

Voronov A. M.

## ADMINISTRATIVE-LEGAL REGIME OF CUSTOMS BODIES' ACTIVITY IN ENSURING PUBLIC SECURITY

*Voronov Aleksei*

*Mikhailovich,*

*Doctor of law, Professor, Director of the Center of the legal basis for the development of public administration and civil society of Institute of Problems in an Effective State and Civil Society, Moscow,*

*alex\_voronoff@mail.ru*

Here is noted a feature of public service in customs bodies, which lies in division of its officials into employees of public civil service and employees exercising functions of law enforcement service.

The author argues that administrative-legal regime of customs authorities' activity in the field of ensuring public security of the Russian Federation is a comprehensive legal institute of administrative law, and rightly is one of the most important instruments of state policy aimed at ensuring public security and protection of both public and private interests of the state in the sphere of customs affairs.

The main aim of administrative-legal regime of customs bodies' activity is postulated in the article – protection of the internal market of the Russian Federation from adverse foreign economic factors, internal and external threats, detection and suppression of illegal activities of transnational organized crime, as well as other illicit activities of natural and legal persons exercised during moving goods and transport vehicles across the customs border of the State.

**Keywords:** public security, customs bodies, administrative-legal regime of customs bodies' activity, customs regime, customs administration.

Should be noted that each direction of administrative activity of public administrations, including customs authorities in the field of ensuring public safety, must be organized within the framework of this or that legal regime, which would define their competence.

Administrative-legal regime of the customs bodies' activity (hereinafter customs regime) is the most effective means of legal regulation of social relations arising upon the movement of goods and vehicles across a customs border.

At present, the formation of the Customs Union in the framework of the Common Economic Space and the accession of the Russian Federation to the World Trade Organization define the basic aims, objectives and directions of development of customs authorities of the RF. As a result of active upgrade of customs legislation the impact of customs regulation, which is an element of state regulation of foreign trade activities, on the process of integration into the world economy and international trading system significantly increases.

As rightly pointed out by O. V. Grechkina, the whole system of administrative management of customs regulation is subjected to reform. This are organizational-structural, HR, and rule making components of the system. At the same time, rapidly changing economic environment imposes increasingly higher requirements for customs administration, which is designed to ensure the legality of legal relations arising between the participants of foreign economic activity and the state in the implementation and protection of the rights, freedoms and legitimate interests of persons during the movement of goods and vehicles across a customs border [9].

Customs Union of Russia, Belarus and Kazakhstan was established on December 19, 2009 in Alma-Ata (Kazakhstan), where the leaders of the three countries signed a Joint statement on its formation. The first phase of the Customs Union activity started January 01, 2010, from the introduction of the Common Customs Tariff [1]. Common Customs Tariff of the Customs Union of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation (CCT CU) - a corpus of rates for import customs duties applied to goods imported into the common customs territory of the Customs Union from third countries classified in accordance with the uniform Commodity Nomenclature of Foreign Economic Activity of the Customs Union (CN FEA CU).

It should be noted that the supreme body of the Customs Union is Interstate Councils at the level of Heads of States and Heads of Governments. The unified constantly regulating body is the Commission of the Customs Union.

The formation of the Customs Union provides for creation of a single customs territory, within which do not apply customs duties and restrictions of economic

nature, with the exception of special protective, antidumping and countervailing measures. In the framework of the Customs Union apply a Common Customs Tariff and other unified measures of regulation trade with third countries.

Since the first of July 2010 the Customs Code of the Customs Union of EAEC has entered into force. For the Member States of the Customs Union the legislation on Customs Affairs has transformed into a complex normative system based on international legal acts of EAEC (customs code, international agreements and decisions of the Commission of the Customs Union). Solution of the tasks of control over customs affairs in the Russian Federation significantly has shifted to the international-legal level.

