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**SOCIAL AND LEGAL BASIS
FOR CORRUPTION INFRINGEMENT PREVENTION
IN THE CUSTOMS SERVICE OF UKRAINE**

У поданій науковій статті виявлено та досліджено основні соціально-правові проблеми профілактики корупційних правопорушень у митній службі України. Внесено пропозиції щодо вдосконалення митного законодавства в частині соціального захисту працівників митної служби.

В представленной научной статье выявлены и исследованы основные социально-правовые проблемы профилактики коррупционных правонарушений в таможенной службе Украины. Внесены предложения по совершенствованию таможенного законодательства в части социальной защиты работников таможенной службы.

In the presented scientific article the basic social and legal problems of the corruption offenses prevention in the Customs Service of Ukraine have been identified and investigated. The propositions of legislation perfection in the area of Customs Service workers' social protection have been made.

Key words. Background prevention of corruption infringement, the imperfection of social protection norms, material and housing support to the customs officials, the problem of recruitment in the Customs Service.

Introduction. The realization tasks of the Customs Service of Ukraine depends on the quality of its personnel integration, the proper discharge of their duties. Important foundation of effective counteraction and corruption infringement prevention in the Customs Service is fixed in legislative and social guarantees and workers legal protection. However, their real nature, provided with the appropriate mechanism for implementation makes it possible to have stable foundation for corruption infringement prevention.

Problem. The purpose of this article is to identify and study major social and legal problems of corruption infringement prevention at the Customs, to make proposals how to improve the Customs legislation about social protection of the Customs Service workers.

Results. Social protection of Ukrainian Customs Service workers is a system of social guarantees to ensure satisfaction of material and spiritual needs and compensate the limitations imposed by law for this category of people. According to the project of the State Customs Service of Ukraine social development in 2006–2010, the main tasks of the State in this direction are to establish an effective and efficient mechanism for protecting the rights and freedoms of the Customs Service workers and their families, to improve the legal framework on these aspects and to provide the consistent and gradual entry of the Customs Service into the European community. The program is developed in accordance with the Constitution of Ukraine [1], laws of Ukraine, the thesis of the Address of the Ukrainian President “European choice. Strategy of economic and social development of Ukraine for 2002–2011 years” [2], Civil Service Development Program for 2005–2010 [3].

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Article (hereinafter – Art) 46 of the Constitution of Ukraine [1] establishes the right of social protection for all citizens. According to Part 1 of Art. 427 of the Customs Code of Ukraine of 11.07.2002 (hereinafter – CC of Ukraine 2002) [4] The state guarantees the officials of the Customs Service of Ukraine, social protection and material and housing security. It can be argued that the State performs these obligations incompletely. The Cabinet of Ministers of Ukraine of 26.05.2004, № 678 [5] fully implemented only the provisions of Art. 427, 431 CC of Ukraine 2002, and provides additional compensation to employees of customs authorities for the damage caused during the performing of their duties or in the cases when it is connected with this performance.

First of all the problems arise with the realization of the provisions of Art. 428 and 429 CC of Ukraine 2002 [4]. On the one hand, for the realization of Art. 428 CC of Ukraine 2002, the Cabinet of Ministers of Ukraine adopted a Resolution of 31.05.2006, № 767 [6], which clearly regulates the question of the Customs Service workers payment, and the Resolution of 06.02.2008, № 34 [9] which raised salaries of executives, professionals and employees up to 45 percent. On the other – the Law of Ukraine from 28.12.2007 “About State Budget of Ukraine 2008 and The Amendments of Certain Legislative Acts of Ukraine” [7] the action of Part 2 Art. 428 CC of Ukraine was put out of operation. According to the decision of Constitutional Court of Ukraine from 22.05.2008 № 10-рп/2008 [8] this change was recognized to be unconstitutional.

The most “original” decision of the Supreme Council of Ukraine was the exemption under the law number 107-VI of 28.12.2007 [8], from CC of Ukraine 2002 the Art. 429 “Housing provision of the Ukrainian Customs

Service workers". The decision of the Constitutional Court of Ukraine from 22.05.2008 № 10-rp/2008 [9] recognized this change unconstitutional as well.

Logical question arises: what standards were excluded from the Code, and why?

Part 1 Art. 429 CC of Ukraine 2002 indicates that officials of the Customs Service of Ukraine, who need to improve housing conditions, are entitled to the priority for housing. The officials of The Customs Service of Ukraine retain this right after retirement if they have the experience of work in The Customs Service of Ukraine more than 20 years. Part 3 of that article says that in the case of the Customs Service worker death connecting with the execution of his duties the right to acquire living space under the same conditions and grounds which took place at the time of the officer's death retains for the family.

