

## MANAGEMENT AND ADMINISTRATION

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### ORGANIZACYJNO-PRAWNE MECHANIZMY ADMINISTRACJI PUBLICZNEJ W ZAKRESIE PRZECIWDZIAŁANIA DZIAŁALNOŚCI PRZEMYTNICZEJ NA GRANICY CELNEJ UKRAINY

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**Adnotacja.** Artykuł wskazuje, że działalność przemytnicza na granicy państwa pozostaje jednym ze znaczących aktywnych czynników destrukcyjnych (zagrożeń), które negatywnie wpływają na System Bezpieczeństwa Narodowego Ukrainy. Podkreślono, że stan walki z przemytem przez organy władzy publicznej, które są obdarzone odpowiednimi kompetencjami, mając do tego uprawnienia władzy państwowej, jest niski. Ujawniono zawartość głównych czynników destrukcyjnych stwarzających korzystne warunki dla działalności przemytniczej. Przeanalizowano główne zagrożenia w zakresie prowadzenia działalności przemytniczej. Należy zauważyć, że organizacyjno-prawny mechanizm przeciwdziałania działalności przemytniczej obejmuje procesy tworzenia przepisów, stosowania norm administracyjnoprawnych, z uwzględnieniem zasady praworządności. Ujawniono główną treść skutecznych mechanizmów organizacyjnych i prawnych administracji publicznej, mających na celu zwiększenie skuteczności przeciwdziałania działalności przemytniczej na granicy celnej Ukrainy.

**Słowa kluczowe:** przemyt, przeciwdziałanie działalności przemytniczej, mechanizmy administracji publicznej, bezpieczeństwo narodowe, granica celna Ukrainy, współpraca międzynarodowa.

### ORGANIZATIONAL AND LEGAL MECHANISMS OF PUBLIC GOVERNANCE ON COMBATING SMUGGLING ACTIVITIES AT THE CUSTOMS BORDER OF UKRAINE

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**Abstract.** The article states that smuggling at the state border remains one of the significant active destructive factors (threats) that negatively affect the system of ensuring the national security of Ukraine. Emphasis is placed on the fact that the state of the fight against smuggling by public authorities endowed with the appropriate competence, and having the state power to do it, is low. The content of the main destructive factors that create favorable conditions for smuggling activities is disclosed. The main threats in the field of smuggling are analyzed. It is emphasized that the organizational and legal mechanism of counteraction to smuggling activities includes the processes of rule-making, application of administrative and legal norms, taking into account the principle of the rule of law. The main content of effective organizational and legal mechanisms of public administration aimed at improving the effectiveness of combating smuggling at the customs border of Ukraine is revealed.

**Key words:** smuggling, counteraction to smuggling activity, mechanisms of public administration, national security, customs border of Ukraine, international cooperation.

### ОРГАНІЗАЦІЙНО-ПРАВОВІ МЕХАНІЗМИ ПУБЛІЧНОГО УПРАВЛІННЯ ЩОДО ПРОТИДІЇ ЗДІЙСНЕННЮ КОНТРАБАНДНОЇ ДІЯЛЬНОСТІ НА МИТНОМУ КОРДОНІ УКРАЇНИ

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**Анотація.** У статті зазначено, що контрабандна діяльність на державному кордоні залишається одним зі значущих активних деструктивних чинників (загроз), які негативно впливають на систему забезпечення національної безпеки України. Акцентовано увагу на тому, що стан боротьби з контрабандою органами державної влади, які наділені відповідною компетенцією, маючи для цього державно-владні повноваження, є низьким. Розкрито зміст головних деструктивних чинників, які створюють сприятливі умови для контрабандної діяльності. Проаналізовано основні загрози у сфері здійснення контрабандної діяльності. Наголошено, що організаційно-правовий механізм протидії контрабандній діяльності включає процеси нормотворчості, застосування адміністративно-правових норм з урахуванням принципу верховенства права. Розкрито основний зміст дієвих організаційно-правових механізмів публічного управління, спрямованих на підвищення ефективності протидії здійсненню контрабандної діяльності на митному кордоні України.

**Ключові слова:** контрабанда, протидія контрабандній діяльності, механізми публічного управління, національна безпека, митний кордон України, міжнародне співробітництво.

**Introduction.** Smuggling at the state border is still one of the important active destructive factors (threats) that negatively affect the system of ensuring the national security of Ukraine.

The current state of the fight against smuggling by public authorities endowed with the appropriate competence, and having the state power to do it, is low according to the open information in the media about the brazen actions of smugglers, corrupt customs officers and border guards and the direct involvement of senior and lower level officials in border areas in the smuggling schemes worked out by local criminals.

Therefore, the fight against smuggling and corrupt officials at the border remains one of the priorities of Ukraine's strategic course in the field of economic security at the state border.

