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Application problems of legislation on administrative offenses in the field of customs

The work reveals the concept and features of the qualification of administrative offenses; the choice of administrative penalties applied to persons guilty of their commission is justified; The types of administrative responsibility for committing administrative offenses encroaching on the normal activities of customs authorities are identified. The authors revealed signs of the composition of violations of customs rules. The possibility of using some of them as classification criteria to determine the basis of administrative responsibility made it possible to identify the features of administrative tort, and at the same time, to form a specific type of classification of offenses. The authors of the article found that the specifics of administrative-legal coercion in case of violation of customs rules are determined by its following main features: 1) application mainly by customs authorities and their officials, as well as judges in the framework of relevant law enforcement relations; 2) the use of organizational and technical means to ensure its use; 3) application in administrative and jurisdictional activities of customs authorities, which goes beyond the scope of proceedings on administrative offenses; 4) the application of coercive measures mainly of a property nature; 5) close relationship with the forms of customs control. The study proposes a solution to legal and organizational problems arising from the application of administrative law enforcement in violation of customs regulations, taking into account the specifics of customs and administrative legislation.

Keywords: law, legislation, tort, administrative offense, violation of customs rules, qualification, liability.

Introduction

The customs sphere is an area of monopoly state specialized activity, which structurally includes customs policy and customs (regulation). The legal regulation of the customs sphere is carried out on the basis of the administrative, customs, criminal, tax legislation of the Republic of Kazakhstan. When moving goods across the customs border of the Customs Union in violation of customs regulations, customs and tariff regulation, prohibitions and restrictions are also applied in accordance with the Code of the Republic of Kazakhstan on Customs in the Republic of Kazakhstan dated June 30, 2010 № 296-IV. Violations of customs regulations are combined in Chapter 29 of the Code of the Republic of Kazakhstan on Administrative Offenses of July 5, 2014 № 235-V Administrative Offenses in the field of Customs. In the theory and practice of customs, the problems of qualification of offenses in this area are becoming more and more relevant due to the fact that, in general, the level of effectiveness of the mechanism of administrative responsibility in the customs sphere depends on the correctness and accuracy of qualification of offenses.

The purpose of the work is, firstly, to study the state of legal regulation of administrative responsibility for violations of customs rules; secondly, in the legal assessment of illegal actions (inaction) of participants of foreign economic activity in the process of their foreign trade activities; thirdly, in the analysis of the legal foundations of administrative responsibility; fourthly, in identifying the features and effectiveness of the application of state coercive measures in the field of customs.

Given that the legal consolidation of administrative responsibility in its new sense began relatively recently, and, as the law enforcement practice of customs authorities shows, many relevant, but at the same time controversial aspects of the legal regulation of administrative responsibility, in particular, the legal qualification of violation of customs rules in their modern interpretation leads to an ambiguous interpretation of some articles of the Code of the Republic of Kazakhstan on administrative offenses. Therefore, it is necessary to improve the legal regulation of individual administrative-tort rules, including new approaches to the methodology of legal qualification. In this regard, this scientific work is to some extent intended to fill the existing methodological gap in the study of the administrative tort in question in the customs field.

Materials and methods

The methodological base of the research is based on the fundamental categories of dialectics and, above all, the dialectical method of cognition, which makes it possible to analyze violations of customs rules as a phenomenon of social reality. In this case, private scientific and special research methods are widely used, such as: formal-logical, comparative-legal, system-structural, statistical, legal modeling.

Results

Modern studies on the qualification of administrative offenses contain clarification of the concept and features of administrative offenses in the field of customs. Considering the problem of defining the definition of an administrative offense, S.A. Mustafin proposes to understand an administrative offense in the field of customs affairs as «illegal, culpably committed by individuals or legal entities with signs of General or special subjects, an act, that is, an action or inaction aimed at the established procedure for moving goods, vehicles and other items across the customs border of the Russian Federation (and the Customs Union), including the procedure for applying customs regimes (customs procedures), the procedure for their customs clearance and control (performing customs operations), as well as the procedure for collecting and paying customs payments, providing customs benefits and using them, for which the code of the Russian Federation on administrative offences provides for liability» [1; 46]. Given the blanket approach to code of administrative offenses, Mustafin S. A. considers it appropriate «for the proper qualification of administrative offences in the field of customs and differentiation of administrative responsibility of the persons who committed them, the use of having a practical importance of clarifying the concepts of «administrative offences in customs affairs», «the object of administrative violations in the field of customs affairs», «total subject of violation of customs regulations», «special subject of violation of customs regulations» [1; 45, 46].