According to the preamble of the Law of Ukraine "About Social Housing Fund" [10] this law determines legal, organizational and social principles of state policy on ensuring the constitutional rights of socially unprotected population of Ukraine for obtaining housing. Art. 12 of the Act takes into consideration nineteen privileged categories entitled to receive priority for flats or estate (one-family) residential buildings with social housing. There is a visible contradiction between the norms of Art. 429 CC of Ukraine 2002 [4] and the Law of Ukraine "About Social Housing Fund" [10], because the legally defined level of remuneration of Customs officials can hardly be attributed to socially unprotected people.

Based on the above the following problem springs up. According to Part 2 Art. 429 CC of Ukraine 2002, customs authorities may have institutional housing, which is formed in the order determined by the Cabinet of Ministers of Ukraine. Article 5 of the Housing Code of Ukraine [11] expects the presence of departmental housing in the structure of public housing. But the Cabinet of Ministers of Ukraine does not accept the formation of Customs departmental housing until now.

Part 4 Art. 429 CC of Ukraine 2002 gives the officials of the Customs Service of Ukraine the right to obtain residence or work interest-free loans for individual or cooperative housing and getting household for up to 20 years due 50 percent received loans through the budget. There is an operating procedure for implementation (use) the provisions of Section 3 – the establishment and promotion of tangible and socio-cultural development of the State Customs Service of Ukraine, approved by the State Customs Service from 26.06.1997 № 275 and registered in the Ministry of Justice of Ukraine 05.09.1997 № 385/2189, which approved the overall order of the State Customs Service and the Council of the customs authorities Union of Ukraine from 25.04.2001, № 278/8. But it does not provide a mechanism for granting and redemption set in 2002 CC of Ukraine but there is no legal mechanism for implementing certain provisions.

According to the Art. 430 CC of Ukraine 2002 pensions of the officials of the Customs Service of Ukraine are paid in accordance with the terms and procedure established by Art. 37 and 37-1 of the Law of Ukraine "About State Service" [12]. The paradox is that the majority of the State Customs Service workers after the accepting CC of Ukraine 2002 [4] actually lost the right to receive a service pension, and the retirement of public servants. The rejection of retired state employee appointment is motivated with the fact that the position of Customs Service of Ukraine workers, who are the officers and have a special rank, Art. 25 Law of Ukraine "About State Service" is not provided [see. 13, pp. 16].

We suppose, that the Standard No. 1 Art. 430 CC of Ukraine 2002 in this wording contradicts with the Part 3 of Art. 22 of the Constitution of Ukraine [1] and Part 1 of Art. 427 CC of Ukraine 2002, as it narrows the content and scope of the right to social protection. Let us prove it.

1. CC of Ukraine 1991 [14] contained the Standard 4 Art. 154, which stipulated the length of service for the customs authorities employees – women – 20, men – 25 years with early retirement age (50 and 55 years-under). The analysis of Art 9, 13, 154, 156 and 157 CC of Ukraine 1991 standards gives reason to believe that the term "customs workers with the personal status" and "customs officers" were regarded as identical. But the term "the official of the Customs Service of Ukraine", defined in the Art. 407 CC of Ukraine 2002 in comparison with the Art. 154 CC of Ukraine 1991 is much narrower, than the term "officer".

2. Despite the fact that the legislation of Ukraine about the work term in The Customs Bodies operates with the category "seniority" rather than "public service experience, CC of Ukraine 2002 established the norm of the Customs officials' pensions in accordance with Articles 37 and 37-1 of the Law of Ukraine "About State Service"[12] and the Order of calculating public service experience [15].

This formal approach to the interpretation of legal norms, which determines the grounds for granting State employee pension of the Customs Service workers encourages to look at this problem systematically.

According to Part 2 Art. 9 of the Law of Ukraine "About State Service" the regulation of the legal status of civil servants working in the customs control office is organized in accordance with this Law, (unless otherwise stipulated by the laws of Ukraine). According to the administrative authorities the employees under the Law of Ukraine "About State Service" [12] are divided into leaders and professionals. In addition, this Law operates with another category of public service – officials. Officials in accordance with Part 2, Art. 2 of the Act are considered to be the heads and deputy heads of public bodies and their staff, other public officials, who are to carry out organizational, administrative, consultative and advisory functions. Art. 407 CC of Ukraine 2002 [4] consider the Customs Service workers, who do customs business and have special status as the category of the officials.

