

TESTING OF DRUGS IN THE IMPLEMENTATION OF CUSTOMS CONTROL IN UKRAINE: LEGAL ASPECTS

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In modern conditions, in the implementation of customs control of medicinal products containing narcotic drugs, psychotropic substances and precursors when they are crossed the customs border, the issues resolved by experts should ensure compliance with the law. In 2018, the expert subdivisions of the customs authorities received 11,624 requests for research, samples (trial item) of about 34,726 were also examined. In order to identify substances which are prohibited or restricted to cross through the customs border of Ukraine, 2,441 samples were examined, and in 1035 (42, 4) cases such goods were identified [5]. During 2013, expert subdivisions of the customs authorities of Ukraine examined over 2,000 samples for the presence of controlled substances, where narcotic, psychotropic substances, or precursors were revealed in a half of them. Besides this, 10 new synthetic and natural origin of psychotropic combinations were identified exactly in 2013 for the first time. In general, during 2008 - 2015 55 types of new psychoactive combinations were identified by customs laboratory specialists [24].

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Certain aspects of customs expertise in cases of violation of customs rules have already been studied in the scientific literature [1,4,6,8], but the legal issues of running expert examinations of medicinal products containing narcotic drugs, psychotropic substances and also precursors for the customs purpose were not the subject of study by researchers in modern conditions, so that indicates the relevance of this study.

The basis of this study is an interdisciplinary method to the analysis of legal problems of the examination of medicines containing narcotic drugs, psychotropic substances and precursors in the implementation of customs control using comparative legal, methods of analysis and synthesis, dialectical and systemic methods.

Articles 2, 13 of the Law of Ukraine “On Narcotic Drugs, Psychotropic Substances and Precursors” [21] and Article 197 of the Customs Code of Ukraine [9] indicate that narcotic drugs, including plants, and psychotropic substances included in lists No. 1, No. 2 and No. 3 of the Table I List of narcotic drugs,

psychotropic substances and precursors [14] according to certain codes (for example, 1211.1301, 2806, etc.) of the Ukrainian classification of goods of foreign economic activity are prohibited for import, export and transit through the customs territory of Ukraine [12]. Import and export of drugs containing narcotic drugs, psychotropic substances and precursors is carried out by enterprises in case of obtaining permission for each individual operation, which is issued by the State Service of Ukraine on Medicinal Products and Narcotic Drugs Control. Issuance of permission is carried out in coordination with the Security Service of Ukraine [18]. Based on the provisions of this regulatory legal act, the following types of permits can be distinguished: 1) for the one-time importation into Ukraine of unregistered such medicinal products; 2) for import into Ukraine for registration of samples of medicines containing narcotic drugs, psychotropic substances and precursors; 3) the importation as a humanitarian aid of medicines containing narcotic drugs, psychotropic substances and precursors; and also for 4) their export 5) and transit. The customs authorities at the specified permission put a mark on the delivery of each batch of medicines containing narcotic drugs, psychotropic substances and precursors. [18]. Importation into the territory of Ukraine (export from the territory of Ukraine) or transit through the territory of Ukraine of such medicinal products is carried out only through customs, determined by the Cabinet of Ministers of Ukraine [15].

Drugs containing narcotic drugs, psychotropic substances and precursors when crossing through the customs border of Ukraine are subject to customs control and clearance. Customs control is a set of measures implemented to ensure compliance with the provisions of the Customs Code of Ukraine, laws and other regulatory acts on state customs, international agreements of Ukraine, concluded in accordance with the law (clause 24, Article 4) [9]. The main rules of the Customs Code of Ukraine, defining customs control, are set out in Section 11 "Customs Control" (Articles 318-363), and (Chapter 50 (Articles 356-357) is devoted to customs expertise implementing during customs control.

One of the activities of the State Customs Service of Ukraine is the organization and implementation of customs examinations in the customs service and its territorial entities (p.64 article 4) [16]. Examination of drugs containing narcotic drugs, psychotropic substances and precursors should be referred to the method of customs control. This is confirmed by the fact that the Customs Code of Ukraine does not include customs expertise into the forms of customs control, which are provided for in Article 336 of this Code [9], in the legal literature also expertise refers to the method of customs control [7, p.42].

In the process of customs control of drugs containing narcotic drugs, psychotropic substances and precursors, if it is necessary to apply special knowledge, specialists and experts can be involved, in accordance with Article 327 of the Customs Code of Ukraine. This article of the law regulates the issues of reimbursement of expenses related to the participation of specialists or experts in the implementation of customs control [9]. It is also indicated that the choice of a specialist or expert is carried out by the head of the Entity of Revenues and Fees or his deputy with consultation with the head of the enterprise or institution where the specialist or expert works. It should be noted that the Entity of Revenues and Fees is included in the central executive entity that provides the formation and implements the state tax and customs policy (State Customs Service of Ukraine), customs and customs posts (clause 34-1 of article 4) (hereinafter - customs organisations) [9]. In accordance with the provisions of Art. 502

of the Labor Code of Ukraine, an expert can be a person who has the necessary knowledge to provide the relevant conclusion and has the right: 1) to get access to the case materials relating to the subject matter of the examination; 2) to file petitions for the provision of additional information if necessary for the provision of conclusions [9]. It should be noted that the customs examination of medicinal products containing narcotic drugs, psychotropic substances and precursors imported into the customs territory of Ukraine is carried out in the following cases: 1) in cases of violation of customs rules in order to clarify issues arising and obtain evidence necessary for consideration these cases; 2) under customs control and customs clearance [13].