The commission of an administrative offense is the actual basis of administrative responsibility, the application of administrative penalties to a person. In the context of this study, we are talking about a complex of offenses in the field of customs. The norms and provisions of the articles of Chapter 29 of the Code of the Republic of Kazakhstan on administrative offenses protect a fairly extensive list of legal relations. In the system of regulatory legal acts regulating public relations in the field of customs, the Agreement on the Specifics of Criminal and Administrative Responsibility for Violations of the Customs Legislation of the Customs Union and the Member States of the Customs is important for the correct qualification of administrative offenses and the imposition of punishments for this. The union adopted by the decision of the Interstate Council of the Eurasian Economic Community (the Supreme body of the Customs Union) at the level of AB States on July 5, 2010 № 50 [2]. In accordance with articles 521, 549 of the Code of Administrative Offenses of the Republic of Kazakhstan, the complex of customs offenses includes administrative offenses, the object of which is the legal relationship related to the implementation of customs control: violation of the customs control zone, hiding from customs control of goods moving across the customs border of the Customs Union. Articles 522, 523, 536–539 of the Administrative Code of the Republic of Kazakhstan regulate issues related to violations of the procedure for carrying out activities in the field of customs, the procedure for carrying out activities by a customs carrier, the procedure for carrying out activities in the field of customs by an authorized economic operator; violation of the deadlines for submitting a customs declaration, documents and information; failure to submit reports to the state revenue authority of the Republic of Kazakhstan or false reports and non-compliance with the accounting procedure.

Offenses, the subject of violation of which are goods and vehicles, make up the whole frame of Chapter 29 of the special part of the Code of Administrative Offenses of the Republic of Kazakhstan. This chapter of the code also contains regulation of articles on actions aimed at returning customs payments and taxes paid without due grounds, receiving payments and other compensations, or not returning them; violation of the deadlines for payment of customs duties, taxes, special, anti-dumping, countervailing duties; on non-fulfillment of the requirement of the state revenue body of the Republic of Kazakhstan to pay the due amounts of customs payments, taxes and penalties on time; on non-execution by banks and organizations engaged in certain types of banking operations of decisions of state revenue bodies of the Republic of Kazakhstan; violation of the deadlines for payment of customs payments and taxes [3].

Discussion

The basis for the application of administrative and legal coercion measures in violation of customs regulations is the commission by a person of an objectively dangerous act that infringes on the established

procedure for moving goods across the customs border of the Republic of Kazakhstan, customs control and customs operations. This act should be understood as an unlawful, socially dangerous act (crime or administrative offense) that violates the normal activities of customs authorities to regulate foreign economic activity.

In administrative law, the qualification of offenses refers to the establishment and legal fixing of an exact correspondence between the signs of the committed act and the signs of the specific composition of the administrative offense provided for in the corresponding article of the Code of Administrative Offenses [4]. The qualification of offenses is the responsibility of the administrative jurisdictional authorities.

The requirements for the completeness of qualification of administrative offenses at each stage of the administrative process are different, since the real possibilities of providing an accurate and complete qualification largely depend on the volume and reliability of information about the circumstances of the misconduct.

At the stage of initiating a case of an administrative offense and the initial stage of an administrative investigation, the amount of information is sometimes sufficient only to conclude that the act was unlawful. The task of the initial stage of qualification is often to determine what type of offenses the assessed case belongs to: a) an administrative offense; b) a crime; c) disciplinary misconduct; d) civil tort.

In the process of administrative investigation, the question of which norm of the legislation on administrative offenses corresponds to the act in question is resolved. The resulting conclusion, as a rule, is reflected in the protocol on an administrative offense.