Art. 3 CC of Ukraine 2002 gives the definitions of the Customs Service. Civil servants engaged in the Customs matters, enter into legal customs business as the State representatives and implement a number of

important functions in foreign policy and foreign areas: regulatory, economic, supervisory, fiscal, and others. Norms of Art. 407 and 408 CC of Ukraine 2002 as a special legislative act, do not contradict with Part 2, Art. 2 of the Law of Ukraine "About State Service", and extend the definition of an official.

That is why the classification of state employees is put into the rules of item 3 of public service experience calculation [15], which gives the right to calculate the public service experience time in such public organizations as the State Criminal Executive Service, the Interior Ministry, State Special Relationship and so on.

The next problem is the problem of Customs recruitment through the Academy of Customs of Ukraine (hereinafter – the Academy). According to the rules CC of Ukraine 2002, a cadet is a person who is admitted to the Academy with special studying conditions and acquires a certain educational and qualification level for the further work in the Customs Service of Ukraine.

Unification of legislation aspects on the order of entering the higher education establishments has led to a number of problems and conflicts which arise at the entrants to the Academy.

Art. 412 CC of Ukraine 2002 [4] establishes the requirements and restrictions for a person who applies for a job in the Customs Service, specialized Customs institutions and organizations. However, the Admission to higher educational institutions of Ukraine [16] (hereinafter – Admission) establishes a comprehensive list of documents that applicant is to submit to the examination board. But as the fact the examination board is able to check only the applicant's nationality and educational level. Business and moral qualities, the state of health, absence of conviction for committing an intentional crime, etc. are not the subject to verification.

This situation may lead to the following negative effects:

a) Cadets with disabilities who can not be allowed to treat firearms or undergo special physical training (hand-to-hand fighting, etc) Including in the establishment are admitted to the Academy out of competition;

b) Graduates who have a criminal record or whose behavior does not correspond to socially accepted norms as well as those who consider the service as the opportunity for enrichment are sent to the Customs Service.

Section XXI of Admission [16] establishes the characteristics of admission to higher educational establishments of the Armed Forces of Ukraine, the Ministry of Internal Affairs of Ukraine, Ukraine's Security Service and others. The addition of state bodies, where the selection of students has its own characteristics, higher educational institution of Customs will determine the applicant's suitability not only for studying, but also for the further service in the Customs Bodies. In addition, it is necessary to use the positive experience of the Internal Affairs Ministry. The rules of selection and admission to higher educational institutions of the Internal Affairs Ministry of Ukraine [17] comprehensively settle the question of selection of applicants, their checking with the help of the criteria defined by the laws, their taking the entrance examinations and getting the possibility to study.

Another problem is associated with the aspect of Statute 31 about the order and the conditions of the service in the Customs [18]. The period of studying at the Academy is not included in the public service experience. We think the current version of Statute 31 adopted in 1993, does not reflect changes that have been made in the legislation and ignores the peculiarities of the legal status of cadets as a part of the personnel of the Ukrainian Customs Service.

The features of the legal status of cadets are identified in Art. 410, 418 and 420 CC of Ukraine 2002 [4] and the Decree of President of Ukraine dated 23.03.1998, the № 216/98 [19]. According to the Law the students are given the special rank of "cadet". The Statute of the workers and the cadets' special status establishes the procedure for their assignment [20]. Students are to wear clothing with appropriate insignia, and keep the rules of wearing uniforms (p. 10 Art. 410 CC of Ukraine 2002, the Cabinet of Ministers of Ukraine dated 26.12.02 № 1988 [21], The Rules of wearing uniforms by the officials of the Customs Service of Ukraine and the cadets are fixed in the Addition to the Order № 602 of the Customs Service of Ukraine (10.09.03).

Conclusions. In order to solve the major social and legal problems for corruption infringement prevention in the Customs Service it is necessary:

1) to adopt the resolution of the Cabinet of Ministers of Ukraine about the formation of the Customs Service departmental housing;

2) to adopt the resolution of the Cabinet of Ministers of Ukraine which provides the mechanism for granting and repayment of free loans under CC of Ukraine for an individual or cooperative housing and acquiring household effects;

3) to amend Art. 430 CC of Ukraine, so as to take into consideration employees of Customs bodies and specialized Customs agencies, having a specific rank;

4) to add paragraph 3 of the computing experience of civil service Order with the addition to calculate the civil service experience in the Customs bodies and specialized Customs agencies for officials with special ranks as the public service experience;

5) to amend Section XXI of the Admission to higher educational institutions of Ukraine in order to establish the rules of the admission to the Academy of Customs of Ukraine;

6) to approve the rules of selection and admission to the Academy of Customs of Ukraine;

7) to amend the paragraph 31 of the Statute about the order and conditions of work in the Customs Service of Ukraine in order to include the period of studying at the Academy to the public service experience.

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