

### **Література:**

1. Будаков М. О. Міжнародно-правові проблеми боротьби з морським піратством: аспекти кримінального переслідування. *Часопис академії адвокатури України*. 2010. № 9. С. 1–6.
2. Конвенція про відкрите море 1958 р. URL: [http:// zakon4.rada.gov.ua/laws/show/995\\_180](http://zakon4.rada.gov.ua/laws/show/995_180)
3. Кримінальний кодекс України : Закон України від 05.04.2001. *Відомості Верховної Ради України*. 2001. № 25–26. Ст. 131.
4. Харитонов Є.О., Шемонаєв В.Ю. Деякі питання захисту прав людини і міжнародне мореплавство. *Актуальні проблеми політики*. 2001. Вип. 12. С. 348–352.
5. Цирфа Ю. Сучасні шукачі щастя – чергова загроза міжнародній безпеці. *Віче*. 2008. № 21. С. 22.
6. Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships adopted on 2 December 2009 : IMO Resolution A.1025(26) URL: <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Guidance/Documents/A.1025.pdf>
7. IMB Piracy Reporting Centre, Piracy News & Figures. URL: <http://www.icc-ccs.org/piracy-reporting-centre/piracynewsfigures>

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## **RESOLVING THE CONFLICT OF INTERESTS AS A MEANS OF PREVENTING CORRUPTION RISKS DURING CUSTOMS PROCEDURES**

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Anti-corruption in the customs sphere is inextricably linked to the settlement of conflicts of interest as a means of preventing corruption risks in the implementation of customs procedures. In the clarifications of the Ministry of Justice of Ukraine dated April 12, 2011 according to the criterion of the prevalence of corruption risks, indicates such a category as the conflict of interests of public officials. It is worth noting that in the State Anti-Corruption Program for 2023-2025, it is determined that the shortcomings of the legislation

limit the possibilities of minimizing corruption due to the emergence of a conflict of interests. Attention should also be paid to the fact that according to the criterion of the prevalence of corruption risks of civil servants in the Methodological recommendations "Prevention and counteraction of corruption in state bodies and local self-government bodies", prepared by the Ministry of Justice of Ukraine on October 9, 2013, priority was given to the presence of a conflict of interests. The importance of researching the administrative and legal principles of preventing conflicts of interest in the activities of customs bodies is indicated by separate scientific works [1], judicial bodies [2], highlighting the occurrence of conflicts of interests as a component of preventing corruption risks in the activities of law enforcement bodies [3], etc. In scientific works, there are isolated works on the legal nature of the prevention and settlement of conflicts of interest in customs authorities. The above indicates the scientific novelty of this work. However, the authors investigated the category "conflict in state customs affairs", but within the category "customs dispute". In particular, researchers studied the legal nature and signs of conflict in the field of customs legal relations as prerequisites for the emergence of a customs dispute [4]. Currently, the study of the signs and essence of the conflict of interests and its components in the implementation of customs procedures as a type of corruption risk within the limits of its administrative and legal support and acquires actual importance in modern conditions, and remains insufficiently researched in customs law.

According to Article 569 of the Customs Code of Ukraine, officials of customs authorities are civil servants. The provisions of the Law of Ukraine "On Civil Service" outline the duties of a civil servant, among which it is indicated: to prevent the emergence of a real, potential conflict of interests during civil service (Article 8). The basis for determining the essence of the conflict of interests as a means of preventing corruption risks in the implementation of customs procedures is the separation of private and public interest of civil servants of customs authorities [5, p.114]. Thus, Article 8 of Recommendation No. R (2000) 10 of the Council of Europe "Model Code of Conduct for Civil Servants" states that a civil servant should not allow his personal interests to conflict with his public office. Avoiding such conflicts – real, potential or possible – is his duty.

The provisions of international standards on the prevention of conflicts of interest as a means of preventing corruption risks during customs procedures were implemented into the Law of Ukraine "On Prevention of Corruption" dated October 14, 2014. No. 1893-IX, and differentiated the definition of "conflict of interest" by distinguishing its two types (1) real and (2) potential conflict of interest. This legislative act does not contain an understanding of the essence of the "conflict of interests" category, and this category is not provided for in the 2012 Customs Code of Ukraine.

The categories of "conflict" and "conflict of interests" are defined differently in scientific works. The legal construction of "conflict of interests in the implementation of customs procedures" remains undefined, as well as its signs and components have not been established. In particular, the Law of Ukraine "On Prevention of Corruption" dated October 14, 2014. No. 1893-IX indicates the separation of two types of conflict of interest: (1) real conflict of interest; (2) potential conflict of interest.

The requirements and procedure for the prevention of conflicts of interest, in addition to the above legislative acts, are detailed in the Methodological recommendations of the National Agency for the Prevention of Corruption dated January 12, 2024 under No. 2 entitled "Regarding the application of certain provisions of the Law of Ukraine "On the Prevention of Corruption" regarding the prevention and settlement of conflicts of interest, compliance restrictions on the prevention of corruption". And also in the Methodological recommendations of the Ministry of Finance of Ukraine dated May 21, 2024 No. 253, which cover the sphere of customs affairs, in particular, in the implementation of customs procedures. Based on the analysis of the provisions of the Methodological Recommendations of the Ministry of Finance of Ukraine dated May 21, 2024 No. 253, the following are the components of a conflict of interest in the state customs affairs (real, potential) in the implementation of customs procedures: (1) private interest, (2) discretionary official or representative powers (at the same time, the professional duties of a public servant and his powers as a manager are also important), (3) the existence of a conflict between private interest and authority. Thus, the definition of the concept of "private interest" is given in the Law of Ukraine "On Prevention of Corruption" dated October 14, 2014 No. 1700-VII, which creates a number of legal problems when solving issues related to the presence (or absence) of a conflict of interest in the activities of a civil servant of customs authorities when carrying out customs procedures, obliged to take measures for its prevention and settlement. And they also have ambiguous judicial practice on these issues.