Qualification at the stage of initiating proceedings and administrative investigations is preliminary. The final legal assessment of the deed is given by the law enforcer at the stage of consideration of the case of an administrative offense. The peculiarity of the evidence in cases of administrative offenses in the field of customs is characterized by a large volume of workflow associated with the specifics of the activities of the customs authorities during the administrative investigation, and lies in the variety of different types of documents used as a source of evidence [5; 45].

Examining all the circumstances of the case, the body (official) agrees with the preliminary qualification or comes to the conclusion about a different qualification of the act in question, which is reflected in the decision to terminate the proceedings or to impose an administrative penalty (such a decision is made if the reviewer concludes the absence of an administrative offense or the need to refer the case to the investigation or inquiry bodies if any signs of a crime are detected in the act; production of an administrative case is also possible in other cases provided for by the Code of Administrative Offenses of the Republic of Kazakhstan). In some cases, this qualification is not always final.

As a general rule, a decision in an administrative case may be appealed and challenged. When considering the complaint or protest by the authorized body (official), the legality and validity of the decision are checked, which also involves checking the accuracy of the given assessment (qualification) of the act.

The qualification of administrative offenses is the most important stage in the application of the norms of legislation on administrative offenses. Proper qualification is a necessary condition for the legality of all law enforcement activities. If a mistake is found in the qualification of the act, the body (official) considering the complaint or protest shall cancel the decision, change the qualification or direct the case to a new investigation.

As practice shows, errors in qualification give rise to a number of negative consequences. For example, an incorrect recognition at the stage of initiating a case or an administrative investigation of an act as an administrative offense leads to the unlawful delivery, detention, search, application of other administrative procedural measures to a person whose behavior was lawful. Incorrect determination of the type of a committed administrative offense may also lead to unreasonable application of interventions, such as detention. Moreover, the legislator, depending on the type of the committed administrative offense, determines the terms of administrative detention. On the other hand, an administrative offense committed by a person may, contrary to the requirement of the law, not entail appropriate legal response measures as a result of erroneous preliminary qualification of the act.

The qualification process of administrative offenses is a comparison in order to establish the identity of the signs of the committed act and the elements of the administrative offense provided for by the legal norm. Identification of the signs of an act is carried out by collecting and evaluating evidence that is beyond the scope of qualifications and contain a significant amount of actual circumstances of the offense, such as the place, time, method, means and circumstances of the offense, the identity of the offender, the victim, etc. To qualify an administrative offense from the many signs of actually committed acts, it is necessary to select the

most significant. These primarily include common features inherent in any type of administrative offense: public danger and the wrongfulness of an act.

The conclusion about social danger and wrongfulness of an act is based on the knowledge of the person who is carrying out the qualification, the current legislation, life and professional experience, as well as legal awareness. The study of common signs of an administrative offense is of great importance for qualification, since it depends on it whether it will be stopped at this stage or continued in the form of further investigation of the signs of the specific offense.

After the recognition of the act as socially dangerous and unlawful, the second, most difficult stage of qualification follows. The task of the second stage is to resolve the question of which administrative law provides for liability for such an act. Here it is necessary to clarify and compare the so-called species characteristics, i.e., features characteristic of this particular type of administrative offense. Then from among them a group of adjacent compounds is identified, and from the number of adjacent compounds one is selected whose signs fully correspond to the signs of a qualified act. So, the main content of the process of qualification of administrative offenses is a comparison of the signs of the committed act with the signs of the administrative offense.

The qualification of administrative offenses in the field of customs is the legal basis for the administrative responsibility of a person who has committed a violation of customs rules [6; 771]. Based on the qualification of the offense, procedural coercion measures are applied to the delinquent. The qualification of the offense becomes the basis for conducting proceedings on administrative offenses in the field of customs. Based on the qualification of the offense, appropriate types of penalties for violation of customs rules are assigned.

In accordance with the provisions of the Code of the Republic of Kazakhstan on Administrative Offenses of July 5, 2014 № 235-V, violation of customs rules is regulated in Chapter 29 Administrative Offenses in the Field of Customs. An administrative offense is recognized as unlawful, guilty (intentional or reckless) action or inaction of an individual or illegal action or inaction of a legal entity for which the administrative Code of Administrative Offenses is provided for. The doctrinal and legislative definition of an administrative offense «points to legal and social signs that make it possible to distinguish between an unlawful act represented as an administrative offense from other acts of an unlawful nature» [7; 94].