At the same time the domestic customs legislation and its regime organization have become more complicated after replacing in 2003 the Customs Code of the Russian Federation by the Federal Law No. 311-FL from 27.11.2010 "On Customs Regulation in the Russian Federation" [4]. Further to its development have adopted Federal Laws of the Russian Federation: "On Russia's Accession to the International Convention on Simplification and Harmonization of Customs Procedures from May 18, 1973 as Amended by the Protocol on Making Amendments to the International Convention on Simplification and Harmonization of Customs Procedures from June 26, 1999" [3], "On Ratification of the Agreement on Legal Assistance and Cooperation of Customs Authorities of the Member States of the Customs Union on Criminal Cases and Cases on Administrative Offenses, "On Ratification of the Agreement on the Procedure of Movement of Goods for Personal Use by Individuals through the Customs Border of the Customs Union and Committing of Customs Operations Related to their Clearance", Federal Law No. 406-FL from December 06, 2011 "On Amending the Federal Law "On Currency Regulation and Currency Control" in the Part of Simplification of Currency Control" [5].

Also December 10, 2011 the President of the Russian Federation signed a law aimed at the unification of the Russian legislation and the legislation of the Customs Union within the framework of the EAEC, which amends 24 legislative act, including the Air Code of the Russian Federation, the Code on Administrative Offences of the Russian Federation, the Law of the Russian Federation "On Customs Tariff", the Federal Law "On Banks and Banking Activity", "On Insolvency (Bankruptcy)" and several others.

In addition, the law also makes amendments to the legislation of the Russian Federation on special economic zones in order to bring it into conformity with the Agreement between the Government of the Russian Federation, the Government of the Republic of Belarus and the Government of the Republic of Kazakhstan from

June 18, 2010 "On the issues of free (special, particular) economic zones in the customs territory of the Customs Union and the customs procedure of free customs zone".

At that, it is appropriate to turn to the background of the issue. We should be aware that a fundamental change of customs administration could not be possible without the adoption of a new edition of the Customs Code. RF Customs Code of 1993 [2] was being developed in the liberalization of foreign trade, but before the adoption of the Constitution, Civil Code, Tax Code and Code on Administrative Offences of the Russian Federation, it was not suited to the standards of the WTO [2]. With the introduction on the 1<sup>st</sup> of January 2004 the new Customs Code Customs Service switched to work under international standards and rules based on the system of analysis and management of risks, with maximum use of modern customs and information technologies. Now, at the fore is not a fiscal (not removed from customs service) task to ensure the filling of budget income, but the task of promoting the development of foreign trade. RF Customs Code of 2004 contained a significant number of innovations to speed up and simplify customs procedures, and in this part provided the change and development of the system of customs administration.

However, the optimization of customs bodies' functions demanded the rejection of excessive customs administration and comprehensive measures of its improving on the base of modernization of the information systems of FCS of Russia, technical re-equipment of the customs authorities, creation of a modern customs infrastructure. Initially, these measures were defined by the Target program approved by the Order of the FCS of Russia No. 403 from 20.12.2004. However, the implementation of the Program was prematurely terminated due to the start of implementation the Concept of development of customs authorities approved by the RF Government decree No. 2225-r from 14.12.2005.

The concept contained the analysis of the achieved results of the customs authorities' activities, emphasized unsolved problems leading to low efficiency of customs administration. The concept defined the task of improving customs administration on the basis of formation new approaches that involve ensuring of high efficiency of customs administration with external simplicity and faster clearance of goods moved through the customs border of the Russian Federation.

Resolving the tasks of administrative reform on reforming of customs authorities' activity facilitated effective implementation of the Concept events. So, RF Presidential Decree No. 473 from 11.05.2006 defined that the Government of the Russian Federation must carry out the leadership of the Russian FCS, and RF

Government Decree No. 459 from 26.07.2006 approved new Provision on the Federal Customs Service [6].

Also, RF Government Decree No. 1662-p from 17.11.2008 approved the Strategy of development of the Federal Customs Service up to 2020 [8], which provided that the control system of customs administration of the Customs Union should include the Commission of the Customs Union, the Coordination Council of the heads of customs services of the Customs Union and national systems of customs administration.

The strategic goal of the Federal Customs Service development is the development up to a level sufficient to reliable ensuring of Russia's economic development in the field of customs, qualitative customs regulation in order to create favorable conditions for attracting investments into the Russian economy, full flow of revenues to the federal budget, necessary protection of domestic commodity producers, objects of intellectual property, maximum promotion to foreign trade, and effective combating against administrative offenses and crimes.