Thus, according to the provisions of the Law of Ukraine "On Prevention of Corruption" dated October 14, 2014 No. 1700-VII, the following measures are provided for: 1) restrictions on the use of official powers or one's position (Article 22); 2) restrictions on receiving gifts (Article 23); 3) prevention of receiving an unlawful benefit or a gift and dealing with them (Article 24); 4) restrictions on co-operation and co-operation with other types of activities (Article 25); 5) restrictions after termination of activities related to the performance of functions of the state, local self-government (Article 26); 6) restrictions on the joint work of relatives (Article 27). Chapter V "Prevention and settlement of conflicts of interest" of the Law of Ukraine "On Prevention of Corruption" dated October 14, 2014 No. 1700-VII is devoted to external and independent conflict settlement measures. The above provisions also cover

methods of settlement and prevention of conflict of interests during customs procedures.

With regard to individual court decisions on the settlement and prevention of conflicts of interest in the implementation of customs procedures. As we indicated, it has an ambiguous judicial practice. Thus, the case materials of the Administrative Court of Cassation under No. 821/1532/17 concerned the dismissal of the plaintiff from the post of Kherson customs inspector due to his alleged violation of the requirements to prevent conflicts of interest when he signed the application for the award of his stepson, who was under his temporary supervision [6]. The plaintiff in this case, under No. 821/1532/17, appealed to the court with a claim for recognition as illegal and annulment of the orders for his dismissal, reinstatement and collection of earnings for the period of forced absenteeism. The court found that the dismissal of the plaintiff on the basis of a conflict of interest was illegal, since no actual conflict of interest was found. In another example, the inspector of the department of customs clearance of the customs post informed the head of the Odesa customs office about the absence of a conflict of interest when performing the duties of this position and that in the event of a conflict of interest, she undertakes to take measures to prevent a conflict of interest.

During the implementation of customs formalities and customs clearance of the customs declaration, the inspector of the customs clearance department of the customs post had a real conflict of interests, which consisted in a contradiction between her private interest and her official powers, that affected the objectivity or impartiality of decision-making during the implementation of customs formalities (declared the goods at the customs post, the owner of which is the sister of an official of the customs body), did not report the existence of a real conflict of interest [7]. That is, the inspector of the customs post did not report that she had a real conflict of interest, that is, she deliberately violated Articles 28, 35 of the Law of Ukraine "On Prevention of Corruption". The inspector of the customs body did not admit guilt and asked to close the proceedings in the absence of an administrative offense and the expiration

of the terms of administrative liability. In the analyzed case, the court closed the proceedings due to the expiration of the terms of bringing to administrative responsibility. The question of the presence or absence of an administrative offense in a person's actions was not resolved [7]. Therefore, a conflict of interests in the implementation of customs procedures should be considered as a situation where a person has a private interest in the implementation of customs procedures in which he performs his official powers, which may affect or has affected the objectivity or impartiality of his decision-making or the performance or non-performance of actions during the execution of the specified powers in the implementation of customs procedures. Types of conflict of interests in the implementation of customs procedures, based on the

provisions of the Law of Ukraine "On Prevention of Corruption", should include: (1) potential conflict of interests and (2) real conflict of interests.

### **Bibliography:**

1. Клок О. В. Конфлікт інтересів у діяльності посадових осіб органів доходів і зборів: особливості виникнення та врегулювання. *Митна справа*. 2013. № 6. С. 125–132.

2. Shevchuk, O. Conflict of interest in the activities of judges in Ukraine and the European Union: a comparative legal study / Shevchuk, O., Matyukhina, N., Babaieva, O., Lysodyed, O., Davydenko, S. *Juridical Tribune – Tribuna Juridica*, 2023. Vol. 3, Iss. 2. P. 262–282.

3. Шатрава С.О. Конфлікт інтересів як корупційний ризик в діяльності органів внутрішніх справ. *Європейські перспективи*. 2015. № 6. С. 126–131.

4. Абдукадірова К. Е. Конфлікт у сфері митних правовідносин як передумова виникнення митного спору. *Науковий вісник Міжнародного гуманітарного університету. Сер. : Юриспруденція*. 2020. № 47, том 1. С. 50–53.

5. Оніщик Ю. В., Толстолуцька М. М. Правова ідентифікація дефініції «митний спір». *Правові новели*. 2019. № 9. С. 114–119.

6. Постанова Касаційного адміністративного суду від 29.05.2020 р. по справі № 821/1532/17. URL: <https://reyestr.court.gov.ua/Review/89544331>

7. Постанова Малиновського районного суду м. Одеси від 11.03.2020 р. у справі 521/2448/20 URL: <https://reyestr.court.gov.ua/Review/88602104>

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## **ПРОБЛЕМИ ПОНЯТТЯ, СУТНОСТІ ТА ПРАВОВОЇ ПРИРОДИ ПРАВОВІДНОСИН В СФЕРІ ІНФОРМАЦІЙНИХ ТЕХНОЛОГІЙ**

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Правовідносини, безперечно, є однією із важливих та конкретних форм соціального буття права. Вони розкривають, роблять предметно визначеним процес втілення правових норм в суспільне життя. Право як загально-соціальне явище проявляє себе в наступних ключових сферах: правосвідомість, правові норми та правові відносини. Правовідносини –