Administrative liability for offenses under the articles of the special Part of the Code of Administrative Offenses occurs if these offenses by their nature do not entail criminal liability in accordance with the legislation. The norms and provisions of the articles of Chapter 29 of the Code of the Republic of Kazakhstan on administrative offenses protect a fairly extensive list of legal relations. In the context of this study, we are talking about a complex of offenses in the field of customs. In the system of normative legal acts regulating public relations in the field of customs, an agreement on the specifics of criminal and administrative liability for violations of the customs legislation of the Customs Union and Member States is also important for the correct qualification of administrative offenses and the imposition of penalties for their commission in this area of the Customs Union, adopted by the decision of the Interstate Council of the Eurasian Economic Community (the Supreme body of the Customs Union) at the level of regional States on July 5, 2010 № 50 [2].

Offenses, the subject of violation of which are goods and vehicles, make up the whole frame of Chapter 29 of the special part of the Code of Administrative Offenses of the Republic of Kazakhstan [3].

The complex of typical properties of customs offenses, as a rule, includes: object of encroachment; area of commission — the scope of customs regulation; commission of customs tort, expressed in violation of customs legislation. Violation of customs regulations entails the application of administrative responsibility measures.

In the study of the problem of legal liability for violation of customs rules A.I. Tutnov traced the unity of the two positions. First of all, the system of punishments for violation of prohibitions and restrictions in the field of customs regulation with the inevitability of the fact that coercive measures are applied to the delinquency is taken into account. In addition, the content of a specific customs legal relationship includes the right of the authorized body in accordance with the law and in accordance with relevant procedures to qualify the act in order to apply sanctions to the offender [8; 9]. Administrative punishment for violation of customs legislation is a measure of responsibility for committing a customs violation established by legislation on administrative offenses. The application of an administrative penalty for violation of customs rules as a measure of administrative responsibility is manifested in the following functions of administrative responsibility: repressive (punitive), preventive (general and private prevention), educational (as a person who com-

mitted a customs offense, and an indefinite number of persons), law enforcement, compensation (recovery), alarm (information).

To determine the measure of administrative punishment, the qualification of a specific act as an administrative offense is of great importance. As a rule, first of all, one must take into account the mandatory presence of all elements of an administrative offense. The legal assessment of the act committed is summarized in the conclusion that «the act contains evidence of an administrative offense under one or another rule of administrative law» [9; 36]. As a rule, the qualification of an administrative offense begins with the establishment and clarification of the specifics of an object as the first element of an administrative offense. According to the degree of generalization, they distinguish between the common, clan and immediate objects of administrative offenses. When analyzing administrative offenses in the field of customs, first of all, we will determine the main vectors of the very concept of customs, defined by the legislator: in accordance with the provisions of Article 1 of the Code of the Republic of Kazakhstan on Customs in the Republic of Kazakhstan, «regulation of relations in the Republic of Kazakhstan is recognized as a customs matter (regulation) in the Republic of Kazakhstan the customs territory of the Customs Union (territory of the Republic of Kazakhstan), in which the Republic of Kazakhstan has exclusive jurisdiction associated with the movement the distribution of goods across the customs border of the Customs Union, their transportation across the single customs territory of the Customs Union under customs control, temporary storage, customs declaration, release and use in accordance with customs procedures, customs control, payment of customs payments and taxes, as well as customs relations customs authorities and persons implementing the rights to own, use and dispose of these goods. Customs regulation in the Republic of Kazakhstan is carried out in accordance with the customs legislation of the Customs Union, and to the extent not regulated by such legislation, the customs legislation of the Republic of Kazakhstan. The scope of customs affairs is the area of state administration in the implementation of customs matters [10; 18].

A common object of administrative violation in the field of customs affairs is the totality of public relations, the subjects of which are: the state represented by customs authorities; legal entities: individuals. This set consists of public relations protected by the norms of Chapter 29 of the Administrative Code of the Republic of Kazakhstan.

