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DETERMINATION OF CONCEPTUAL PRINCIPLES OF CRIMINAL PROCEDURAL MEANS FOR ENSURING THE SAFETY OF UKRAINIAN CUSTOMS OFFICERS

Інна Єфімова. ВИЗНАЧЕННЯ КОНЦЕПТУАЛЬНИХ ЗАСАД КРИМІНАЛЬНИХ ПРОЦЕСУАЛЬНИХ ЗАСОБІВ ЗАБЕЗПЕЧЕННЯ БЕЗПЕКИ ПРАЦІВНИКІВ МИТНИЦІ УКРАЇНИ. Досліджуються організаційні особливості визначення концептуальних засад кримінальних процесуальних засобів забезпечення безпеки працівників митниці України. Акцентовується увага на тому, що високо оцінюючи значимість здобутків науковців, формування системи кримінального процесуальних засобів забезпечення безпеки працівників митниці й досі залишається актуальним. Можливо, публічне обговорення зазначених проблем підвищить ефективність кримінальної процесуальної практики забезпечення безпеки не тільки працівників митниці, а й інших правоохоронних органів України у контексті глобального реформування законодавства України.

Підкреслюється, що на висвітлення теоретично сформульованих та емпірично доведених положень і рекомендацій щодо сталого забезпечення безпеки працівників митниці запропоновано шляхи удосконалення цієї діяльності з урахуванням реформування правоохоронних органів та безпосередньо вдосконалення положень Кримінального процесуального кодексу України.

Наголошено, що велике значення для правового регулювання кримінального процесуального забезпечення безпеки працівників митниці України при виконанні службово-професійних завдань мають закони України «Про державний захист працівників суду і правоохоронних органів» та «Про забезпечення безпеки осіб, які беруть участь у кримінальному судочинстві», якими передбачено систему заходів від перешкоджання виконанню покладених обов'язків і здійсненню наданих прав, а так само від посягань на життя, здоров'я, житло і майно зазначених осіб та їх близьких родичів у зв'язку зі службовою діяльністю. Керівники підрозділів повинні постійно: проводити інструктажі щодо заходів безпеки при проведенні спеціальних операцій; проводити відповідні заняття з метою підвищення навичок співробітників; проводити розбір екстремальних ситуацій, які вже виникли або можуть виникнути; моделювати можливі екстремальні ситуації; доводити до підлеглих відповідні накази та здійснювати контроль за виконанням відповідних розпоряджень і вказівок; впроваджувати у службову діяльність нові технічні розробки, зброю, спеціальні засоби тощо.

Вказано, що комплекс правових заходів передовсім процесуального характеру, повинен гарантувати співробітникам та їх близьким родичам їх правовий, фізичний, психологічний захист та захист немайнових прав і свобод у разі виникнення необхідності. Але багато проблем виникає під час реалізації заходів безпеки. Насамперед не відпрацьовано механізм реалізації цих заходів, швидкість та оперативність проведення відповідних заходів, відсутнє належне матеріально-технічне забезпечення їх реалізації (наприклад, необхідно швидко підготувати несправжні імітаційні засоби, а саме зміни прізвище, ім'я, по-батькові працівника тощо). Для більш ефективної реалізації заходів, передбачених цими законами, необхідно ввести до структури Служби безпеки України спеціальний підрозділ, на який буде покладено вирішення заходів безпеки працівників Державної прикордонної та Державної митної служби України.

Ключові слова: кримінальна процесуальна діяльність, негласні слідчі (розшукові) дії, кримінальні процесуальні засоби забезпечення безпеки, працівники митниці, підрозділи власної безпеки, Державна митна служби України.

Relevance of the study. The formation of a new socio-economic structure of Ukraine, the formation and transformation of state institutions are fraught with many problems. Objective complexity and subjective miscalculations in the course of large-scale reforms have determined the intensification of criminal processes and the transformation of criminal activity into a social practice, which acquires new systemic quality due to the active establishment of cor-

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rupt relationships and the penetration of power structures.

The legal status of customs officers has also changed dramatically. The activity on provocations, attempts of unlawful pressure on customs officers was intensified. According to statistics, 19 crimes were registered against customs officers in 2017, 25 crimes in 2018, and 27 crimes in 2019.

Recent publications review. The theoretical basis of the article was the work of domestic and foreign scientists in the field of theory of operative-search activity and counteracting organized crime, in particular: M. I. Anufriev, K. V. Antonov, O. M. Bandurka, V. I. Vasylynychuk, S. M. Husarov, O. M. Dzhuzha, E. O. Didorenko, O. F. Dolzhenkov, V. P. Zakharov, O. V. Kyrychenko, A. M. Kyslyy, I. P. Kozachenko, O. I. Kozachenko, O. E. Korystin, S. I. Minchenko, D. I. Nykyforchuk, V. A. Nekrasov, S. V. Slinko, S. V. Obshalov, V. L. Ortynskyy, M. A. Pogoretskyy, D. V. Pryymachenko, V. D. Pcholkin, V. S. Sapsay, V. V. Topchyy, V. H. Telychuk, O. V. Husainov, S. S. Chernyavsky, A. A. Yuhno, V. V. Shendryk, I. R. Shynkarenko and others.

