

The Mode of Government Service in Custom Authorities

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Abstract: The essence of the regime organization of government involves the construction of a coherent system of relations and interactions of subjects and objects of management to achieve the goals and tasks at hand. Among the many tasks of a special place in the organization of the regime of the state bodies belong to preserve state secrets. A significant part of the public authorities is related to the security of state secrets. That's why for the regime of state secrets creates a whole system of security measures dissemination of national importance. Almost impossible to cover the whole list of features of the regime of public service with the customs authorities. However, the basic questions of the organization of the customs authorities (structure and activity, authority, cooperation with other state agencies and uchasnikami foreign trade activities in the field of customs) and the order of service in customs are reflected in the relevant sections of the Customs Code and the Regulations on the Committee customs control of the Ministry of Finance.

Key words: Kazakhstan • Government service • Custom authorities

INTRODUCTION

At all times and practically in the entire civilized countries of requirement to government service were and remain extraordinarily high. There must so high be requirements to the normatively-legal acts, regulative activity of all kinds and forms of government service. Government service, the mode of government service in custom authorities is legal concepts though withstand, however worked not enough out in a theory and that is why not getting clear and unequivocal elucidation in Law. All of it brings in a mess in practice of activity [1]. It would seem, with the acceptance of normative act finally points must be placed above understanding of one or another legal category. A law in a certain norm expounds the signs of the sought after concept and as though stops every the same round him. So, in any event, it must be. But on a check all appears not so simply. Unfortunately, the norm of law frequently casts light not only, but finally tangles a question. The same legal concept can be differently interpreted in different normative acts. We will appeal to maintenance of Law PK «About government service» [2].

In the first article of this Law government service is determined as activity of civil servants in public organs on execution of post plenary powers, sent to realization of

tasks and functions of state power. This legislative norm from technical and logical incongruities does not execute the destiny. Firstly, in one short suggestion four times an adjective recurs «state» in different cases as it applies to service, office workers, organs and power, that testifies to the lack of ability clearly and clear to express an idea, say of the judgment, correctly to frame a sentence. Secondly, the logical error of idem per item is suffered - the same by means of the same [3]. Who will argue, that work of civil servants and there is government service. Thirdly, one legal concept - "government service" is explained through the row of other legal concepts: "civil servant", "public organ", "post plenary powers", "functions of state power", that the interpretation is given in the same article. Algebraic equalization turned out the family with by a great number unknown. And to understand with the sought after concept, a reader tries to go deep in sense of other legal concepts, after again goes back to initial and so proceeds infinitely long and without some result. We will make an effort break from this trap by a search and ground of signs of interesting us legal concept, that in general and must be the basis of legal technique at writing of laws. Leaving all chainlet of logical deductions after brackets, we will set forth working determination. Government service is this, foremost, special structural subdivision created for realization of the

function of the state distinguished on criteria. In our case the question is about such important state function, as custom business. For her realization the special service is created or, that the same is an organizational structure [4].

Main Part: In general, if to touch legal concepts and terms and they, actually and form the language of any legislative act, then errors at their application, explanation and determination are general trouble of practically all our Laws in force. No, perhaps, not a single Law that would avoid similar errors. We already not once had publicly to speak out on this issue. It is enough to name our article in the "Legal newspaper" after 5 and on March, 6, 2007, touching the Landed code. Now let us give up a passing glance on maintenance of some reasons of the Custom code, that is a point at an issue in this article. On recommendation, apparently, our western partners, in all Laws accepted by us the article joins about basic concepts. In the Custom code it is the article [7]. In her elucidations are given 48 concepts. Would it be desirable to ask a legislator, what criterion the selection of these concepts was done on? Why exactly are these 48 concepts confessed by basic? The selection of these concepts can not surprise: producing of commodities and transport vehicles; freight operations; action of act of providence; and declaration; foreign person and Kazakhstan person; simply person; foreign commodity and Kazakhstan commodity; taxes; ferryman; authorized organ; electronic document and other. Would it be desirable to understand why did these widespread words and expressions and even current law terms find character of legal norms on custom business? From text of this article does not quite follow, that another interpretation is given these concepts, than that can be read in certificate literature - dictionaries, encyclopaedias, textbooks and monographs? Who will argue, that such, for example concepts, as freight operations, taxes, ferryman, electronic document of and other are they, as accepted to talk and in Africa does not change the value.

In the field of custom business it is possible basic legal concepts to confess those that determine character of this specific activity of the state. To them, in particular, belong: custom operations and custom procedures, custom payments and custom statistics, custom modes and custom administration and much other, normatively envisaged in the corresponding articles of code. If in a certain incoterms specially determination of one or another legally meaningful concept holds own,

consequently, there is not such legal concept and there is a simply current word that must be used in the primary sense.