The generic object of administrative violation relates to the general object as a part, represents the totality of specific social relations between the state and an unlimited circle of legal entities and individuals. These relations are related to the movement of goods across the customs border of the Customs Union, their transportation through the single customs territory of the Customs Union under customs control, temporary storage, customs declaration, release and use in accordance with customs procedures, customs control, payment of customs duties and taxes, and also power relations between customs authorities and persons exercising the rights of possession, use and disposal of these goods. The generic object of an administrative offense is essentially the main criterion for dividing the special part of the Code of Administrative Offenses into chapters, the criterion for structuring the code. The generic object of administrative offenses, combined in chapter 29 of the Administrative Code of the Republic of Kazakhstan, are homogeneous public relations in the field of customs activity. According to the generic object, customs violations can be classified into the following categories: a) encroaching on the procedure for carrying out activities in the field of customs (Article 522), b) directed against the procedure for customs clearance of goods and vehicles moving across the customs border (Articles 523, 551, 537, 538, 534, 539, 538); c) directed against the established procedure for customs duties and taxes, for violation of the terms for their payment (Articles 554, 555).

The direct object of an administrative offense is an even more specific type of social relations, which should be considered as the main criterion for distinguishing one administrative offense from another. Based on the principles of classification of administrative offenses in the field of customs and taking into account the immediate object of violation as the basis for classification, it is possible to divide customs tort into the following groups: a) violation of the procedure for customs control (Articles 521, 534); b) violation of order and reporting (Article 539); violation of the order of the main customs clearance (Articles 551, 534); violation of the procedure for moving goods and vehicles across the customs border (Articles 521, 545), etc.

The specifics of the qualification of an administrative offense is also manifested in the fact that the establishment of the object of the offense is accompanied by a parallel process of clarifying its subject.

The objective side of administrative offenses in the field of customs affairs is manifested as an objective manifestation of a wrongful act in action or inaction. In this context, an action is considered as a direct violation of the prohibition, and inaction is the imperfection of the proper action, failure to fulfill the legal obligation to act in a certain, duly, entailing violation of legal requirements. In the theory of offense, its objective

side is defined as the external side of unlawful behavior, which results in harmful consequences. The properties and signs inherent in administrative offenses in the field of customs are considered in the course of their qualification, taking into account all the circumstances associated with the commission of a specific illegal act: method, time, place. Examples of actions as a form of the objective side are signs such as the movement of goods, vehicles, departure of a vehicle without permission of the state revenue body of the Republic of Kazakhstan, etc. To illustrate the objective side in the form of inaction, examples of violation of such customs rules as failure to take measures in the event of an accident or force majeure, failure to submit goods, vehicles and documents to the state revenue authority of the Republic of Kazakhstan, unfulfilled ie banks and institutions performing certain types of operations bankovskih, decisions of state revenues of the Republic of Kazakhstan.

Important for the qualification of administrative offenses in the field of customs is the definition of the subject of their commission. The modern doctrine of administrative responsibility distinguishes between general and special subjects. It is proved that the common subject is any tortable person who is held liable; a special subject — an individual or legal entity with a special status, or endowed with certain features necessary to bring him to justice for a committed offense [11; 228].

It should be borne in mind that the subject of a certain part of the offenses in the field of customs affairs is not specified: for example, the subjects of such an offense as non-declaration or inaccurate customs declaration of goods, cash, traveler's checks or documentary securities may be declarants, customs brokers, legal entities and officials.