Further in the context of the Strategy for Federal Customs Service development, a "roadmap" was adopted by the RF Government Order No. 1125-o from 29.06.2012 "On Approval of the Plan (roadmap) of Events "Improvement of Customs Administration" [7].

The "roadmap" is intended to simplify the procedure for moving goods and vehicles across the customs border of the Customs Union during their importation into the Russian Federation and export from the Russian Federation.

The goals of the "roadmap" are:

- reducing the number of documents required for customs operations and customs procedures during import of goods and vehicles to the Russian Federation and their export from the Russian Federation;
- reducing the timeframe for preparing and receipt of the documents required to complete the procedures for export and import of goods;
- reducing the timeframe of going through all the procedures associated with the importation of goods and vehicles to the Russian Federation and their export from the Russian Federation;
- reduction of the shadow turnover of imported goods in the Russian market;
- introduction the technologies of customs declaring and clearance of goods that can reduce to a minimum the time of passing administrative procedures in connection with the importation of goods and vehicles to the Russian Federation and their export from the Russian Federation.

Article 29 “General Provisions on Customs Procedures” has become a significant innovation of the Customs Code of the Customs Union (CC CU). So, for the purposes of customs regulation of goods that are transported across the customs border of the Customs Union, article 202 of the Code establishes the types of customs procedures (according to article 202 CC CU, there are 17 types of customs procedures). Also, in accordance with article 4 CC CU, a change that takes place in the customs terminology is the fact that the notion of “customs regime” has been replaced by “customs procedure”.

So, in article 4 TC CU “Key Terms Used in this Code”, customs procedure is interpreted as a set of norms defining for customs purposes the requirements and conditions of use and (or) disposal of goods in the customs territory of the Customs Union and beyond.

Seems that this interpretation is more correct than the previous one that existed in paragraph 12 article 18 of the Customs Code of the RF “customs regime is a set of provisions governing the status of the goods and vehicles moved across the customs border of the Russian Federation, for customs purposes”. “Status” (Lat. status – state, position), i.e., an abstract multi-value term that in general sense denotes the totality of stable values of the parameters of an object or subject.

The term of “procedure” is defined as an interrelated sequence of actions, i.e., normatively-regulated order of activities aimed at achieving customs objectives. Thus, customs regime is a complex customs procedures in respect of goods and vehicles moved across customs border.

It is appropriate to note that the uniqueness of activity areas, which are identified by the State for the customs authorities [6], stipulated the feature of public service in these bodies, which is a separation of customs officials to the public civil service officials and employees exercising the functions of law enforcement service. The difference between their administrative-legal statuses is due to the specificity of public civil service and law enforcement service in the customs authorities of the Russian Federation, which has both fiscal and law enforcement nature.

Thus, article 6 CC CU defines their basic tasks, including:

- promoting to the unified trade policy of the Customs Union;
- enforcement of the customs legislation of the Customs Union and another legislation of the state-members of the Customs Union, the control over execution of which is the competence of customs authorities;
- fulfillment of customs operations and carrying out customs control, including in the framework of mutual administrative assistance;

- collection of customs duties, as well as special, anti-dumping and countervailing duties; control of the correctness of their calculation and timely payment; adoption of measures for their compulsory exaction within their competence;

- ensuring within their competence the compliance with the measures of customs and tariff regulation, prohibitions and restrictions regarding goods moved across the customs border.

In addition to the above, there are tasks in the researched by us area, namely:

- ensuring within their competence the compliance with the rights and legitimate interests of persons in the area of customs regulation and creation of conditions for accelerating the movement of goods across the customs border;

- ensuring within their competence the measures to protect national security of the Member States of the Customs Union, life and health of people, fauna and flora, environment, and, in accordance with international agreement of the Member States of the Customs Union, the measures to counter the legalization (laundering) of proceeds of crime and financing of terrorism in the control of movement across the customs border of currencies of the Member States of the Customs Union, securities and (or) currency values, traveler's checks;

- detection, prevention and suppression of administrative offences and crimes in accordance with the legislations of the Member States of the Customs Union;

- protection within their competence of intellectual property rights in the customs territory of the Customs Union;

It should also be noted that according to article 7 CC CU, customs authorities of the Member States of the Customs Union are bodies of inquiry in cases of smuggling, evasion of customs duties and other crimes, the proceedings on which, in accordance with the legislations of the Member States of the Customs Union, are assigned to the jurisdiction of customs authorities;

- carry out operational-investigative activities in order to reveal individuals who are preparing, committing or have committed a wrongful act, which is recognized by the legislation of these states as a crime, the proceedings on which are assigned to the jurisdiction of customs authorities, execution of requests of international customs organizations, customs and other competent authorities of foreign states in accordance with international treaties;

- conduct an administrative trial (carry out proceedings) on cases of administrative offenses and bring persons to administrative responsibility in accordance with the legislations of the Member States of the Customs Union.