About Principles of Service in Custom Authorities: Since any public service, including customs, has common principles of its activities will focus on one of them, cause us some concern. Principles of public service special article 3 of the Law "On Public Service " and in it, in particular, refers to such a requirement as a priority of the rights, freedoms and legitimate interests of citizens before the interests of the state. In our view, the proclamation of this principle is controversial. As always, we are bumping from one extreme to the other. In Soviet times, political reliability was tested by how a person relates the public and the private, public and private. If it prevailed private interests above the public was private, he received a brand unreliable and his career was put on the cross. Today, the opposite is true. Why is the state's interests positiveness downplayed in the name of the interests of the individual?. It seems to me that one can not oppose the interests of the individual to the interests of the state. When the interests of many individuals are the same, they become the common interest and the protection of those interests is passed as a default under the jurisdiction of the state. As such, you can name, for example, public safety and crime prevention, environmental protection, national defense, border security, cooperation with other countries, etc. They take on the character of state functions to implement them are organizational structures that are overgrown bureaucratic lyudom as trees with leaves.

Interests of the State and Interests of Personality: In general terms, it can be noted that in many cases the specific person of interest the whole logic of public life is reborn in the interest of the state. A person of their worries as it passes, entrusts the state and in this part it should be said, is compelled, obliged to limit their claims, to entrust to the state. But since we are faced with the state does not directly and in the face of certain officials (civil servants), they are something we experience and most of distrust and even hostility that caused quite understandable reasons. In one case, this is due to the representative of the arrogance of power, in the other - because of its vulgarity, in the third - because of its tendency to corrupt profit, euphemistically referred to as a client appreciation, etc. In order to somehow deal with this, It remains to one - following the well-known saying:

trust but verify - to create different structures for public control over the activities of public servants. Civil society is an alternative to the arbitrariness of officials.

Thus, the contradiction between the interests of the state and the individual often contrived, artificial *nasazhdaemy*. In fact, all the way, the latter can occur for various reasons, between the citizen and the state official, but it does not have to be afraid, it is normal practice. Another thing is that they should be allowed in a civilized manner. Arbiters in resolving such conflicts appear Law, the judiciary, public control.

Regime Organization as Management Form by Custom Authorities: As the public service in the customs authorities is necessary to ensure the interests of society as a whole, meet the needs of the vast numbers of people to it (public service) is not without reason had strict requirements in terms of professional skills, competence, authority and responsibility. How can I ensure that the activities of public service these criteria?

On the one hand, the customs business is a multi-functional complex hierarchical social formation with a large number of diverse and specific labor operations. And every socially driven work, as it is known, needs to be managed. Is no exception and the civil service of the customs authorities. In one of the values of the concept of "service" is precisely defined as a function of management. When we say, for example, about the health service, the weather service, time service, legal service, etc. etc., while we mean primarily specific management function. Customs Service and as a management function and an organizational structure in both its multifaceted manifestations. Suffice it to say that only one legislative act, devoted to the service, the Customs Code consists of 531 articles, distributed to the structural part (there are 3), sections (16), chapter (73) and individual articles. For comparison, the Criminal Code of the Republic of Kazakhstan contains 393 articles. Second in importance after the Civil Code of the Land Code of the Republic of Kazakhstan has 170 articles.

The peculiarity of the Customs Code is that it reflects issues and substantive and procedural law and *funktsionalnye* and organizational and informational problems of building an integrated system of customs authorities. All this is extremely difficult to manage the customs authorities.

On the other hand, the Customs Service is not just a social entity, but a complex system of state law enforcement agencies on the implementation of specific

functions to ensure the economic security of the country's foreign trade. It brings together tens of thousands of people and property worth billions of tenge. Service in customs is important to the public domain and require special, just her inherent forms and methods of operation. That is why, in our opinion, Modal organization of public service and there is a way to streamline and improve the efficiency of the customs authorities.

Regime Organization and State Secret: The essence of the regime organization of government involves the construction of a coherent system of relations and interactions of subjects and objects of management to achieve the goals and tasks at hand. Among the many tasks of a special place in the organization of the regime of the state bodies belong to preserve state secrets. A significant part of the public authorities is related to the security of state secrets. That's why for the regime of state secrets creates a whole system of security measures dissemination of national importance. It is clear that the best way to maintain privacy of the information it *nerasprostranenie* her, locking her in a securely guarded safes. But the carefully guarded, evanescent information - is nonsense. Information must find its destination, otherwise there is no information at all - neither secret nor obvious. Consequently, the regime is not state secrets to classified information will not distribute, but the fact that the final paragraph of her appointment was really the last and final. The end-point of classified information means either its destruction by the user, or return its source distribution [8]. Access of civil servants to the information constituting a state secret, another key component of the regime of public service. To be eligible for state secrets, the official has to give consent to the holding in respect of its special events. If he refuses to give such consent, it automatically implies its dismissal of civil servants.