In the implementation of the qualification of administrative offenses in the field of customs, specificity is manifested due to the complexity of the blanket nature of the rules. To determine the content of blanket norms, it is necessary to clarify and highlight their special qualifying attributes, firstly, the type of objects of an administrative offense — general, generic, direct; secondly, the subject; thirdly, the objective side; fourthly, the subject — general and special; fifth, the subjective side. For example, the fact of non-declaring goods is qualified in accordance with the provisions of Article 551 of the Code of Administrative Offenses of the Republic of Kazakhstan, which provides for liability for non-declaration or inaccurate customs declaration of goods, cash, travelers checks or documentary securities. In this case, a direct method of exposing an administrative-tort legal norm was used, and the content of the disposition is sufficient for qualification. More complicated is the qualification of an administrative offense related to the application or non-application of prohibitions and restrictions established by the customs legislation on the import of goods into the customs territory, or export from the customs territory. A person who qualifies an administrative offense primarily refers to Article 545 of the Code of Administrative Offenses of the Republic of Kazakhstan, which contains the rules and regulations on administrative responsibility for non-compliance with the prohibitions and restrictions established by the customs legislation of the Customs Union and (or) the Republic of Kazakhstan on the import of goods into the customs territory, or export from the customs territory. In accordance with Article 545 of the Code of Administrative Offenses of the Republic of Kazakhstan, the movement through the customs border of the Customs Union of goods and vehicles with non-compliance with the prohibitions and restrictions established by the customs legislation of the Customs Union and (or) of the Republic of Kazakhstan entails a fine on individuals of fifteen, on small businesses or commercial organizations in the amount of twenty, for medium-sized enterprises in the amount of thirty, for large businesses in the amount of fifty raschetnyh monthly indicators, with confiscation of goods and vehicles, which are direct objects of an administrative offense, or without it. In this case, the blanket method of presentation of the administrative-tort norm is used; contains reference to the customs legislation and the legislation on the regulation of trade activities. When qualifying an administrative offense, there is a need to appeal to the norms of the general part of the Code of Administrative Offenses of the Republic of Kazakhstan to clarify issues related to the definition of the concept and signs of an administrative offense, the procedure for determining the guilt of a legal entity, the form of guilt, the age at which administrative responsibility is reached, and the conditions for holding general accountable and special subjects, concepts, extreme necessity and insanity. The literature substantiates the relevance of applying not only the norms of criminal and customs law, but also the use of «the preventive capabilities of other branches of law, in particular, administrative law» [1; 40].

Chapter 29 of the Code of Administrative Offenses of the Republic of Kazakhstan provides for 38 administrative offenses in the field of customs (violation of customs rules), a certain part of which borders on crimes. For example, the administrative offenses referred to in Articles 548 and 549 of the Code of Administrative Offenses of the Republic of Kazakhstan — the movement of goods and vehicles across the customs border of the Customs Union in addition to customs control and concealment from customs control of goods

moved or moved across the customs border of the Customs Union, including using hiding places or other methods that make it difficult to find goods, or to make certain goods look like others, border on a criminal offense — smuggling. The level of qualification of administrative offenses in the field of customs affairs is directly dependent on the clarity and validity of the classification of offenses. Taking as the basis of the classification the degree of public danger of the offense, administrative offenses in the field of customs can be divided into two groups: 1) not posing a great danger to state interests — insignificant, 2) gross violations of customs law that encroach on the basics of customs and entail the infliction of substantial damage to the state economy.

The subject of administrative offenses is the law defines goods and vehicles, the act is expressed in the movement of goods and vehicles across the customs border of the Customs Union, in addition to customs control and concealment from customs control of goods moved or moved across the customs border of the Customs Union. The subjects of the offense are individuals and legal entities, officials. The subjective side is characterized by guilt in the form of intent or negligence. The above elements in the complex determines the presence of an administrative offense.

Qualification of offenses is accompanied by a solution to the problem of circumstances mitigating administrative responsibility, excluding administrative responsibility, aggravating administrative responsibility — in accordance with the Code of Administrative Offenses of the Republic of Kazakhstan.

Conclusion

Summarizing the above, we note that the problem of the qualification of administrative offenses in the field of customs is actualized due to their rather high level, as well as the development of administrative, customs and tax laws in terms of more detailed regulation of violations of customs rules. The doctrinal understanding and legislative definition of an administrative offense logically applies to customs violations. The considered complex of administrative offenses in the field of customs is regulated by the norms of the administrative, customs, criminal and tax laws of the Republic of Kazakhstan, other regulatory legal acts. The qualification of violations of customs rules as a process of establishing adequate compliance of the signs of customs tort with the offense provided for by customs legislation is carried out sequentially, in stages. First of all, the authorities and officials of the customs jurisdiction establish the actual circumstances of the offense. At the second stage, the ratio of the customs law norm with the circumstances of the offense clarified at the first stage of the qualification is clarified. Very important is the third stage of this process, when the evidence is compared with the applicable legal norm in the context of all structural elements of the offense. The final stage in the qualification of administrative offenses in the customs sphere is a legal assessment of the actual circumstances of the case.