**The purpose of the article** is to identify the main destructive factors that create favorable conditions for smuggling, and to reveal the main content of effective organizational and legal mechanisms of public administration aimed at improving the effectiveness of combating smuggling.

**Main part.** A number of research publications by domestic and foreign researchers including Basel Ali Dib, O. Busol, D. Bhavati, A. Bantyshev, M. Bohdanov, O. Kozachenko, S. Kravchuk, A. Muzyka, D. Osmanova, O. Potushynska, M. Pohoretskyi, A. Prytula, Y. Streltsov, M. Selyvanov, Y. Turchyn, B. Hansen, V. Khoma, etc. are devoted to the issue of ensuring national security in the economic sphere related to the study of effective mechanisms to combat smuggling.

The problem of forming effective mechanisms to combat smuggling and other illegal activities at the border, and improving Ukrainian legislation in this area, has been the subject of research by many domestic and foreign scientists, in particular: S. Aliksieiev T. Barabash, I. Bazyaruk, M. Gutsuliuk, H Dan, O. Diachkin, I. Korostashova, T. Mykhailichenko, V. Nikiforenko and others.

At the same time, the existing scientific and special literature does not pay enough attention to the problems of identifying the main threats from smuggling at the state border to national security, and finding effective mechanisms of public administration aimed at improving the effectiveness of combating this negative phenomenon.

In accordance with current regulations of the national legal framework and the State Register of National Cultural Heritage (Myshchak, 2014: 19–24), smuggling is defined as the movement of cultural property, poisonous, potent, explosives, radioactive materials, weapons, ammunition (except smooth-bore hunting rifles and ammunition), parts of firearms, and special technical means of secret information across the customs border of Ukraine outside customs control or with concealment from customs control. The legislation prematurely excluded from criminal liability attempts to move large quantities of goods and other property across the state border illegally. Illegal import of certain groups of goods and cargoes causes significant damage to the economy of Ukraine (Hutsuliak, 2013: 66).

Organizational and legal mechanism for combating smuggling activities includes rule-making processes, application of administrative and legal norms, taking into account the principle of the rule of law.

Thus, O. Diachkin notes that Article 201 of the Criminal Code of Ukraine should include objects or valuables illegally moving across the border in large quantities, items of cultural value, special technical means of secret information, weapons, ammunition (except for smooth-bore hunting rifles and their ammunition), radioactive materials, potent or toxic substances, narcotic drugs, psychotropic substances or their analogues, precursors. Sanctions under this rule of law should provide for increased responsibility for the repeated instances of a crime and its commission by a group of persons (Diachkin, 2012: 281).

Scientist I. Bazyaruk emphasizes that smuggling is always transnational in nature, which is closely related to the illegal movement of certain objects and substances from the customs territory of one state to another. In view of the above, a special feature of this type of illegal activity includes its proximity to the line of the state border (Bazyaruk, 2012: 196).

T. Mykhailichenko, proposes to expand the boundaries of criminal law to the facts of illegal movement across the state border of the following: energy raw materials; equipment and other tangible assets from strategically important objects or objects of important economic importance; goods of economic importance for implementation of the strategic course of Ukraine in the field of economic security (Mykhailichenko, 2015: 184).

V. Nikiforenko, as a scientist and border guard practitioner, notes that the process of combating smuggling is negatively affected by a number of factors, including:

– a legal collision, which in accordance with Articles 338 and 343 of the Customs Code of Ukraine creates opportunities for customs authorities to block the practical implementation by the State Border Guard Service of Ukraine powers to inspect vehicles and goods that move across the state border under customs control provided by other laws of Ukraine and decrees of the President of Ukraine.

- the absence of an integrated system of technical inspection facilities at the border crossing points such as “RAPISKAN”, which was reconstructed at the expense of funds allocated by the European Union, the customer was the International Organization for Migration;

- non-criminalized liability for smuggling, which does not allow to document effectively and counteract criminal groups that specialize in the illegal movement of goods and cargoes across the state border;

- blocking by customs authorities of realization of the right of the State Border Guard Service of Ukraine to carry out inspections of vehicles and cargoes at internal customs with reference to norms of articles of the Customs code (articles № 338, 343);

- the absence of border engineering structure line elements on 30% of land plots which are privately owned or are included in nature reserves at the state border (Nikiforenko, 2012: 61).

Thus, the analysis of available public information shows that the main threats in the field of smuggling remain as follows:

- the spread of organized forms of illegal activity and creation of sustainable schemes of illegal movement of large volumes of excisable goods across the state border, including those processed at interior customs posts; drug smuggling by sea and by vehicles;

- import of goods, including excisable, using “gray” schemes (understatement of invoice value);

- inconsistency of the information on goods declared in the accompanying documents, non-declaration and concealment, use of fictitious temporarily registered companies, etc.;

- smuggling of tobacco products, metal, coal, grain and other goods to EU countries and from the territory of certain occupied districts of Donetsk and Luhansk regions.