Based on the foregoing, it is appropriate to draw some conclusions.

Administrative and legal regime of the customs authorities' activity in the field of ensuring public safety of the Russian Federation is a complex legal institute of administrative law that rightfully acts as one of the most important instruments of state policy aimed at ensuring public safety and protection of both public and private interests of the state in the field of customs affairs.

The procedure of regulation of social relations by the norms of law, which form the administrative-legal regime of providing customs affairs, is based on the imperative method of impact that is carried out mainly on the basis of centralized management, since it is the state through its customs authorities and officials establishes a special procedure for the implementation of certain activities in the field of customs affairs, as well as provides and confirms the right for their implementation; establishes and implements the customs and other types of state supervision over the movement of goods and vehicles across the customs border; enshrines the possibility of termination of various activities in the field of customs affairs under established grounds; defines measures of legal responsibility for non-performing of established regime regulations.

In our view, administrative and legal regime of the customs authorities' activities in the area of ensuring public safety should be understood as a totality of legal norms and organizational measures, which in order to protect economic and other state interests establish and provide the procedure of movement of goods and vehicles across the customs border, as well as rules of conduct of persons in the field of customs affairs, in the best interest of ensuring security of the Russian Federation.

The considered administrative-legal regime accompanies administrative activities of customs authorities and their officials in the interaction with physical and legal entities in their implementation of functional responsibilities in the field of customs affairs. This is reflected in the protection of the domestic market of the Russian Federation from adverse external economic factors, internal and external threats, and helps to reveal and suppress illegal activity of structures of transnational organized crime and other illegal activities of individuals and legal entities performed in moving of goods and vehicles across the customs border of the state.

The latter aspect is particularly important for the agencies of the Federal Customs Service, who use possibilities of the considered regime at the direction of combating against smuggling and ensuring economic security of the Russian Federation.

The essence of the administrative-legal regime of customs authorities' activities in the field of ensuring public safety is that the customs authorities, endowed

with relevant competence to implement this regime, control the order of movement of goods and vehicles across the customs border of the Russian Federation, the behavior of individuals crossing the customs border of the state, as well as identify items subject to control by other federal bodies of executive power.

The purpose of the administrative-legal regime of customs authorities' activities in the field of ensuring public safety lays in the appropriate legal regulation and maintenance of the desired development of legal relations arising in the process of protecting economic interests of the country and ensuring security of the Russian Federation in the sphere of foreign economic activity during moving of goods and vehicles across the customs border of the Russian Federation, and in ensuring proper exercising of rights of both individuals and legal entities in the sphere under protection.

Also, customs authorities in implementing legal measures of security ensure functioning of customs regimes, assist other public authorities in providing administrative-legal regime of entry into the Russian Federation and exit from it, state border regime and regime of border crossing points, licensing system and regime of security of traffic in narcotic drugs, as well as carry out other measures of general preventive nature.

Administrative-legal regime of customs authorities' activities in the field of ensuring public safety is not limited to performing just law enforcement functions. Activities on ensuring public safety by customs authorities are also reflected in the levying of customs duties, implementing of customs clearance, holding currency and customs control, implementation of operational-search and other activities

The main purpose of this regime is to provide reliable legal and organizational barriers that might prevent and promptly suppress illegal activity of transnational organized crime and other illegal activities in the sphere of moving goods and vehicles across the customs border of the Customs Union.