Modern law enforcement practice needs to further develop the scientific foundations for the qualification of administrative offenses in the field of customs. For an unmistakable qualification of administrative offenses in the field of customs, a detailed analysis of the composition of the offenses is necessary. Wrong qualification of administrative offenses in the field of customs leads to an inadequate tort of the application of measures of administrative responsibility, violation of the principle of justice. This situation leads to the leveling of the application of the punishment, distortion of the meaning and significance of administrative responsibility. The problem is exacerbated by the imperfection of the current legal and regulatory framework governing the area of customs legal relations.

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Кеден ісі саласындағы әкімшілік құқықбұзушылық туралы заңнама нормаларын қолдану мәселелері

Мақалада әкімшілік құқықбұзушылықтарды саралаудың түсінігі мен ерекшеліктері ашылған; олардың жасалуына кінәлі адамдарға қолданылатын әкімшілік жазалардың таңдауы негізделген. Кеден органдарының қалыпты қызметіне қол сұғатын әкімшілік құқықбұзушылық жасағаны үшін әкімшілік жауапкершілік түрлері анықталған. Авторлар кеден ережелерін бұзу белгілерін анықтаған. Әкімшілік жауапкершіліктің негізін анықтау үшін олардың кейбіреуін жіктеу критерийлері ретінде пайдалану мүмкіндігі әкімшілік жауапкершілікті қолданудың ерекшеліктерін анықтауға, сонымен бірге құқықбұзушылықтарды жіктеудің нақты түрін құруға мүмкіндік берді. Мақала авторлары кеден ережелерін бұзған кезде әкімшілік-құқықтық мәжбүрлеудің ерекшелігі оның келесі негізгі белгілерімен анықталады деп атап көрсетеді: 1) негізінен кеден органдары мен олардың лауазымды тұлғалары, сондай-ақ судьялардың тиісті құқық қорғау қатынастарында қолдануы; 2) оны пайдалануды қамтамасыз ету үшін ұйымдық-техникалық құралдарды пайдалану; 3) әкімшілік-құқықбұзушылық туралы іс жүргізу шеңберінен тыс болатын кеден органдарының әкімшілік-юрисдикциялық қызметінде қолдану; 4) негізінен мүліктік сипаттағы мәжбүрлеу шараларын қолдану; 5) кедендік бақылау нысандарымен тығыз байланысы. Зерттеуде кедендік және әкімшілік заңнаманың ерекшеліктерін ескере отырып, кеден ережелерін бұзу кезінде әкімшілік құқықтық мәжбүрлеуден туындайтын құқықтық және ұйымдастырушылық мәселелерді шешу ұсынылған.

Кілт сөздер: заң, заңнама, құқық бұзушылық, әкімшілік құқықбұзушылық, кеден ережелерін бұзу, біліктілік, жауапкершілік.

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Проблемы применения норм законодательства об административных правонарушениях в сфере таможенного дела

В статье раскрыты понятие и особенности квалификации административных правонарушений; обоснован выбор административных наказаний, применяемых к лицам, виновным в их совершении; определены виды административной ответственности за совершение административных правонарушений, посягающих на нормальную деятельность таможенных органов. Авторами выявлены признаки состава нарушений таможенных правил. Использование некоторых из них в качестве классификационных критериев для определения основания административной ответственности позволило выявить особенности административных деликтов и, вместе с тем, сформировать определенную видовую классификацию правонарушений. Авторами статьи установлено, что специфику административно-правового принуждения при нарушении таможенных правил определяют следующие его основные черты: 1) применение преимущественно таможенными органами и их должностными лицами, а также судьями в рамках соответствующих правоохранительных правоотношений; 2) использование организационно-технических средств, обеспечивающих его применение; 3) применение в административно-юрисдикционной деятельности таможенных органов, выходящей за рамки производства по делам об административных правонарушениях; 4) использование принудительных мер в основном имущественного характера; 5) тесная связь с формами таможенного контроля. В исследовании предложено решение правовых и организационных проблем, возникающих при применении административно-правового принуждения при нарушении таможенных правил с учетом специфики таможенного и административного законодательства.

Ключевые слова: право, законодательство, деликт, административное правонарушение, нарушение таможенных правил, квалификация, ответственность.

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