Along with the existing threats to the national security of Ukraine in the economic sphere, the state borderguard units identified:

- illegal movement of tobacco products in containers through seaports (in 2020 – 14.7 thousand boxes of cigarettes were seized; and in the first quarter of 2021 – 15 thousand boxes of cigarettes and 8 tons of tobacco intended for illegal sale in duty-free shops);

- movement of large shipments of cigarettes hidden among cargo moving in the modes of “transit” and “export” (in 2021 the border crossing point “Novi Yarylovychi” alone had 9 instances of interdiction of illegal import into Ukraine of more than 2.5 thousand boxes – 1,3 million packs of cigarettes);

- use of small aircraft (including unmanned aerial vehicles) for illegal movement of cigarettes (320 cases of airspace violations were recorded in 2020, 22 unmanned aerial vehicles and 25 boxes of cigarettes were seized), and in the first quarter of 2021 – 36 cases, 2 small aircraft were seized;

- use of diving equipment for illegal movement of cigarettes (in 2020 – 9 offenders were detained in wetsuits, and in the first quarter of 2021 – 8);

- movement of fuels/lubricants and alcohol using pipelines (in 2020, 5 cases of detection of pipelines were recorded, and in the first quarter of 2021 – 4 such cases);

- import into Ukraine of fuels and lubricants under the guise of solvents from the territory of Russia, in particular as transit via Belarus (September 15, 2020, together with the State Fiscal Service of Ukraine 76 thousand liters of fuel and lubricants ingredients and 22 thousand liters of solvent were seized);

- use of postal service and commercial air transport for import of goods, drugs and medicines to Ukraine (in 2020 – 145 thousand tablets of medicines, and in the first quarter of 2021 at the border crossing point “Boryspil”;

- 62 thousand tablets of medicines were seized) (White Book – 2020, 2021; The State Border Guard Service of Ukraine, 2021).

In view of these facts, President of Ukraine Volodymyr Zelenskyi initiated and introduced a new “sanctions mechanism” against legal entities and individuals involved in smuggling activity through the decisions of the National Security and Defense Council of Ukraine. This mechanism provides for the application of the following personal special economic and other restrictive measures (sanctions) for a period of three years: blocking of assets; restriction of trade operations, transit of resources, flights and transportation via the territory of Ukraine; prevention of capital outflows from Ukraine; termination of economic and financial contracts; revocation (suspension) of licenses (permits), etc. Relevant provisions are enshrined in the decision of the National Security and Defense Council of Ukraine of April 2, 2021 “On the application of personal special economic and other restrictive measures (sanctions)”, enacted by the Decree of the President of Ukraine of April 3, 2021 № 140/2021 (On the application of personal special economic and other restrictive measures (sanctions), Decree of the President of Ukraine, 2021).

Based on the above, there is a need to disclose the main content of effective organizational and legal mechanisms of public administration aimed at increasing the effectiveness of combating smuggling, which include the possibility of: improving the legal framework to combat smuggling at the state border (amendments to the Customs Code of Ukraine); elaboration of the legal basis for the inspection of vehicles and cargoes moving across the state border of Ukraine and undergo customs control, in all customs control zones by authorized officials of the State Border Guard Service of Ukraine, together with customs officers, as well as a re-review of those inspected by customs officials; ensuring coordination of actions, interaction and exchange of information by public authorities and other interested local governments to combat the illegal movement of goods via the customs territory of Ukraine; clarified or revised conceptual (strategic) documents which require clarification in order to: supplement the list of grounds for inspection or re-inspection of goods and vehicles within the framework of the implementation of information obtained in the course of operational and investigative activities and amendments to legislation to strengthen

liability (criminalization) for violating the rules on the use of small vessels, unmanned and small aircraft; creation of the necessary infrastructure at border crossing points at the state border to gradually increase the number of operations for customs clearance of goods directly there; improving the exchange of information with neighboring countries on the movement of vehicles and goods, in particular, providing for joint work by representatives of customs and border services of neighboring countries, etc.

**Conclusions.** Thus, the main destructive factors that create favorable conditions for smuggling are: legal collision, which in accordance with Articles 338 and 343 of the Customs Code of Ukraine creates opportunities for customs authorities to block the practical implementation of other public authorities, including the SBGS to perform their functions in combating smuggling provided by other laws of Ukraine; lack of a comprehensive system of technical inspection facilities such as “RAPISKAN” at border crossing points; insufficient cooperation and coordination of law enforcement and control bodies of Ukraine with the relevant bodies of neighboring countries as to the exchange of information on combating the movement of goods outside customs control or with concealment from customs control; corruption (assistance by officials of state authorities and local governments, in particular law enforcement and control, to legal entities or natural persons in moving this type of product across the customs border of Ukraine; unemployment among residents of border areas, etc.).

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