their expiration. In this case, the body considering the case in violation of customs regulations, makes a decision to close the proceedings. It appears well-grounded that this deficiency should be eliminated at the legislative level by supplementing Article 527 of the Customs Code of Ukraine with parts 3 and 4 of the following content: "3.

The period for conducting an additional check can be extended by an official of the customs body or the court (judge) who issued it, with the availability of a written request of an authorized customs body person conducting the proceedings in violation of customs regulations, for no more than 10 working days by issuing a relevant resolution.

In the event of improper execution or non-execution of the resolution on the conduct of an additional inspection, the body considering the case in violation of customs regulations shall issue a resolution on termination of the proceedings. The court (judge) simultaneously with the decision to terminate the proceedings makes a separate decision on the basis of this part of Article 527 of this Code, which draws the attention of relevant officials to the facts of violation of the law in the implementation of the proceedings. No later than within a month's timeframe, measures must be taken according to this separate decision and the results must be reported to the court that issued it. The need to make a decision to discontinue the proceedings in the case of not fulfilling the tasks defined by the order to conduct an additional inspection, taking into account the extension of the period for its implementation, is stipulated by the norms of part 3, Article 62 of the Ukrainian Constitution, since the doubts concerning the proof of the person's guilt are interpreted to his favour. Repeatedly issuing orders to conduct an additional inspection or to extend the period for its implementation will lead to a violation of the principles of proceedings in violation of customs regulations.

The mentioned above additions are designed to promote high-quality implementation of proceedings in violation of customs regulations, in particular during additional inspections, and to stop discussions among scholars about the imperfection of legislative regulation of issues regarding the issuance of an order to conduct additional inspections.

Conclusions.

The study deals with the concept and place of proceedings in cases of violation of customs rules in the structure of the administrative process, as well as their features, which are caused both by the specificity of customs and tort relations and by reforming the national legislation in the customs sphere.

It was established that the proceedings in violation of customs rules have all the features inherent in the proceedings in administrative offenses, and a number of features of a procedural nature, which allow increasing the efficiency of law enforcement activities of customs bodies, to ensure the full and maximum implementation of administrative responsibility in the field of customs and legal regulation of public relations.

The development of customs legislation leads to the appearance of a novel, which was not previously characteristic of the proceedings in violation of customs rules e.i. the introduction of the institution of compromise. The compromise in the case of violation of customs rules is the possibility of exempting a person from administrative responsibility by terminating such proceedings if there are no signs of a crime in the actions of the offender

and taking into account the compliance with the terms of the amicable agreement. Considering that the compromise as an institution is new to the customs legislation, it requires detailed legal regulation of the following issues: the timeframe for consideration by an official of the customs body of a person's application for termination of proceedings by means of a compromise; the prevention of abuse of the offender's right to enter into a settlement agreement; the steady implementation of the terms of such an agreement, defined in the standard form approved by the Order of the Ministry of Finance of Ukraine, but not provided for by the Customs Code of Ukraine.

No less important feature of the proceedings in violation of customs rules is the decision of the authorized person to conduct an additional inspection on the results of the case, which should not be identified with the return of the case for its proper execution, since such a decision is of the type, which is taken according to the results the case resolution and is intended to provide additional evidence of a person's guilt in committing a violation of customs regulations.

The results of the study proved that the legal regulation of the implementation of proceedings in violation of customs regulations is currently at a high level, however it still requires legislative changes, which is a necessary condition for the introduction of European standards in this area.

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