CONCLUSIONS

Almost impossible to cover the whole list of features of the regime of public service with the customs authorities. However, the basic questions of the organization of the customs authorities (structure and activity, authority, cooperation with other state agencies and *uchasnikami* foreign trade activities in the field of customs) and the order of service in customs are reflected in the relevant sections of the Customs Code

(Articles 16-32, 505 -531). But, as it turns out, this is not enough to provide the necessary public service mode with the customs authorities. Government Resolution of 29 September 2004 approved the Regulations on the Customs Control Committee of the Ministry of Finance. This raises a number of questions. What is the role of the Committee of the customs control in the system of customs authorities of Kazakhstan? Is the Customs Control Committee of the authorized body? Perhaps he, as the name implies, only implements the control function? Or organize the work of the entire customs system? These and other questions arise because of the inconsistency of certain provisions of the Customs Code and the article of the Customs Control Committee of the Ministry of Finance. Let's try to deal with the issues raised. In any case justify the need to address these issues.

First, the Resolution of the Government of the Republic of Kazakhstan on October 29, 2004, which established the Committee of Customs kotrol and approved the Regulations on it, no mention Customs Code and its provisions on the customs authorities. Moreover, in the State of the Article 3 states that the Committee shall function in accordance with the Constitution of the Republic of Kazakhstan, the laws of the Republic of Kazakhstan, acts of the President and the Government of the Republic of Kazakhstan, other regulations, including international treaties of the Republic of Kazakhstan and these Regulations. Why is this list does not mention the Customs Code? The Code has a special place in a number of legislative acts, besides it is a question of customs affairs. Apparently, this omission, if not assume a deliberate disregard.

Secondly, who is the authorized body in the system of the Customs: self Ministry of Finance or the Board? The Customs Code (Article 17, item 3) states that the competent authority is a legal entity and operates on the basis of the Regulation approved by the Government.

If the position of the Customs Control Committee and approved by the Government, as stated in the Regulation (Article 4), the Committee shall be a legal entity and has seals and stamps, etc., etc., we can assume that he (the Committee) and is the competent authority in customs matters. If this is the case, why are very different functions authorized body referred to in Article 17, 1 of the Customs Code and functions of customs, painted in section 2 of the Regulation of him? According to the logic they need to match.

Third, we need to achieve clarity on the question of what the main purpose of the Customs Control Committee: either it implements only a control function, or as an authorized body of the state provides the whole system of customs authorities. The fact is that in the Customs Code is a special article - 15 dedicated to customs control, probably due to the extreme importance of this function. So it was natural to assume that the Customs Control Committee created for this function. However, the text of the Regulation suggests a broader mandate of the Committee. It organizes and manages the operation of the entire system of customs authorities. In such a case, to avoid misunderstanding, why in the name of the Committee to avoid the word "control" and not call it that: "Customs Committee" or "Committee on Customs matters".

These are the considerations regarding gaps in the legislation dealing with the organization and activities of customs authorities.

REFERENCES

1. Berelson, B., P. Lazarsfeld and W. McPhee, 1954. Voting: A Study of Opinion Formation in a Presidential Campaign. Chicago: University of Chicago Press, pp: 395.
2. Gerbner, G., 1972. Mass Media and Human Communication Theory. Sociology of Mass Communications. Ed.: McQuail D. Harmondsworth: Penguin, pp: 31-68.
3. Abdi, O.S., 2012. Middle-East Journal of Scientific Research, 12(7): 927-937.
4. Tirta, N.M., 2013. World Applied Sciences Journal, 23(11): 1508-1516.
5. Adekunle, A.A. and A.O. Fatunbi, 2012. World Applied Sciences Journal, 16(7): 981-988.
6. Dantas, E., 2005. The system of innovation, approach and its relevance to developing countries. Science and Development Network. <http://www.scidev.net/dossiers/index.cfm?fuseaction=policybrief&dossier=13&policy=61>.
7. Kamal, E.M., 2013. World Applied Sciences Journal, 21(8): 1122-1127.
8. Nikhashemi, S.R., L. Paim, A. Haque, A. Khatibi and A.K. Tarofder, 2013. Middle-East Journal of Science Research, 14(1): 79-92.