Recognizing the importance of the achievements of these scientists, it is necessary to emphasize that the operative-search security of the customs employees is still relevant. It is possible that public discussion of these problems will increase the effectiveness of the operative-search practice of ensuring security not only of customs officers, but also of other law enforcement agencies of Ukraine in the context of global reform of Ukrainian legislation.

The article's objective is to clarify theoretically formulated and empirically proven provisions and recommendations on the operative-search security of customs officers and to propose ways of improving this activity taking into account the reform of the operative-search legislation and directly the provisions of the new Criminal Procedure Code of Ukraine.

Discussion. Defining the conceptual foundations of criminal procedural means of ensuring the security of customs officers of Ukraine requires coverage of theoretically formulated and empirically proven provisions and recommendations and can be formed in the following areas [1, pp. 179-183]:

The first direction «Theoretical and legal principles of security of customs officers» is covered by three blocks [2, p. 43; 3; 4, p. 27].

Block 1.1 «Scientific developments to ensure the safety of customs officers» examines the state of scientific development of issues of customs officers.

As a result of the analysis of scientific publications on the issue of ensuring the safety of law enforcement officers in general and customs officers in particular, the types of threats and possible ways to improve this activity are identified. The analysis of scientific achievements on ensuring the safety of law enforcement officers of Ukraine allows us to conclude that most problems of operational and investigative support are considered by scientists in general or it concerns only the system of measures provided by the Law of Ukraine «On State Protection of Court and Law Enforcement Officials» duties imposed on law enforcement officers and the exercise of the granted rights, as well as encroachments on the life, health, housing and property of these persons and their close relatives in connection with the official activities of these employees.

Block 1.2 «Legal regulation of security of customs officers».

In order for customs officers to successfully protect the rights and freedoms of citizens, they need to professionally protect themselves, and for this they need to know the relevant legislation, be physically and technically prepared, skillfully and honestly perform their duties, even if someone does not like it. – be assured that their conscientious work will be duly appreciated and that the honor, dignity, health and property of them personally and their loved ones will be safely protected.

There are external and internal levels of danger in the activities of customs officers. The first are related to the peculiarities of the external environment, and the second – with the nature, content, mode of operation. Solving the problem of legal protection involves finding and identifying significant factors that affect security and depend on employees.

An important condition for the legal protection of customs officers is their legal actions. A study of legal protection issues has shown that it is impossible to eliminate the undesirable consequences only by creating safe conditions, because customs officers often become the causes of violations of the law.

Block 1.3 «Guarantees of legal protection of customs officers».

Some guarantees of legal protection of customs officers remain undefined and undisclosed in essence. In this regard, the law should provide for the improvement of such measures

to ensure the personal safety of customs officers as: providing them and their relatives with personal protection, protection of their homes and property; providing them with temporary use of personal protective equipment, danger notifications, special means, firearms; measures to ensure the confidentiality of data on the object of protection; transfer to another job; issuance of new documents with changed personal data; relocation to another place of residence at the expense of the state. It is a question of revision of norms on criminal and administrative responsibility for counteraction to lawful activity of customs bodies and the further implementation of provisions of the Law of Ukraine «About state protection of employees of court and law enforcement agencies».

The second direction «Organizational and legal framework for ensuring the safety of customs officers» consists of three blocks and is devoted to the practical basis and organizational measures for the safety of customs officers [5; 6; 7, p. 30-35].

Block 2.1 «Characteristics of criminal offenses against customs officers».

Counteraction to criminal offenses against customs officers is impossible without knowledge of the special conditions and reasons that contribute to the commission of such crimes. The low protection of customs officers from crimes leads to their intimidation and the spread of violations of official discipline in the customs authorities of Ukraine. The general causes of this phenomenon include: low income and social protection of customs officers of Ukraine; significant overload of employees' own safety; the level of logistics does not correspond to today's realities; the customs personnel training system does not meet the requirements of today; staff turnover and, as a consequence, loss of corporate experience; ineffective crime prevention system by own security units; lack of effective public control over the activities of the customs authorities of Ukraine; difficult legal situation with the definition of the rights and responsibilities of customs officers; negative social background; closed and excessive corporate nature of the system of customs authorities of Ukraine.

Block 2.2 «Model of sustainable provision of criminal proceedings for crimes against customs officers».

Factors that reduce the effectiveness of operational and investigative support at all stages of criminal proceedings for crimes against customs officers: shortcomings in the regulation of this area of activity; low level of operational readiness of criminal police forces and means; inconsistency of the level of organization of covert investigative (search) actions with the requirements of the time; reforming the bodies of revenues and fees of Ukraine and other law enforcement agencies; insufficient level of professional training of operatives; lack of modern scientific and methodological support; lack of modern scientific developments on innovations in procedural activities.