#### References:

1. Uniform customs tariff of the Customs Union of the Republic of Belarus, Republic of Kazakhstan and the Russian Federation (in edition of the Decision of the Commission of the Customs Union No. 900 from 09.12.2011 and No. 901 from 09.12.2011). Appendix No. 1 to the Decision of the Commission of the Customs Union No. 850 from November 18, 2011 [Edinyi tamozhennyi tarif Tamozhennogo soyuza Respubliki Belarus', Respubliki Kazakhstan i Rossiiskoi Federatsii (v red. Reshenii Komissii Tamozhennogo soyuza ot 09.12.2011 № 900, ot 09.12.2011 № 901) / Prilozhenie № 1 k Resheniyu Komissii Tamozhennogo

soyuza ot 18 noyabrya 2011 goda № 850]. *System GARANT* [Electronic resource], Moscow: 2013.

2. Customs Code of the Russian Federation: Federal Law No. 5221-1 from June 18, 1993 (lost effect) [Tamozhennyi kodeks Rossiiskoi Federatsii: FZ ot 18 iyunya 1993 g. № 5221-1]. *System GARANT* [Electronic resource], Moscow: 2013.

3. Federal Law No. 279-FL from 03.11.2010 "On Russia's Accession to the International Convention on the Simplification and Harmonization of Customs Procedures from May 18 1973, in the wording of the Protocol on Amendments to the International Convention on the Simplification and Harmonization of Customs Procedures from June 26, 1999" [Federal'nyi zakon ot 03.11.2010 № 279-FZ «O prisoedinenii RF k Mezhdunarodnoi konventsii ob uproshchenii i garmonizatsii tamozhennykh protsedur ot 18 maya 1973 goda v redaktsii Protokola o vnesenii izmenenii v Mezhdunarodnuyu konventsiyu ob uproshchenii i garmonizatsii tamozhennykh protsedur ot 26 iyunya 1999 g.»]. *SZ RF – Collection of Laws of the Russian Federation*, 2010, no. 45, article 5744.

4. Federal Law No. 311-FL from 27.11.2010 "On Customs Regulation in the Russian Federation" [Federal'nyi zakon ot 27.11.2010 g. № 311-F3 «O tamozhennom regulirovanii v Rossiiskoi Federatsii»]. *SZ RF – Collection of Laws of the Russian Federation*, 2010, no. 48, article 6252.

5. Federal Law No. 406-FL from December 6, 2011 "On Amending the Federal Law "On Currency Regulation and Currency Control" in the Part of Facilitation the Procedure of Exchange Control" [Federal'nyi zakon ot 6 dekabrya 2011 g. № 406-FZ «O vnesenii izmenenii v Federal'nyi zakon «O valyutnom regulirovanii i valyutnom kontrole» v chasti uproshcheniya protsedur valyutnogo kontrolya»]. *SZ RF – Collection of Laws of the Russian Federation*, 2011, no. 50, article 7348.

6. RF Government Decree No. 459 from 26.07.2006 "On the Federal Customs Service" [Postanovlenie Pravitel'stva RF ot 26.07.2006 № 459 «O Federal'noi tamozhennoi sluzhbe»]. *SZ RF – Collection of Laws of the Russian Federation*, 2006, no. 32, article 3569.

7. RF Government Order No. 1125-o from 29.06.2012 "On Approval of the Plan (roadmap) of Events "Improvement of Customs Administration" [Rasporyazhenie Pravitel'stva RF ot 29.06.2012 № 1125-r «Ob utverzhdenii plana meropriyatii (dorozhnoi karty) «Sovershenstvovanie tamozhennogo administrirovaniya»]. *SZ RF – Collection of Laws of the Russian Federation*, 2012, no. 28, article 3926.

8. RF Government Order No. 1662-o from 17.11.2008 "Development Strategy of the Federal Customs Service up to 2020 [Rasporyazhenie Pravitel'stva Rossiiskoi Federatsii ot 17.11.2008 № 1662-r «Strategiya razvitiya Federal'noi tamozhennoi sluzhby do 2020 goda]. *SZ RF – Collection of Laws of the Russian Federation*, 2008, no. 47, article 5489.

9. Grechkina O. V. *Administrative Jurisdiction of Customs Authorities of the Russian Federation: Theoretical and Applied Research*. Thesis abstract of a Doctor of law [Administrativnaya yurisdiksiya tamozhennykh organov Rossiiskoi Federatsii: teoretiko-prikladnoe issledovanie. Avtoref. dis. ...d-ra yurid. nauk]. Moscow: 2011.