Detection of investigated crimes should be understood as a defined system of organizational measures, investigative actions, forensic, operational and investigative and other investigative measures that ensure rapid and complete detection and consolidation of traces of a crime committed in non-obviousness and identification of the perpetrator.

Block 2.3 «Use of confidential cooperation to ensure the safety of customs officers».

The prevailing opinion of scholars and practitioners is that the advantage of this form of operational and investigative support is that the information obtained can be immediately involved in the process of proving the implementation of appropriate covert investigative (investigative) actions or court decisions and thus gain the force of judicial evidence. Using this advantage, operational units of all tools of operational and investigative activities most often use the development of detained or arrested persons suspected of committing the investigated crimes.

Despite the existing shortcomings and miscalculations in the practice of using the incriminating method, researchers always appreciate its importance in combating crime. The incriminating search is a purposeful action of confidants to timely identify and obtain promptly relevant information about the facts that are the bearers of illegal acts and behavior of the criminal environment, or when they commit these crimes, further action to conceal them and counter law enforcement agencies.

The third direction is «Organizational and tactical principles and directions of improving the criminal procedural security of customs officers» [8, pp. 59-62; 9, pp. 31-33; 10, pp. 27-30].

Block 3.1 «Organization of operational and investigative support of pre-trial investigation in criminal proceedings for crimes against customs officers».

Adherence to the conspiracy of operational units, their technical equipment and experi-

ence gained in conducting all possible covert investigative (investigative) actions to expose the criminal activities of criminal structures and their participants, which allows to obtain such primary information that can effectively supplement or clarify information on investigated crimes.

In combination with other means and methods, especially proactive search, covert surveillance allows to obtain data on the behavior and actions of persons undergoing criminal proceedings. It is important to stop or neutralize the counteraction to the criminal environment during the operational and investigative support of further investigation of crimes of this category in full.

Block 3.2 «Features of operational and investigative support of criminal proceedings for crimes against customs officers».

Ensuring the stage of trial solves the following tasks: 1) continuing a set of operational and investigative measures and covert investigative (search) actions against the accused, defendants in order to identify and document their opposition to a fair trial; 2) detection and documentation of illegal actions of officials and other participants in the trial, who showed intent or committed acts in violation of the principle of inevitability of liability of the defendants for what was done; 3) detection and documentation of crimes committed by the accused or their criminal connections, which remained undisclosed in the criminal process or unreasonably excluded from it due to lack of proof of guilt.

Block 3.3 «The current state of customs officials to prevent crimes against them».

In order to protect the life, health, property, etc. of customs officers, it is necessary to take legal measures, in particular legal protection, which should include protection of the professional activities of the employee and his family members. It can be divided into two types: the first – permanent – is the provision of legal guarantees by the Constitution of Ukraine and the laws of Ukraine; the second – situational – is used in case of a certain situation. The second type involves the study of adverse factors and dangers in the activities of customs officers, identifying opportunities for society, the state, certain institutions to minimize them, compensation and correction of their impact on the development of the employee's personality in terms of legal protection.

Conclusions. It is proved that a set of legal measures, primarily of a procedural nature, should guarantee employees and their close relatives their legal, physical, psychological protection and protection of non-property rights and freedoms in case of need.

Heads of units must constantly: conduct briefings on security measures during special operations; to conduct appropriate classes in order to improve the skills of employees; to analyze extreme situations that have already arisen or may arise; model possible extreme situations, bring relevant orders to subordinates and monitor the implementation of relevant orders and instructions; to introduce new technical developments, weapons, special means into official activity; pay attention to the formation of a positive image of customs authorities through the media; constantly improve leadership style; to promote the creation of a favorable socio-psychological atmosphere in the teams of customs authorities; to form ways of realization of administrative activity by heads (complexity, planning, control, management, obligatory feedback, efficiency, hierarchy, staffing, responsibility, stimulation, adequacy, unambiguity, single leadership, interaction, coordination, timeliness, statistics).

But many problems arise during the implementation of security measures. First of all, the mechanism for implementing these measures, the speed and efficiency of the relevant measures, there is no proper logistics of their implementation (for example, it is necessary to quickly make an operation to change the appearance of the employee, etc.). For more effective implementation of the measures provided by these laws, it is necessary to introduce a special unit into the structure of the State Customs Service of Ukraine, which will be responsible for security measures or which can be introduced into the Department of Internal Security of employees of the State Customs Service of Ukraine.

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Abstract

The article examines the organizational features of determining the conceptual foundations of criminal procedural means of ensuring the safety of customs officers of Ukraine. Emphasis is placed on the fact that highly appreciating the importance of the achievements of scientists, the formation of a system of criminal procedural means of ensuring the safety of customs officers still remains relevant. It is possible that a public discussion of these issues will increase the effectiveness of criminal procedural practices to ensure the security not only of customs officers but also of other law enforcement agencies of Ukraine in the context of global reform of Ukrainian legislation.

Keywords: *criminal procedural activity, covert investigative (search) actions, criminal procedural means of security, customs officers, own security units, the State Customs Service of Ukraine.*