The definitions «narcotic drugs» and «psychotropic drugs» are not defined at the legislative level, although these concepts are often used in regulatory acts to refer to a «special» variety (separate category) of pharmaceutical products [23]. The Law of Ukraine "On Medicinal Products" states that narcotic medicinal products are medicinal products which, in accordance with the legislation, are classified as narcotic [20]. It therefore requires the resolution of the distinction between "narcotic drugs" (art. 1) [14,21], ««Narcotic drugs»; [20-22] and «narcotic (psychotropic) drugs», because the basic definitions should be clear and unambiguous. When distinguishing the above categories, it seems more appropriate to use the common for these concepts of the construction "drugs containing narcotic drugs, psychotropic substances and precursors". We propose to introduce the concept of this definition in Art. 1 of the Law of Ukraine «On Narcotic Drugs, Psychotropic Substances and Precursors» [21].

In order to clarify the essence of the definition "examination of medicinal products containing narcotic drugs, psychotropic substances and precursors" in the field of customs, let us present the scientists' points of view on the term "examination" in a general sense. The Customs Code of Ukraine does not define the term "customs examination". Only in Article 515, the Customs Code of Ukraine determines that examination is appointed if, in order to clarify issues arising in the case of violation of customs rules, there is a need for special knowledge in certain branches of science, technology, art, religion and like that. The specified examination is not a forensic examination [9].

In the legal literature, the concept of "examination" is a special type of scientific research that is carried out by experts in order to obtain a reliable, qualified and independent opinion necessary for making a reasoned decision on problematic or controversial issues arising in various fields of human activity [11]. Other researchers interpret this definition as research, testing, analytical research, quantitative or qualitative assessment by a highly qualified specialist, institution or organization of a particular subject, requiring special knowledge in the relevant field of public activity, the results of which are recorded in the form of an expert opinion. [3,]. There are also opinions of scholars in the legal literature that "customs examination" is a special scientific study carried out by an expert in order to solve problems in the field of customs [1], or it is considered in two aspects: on the first, it is the action of state employees (customs experts), in accordance with the norms of current legislation based on the implementation of their official duties; The second aspect is a scientific activity, the purpose of which is to provide a reasonable conclusion regarding the object of research in accordance with the request of customs authorities [8] From our point of view, the legal combination "customs examination of medicinal products containing narcotic drugs, psychotropic substances and precursors" should be understood as a special scientific and practical research carried out by an expert to solve problems in

the field of customs regarding the medicinal drugs arising in the case of violation of the requirements of customs legislation.

In relation to medicinal products containing narcotic drugs, psychotropic substances and precursors, an expert may be a person who has high qualifications, special knowledge, has experience in the relevant field of activity; speaking fluently Ukrainian, has a higher pharmaceutical, chemical, biological, technical or other education (depending on the specifics of the issues, are considered and solved), while people with an academic title and academic degree are given preference (paragraph 3.1) [19]. If there are some reasons, various examinations of such medicines (drugs) can be prescribed, such as forensic pharmacological, agrotechnical, forensic biological, chemical-technological, medico-narcological, forensic psychiatric, etc. [2,10]. The purpose of the examination of drugs containing narcotic drugs, psychotropic substances, or precursors is to obtain a scientifically based, properly procedural expert opinion of the facts identified by it, which, together with other sources of evidence, will be assessed by a customs official or court.

The approximate scheme of customs examination of medicines containing narcotic drugs, psychotropic substances, or precursors when moving them across the customs border of Ukraine, in our opinion, should look like this:

Stage 1. Preparation of requests from customs authorities for the examination of medicines containing narcotic drugs, psychotropic substances, or precursors in the Department of Tax and Customs Expertise (hereinafter referred to as customs laboratories). Currently, the system of customs expert units in Ukraine consists of the Department of Tax and Customs Expertise DFS (Kiev). In addition to these units, the structure includes five separate departments for examinations and researches located in the cities of Dnipro, Lviv, Odessa, Severodonetsk, Kharkov and Uzhgorod. These laboratories carry out examinations and researches only in the fields of the customs authorities. The request must specify the basis and purpose of the request direction, determine the tasks for research (analysis, examination), namely what characteristics of the product (composition, physical, physical and chemical properties, etc.) need to be checked or define [17].

Stage 2. Preparation of a set of documents for the object of a research. This set of documents includes: the original of the act on the conclusion of samples (trial items); a copy of an inspection certificate for medicinal products containing narcotic drugs, psychotropic substances, or precursors (if available); copies (customs declaration, foreign economic agreement (contract), invoices, bills of parcel, waybills, certificates (conclusions, registration certificates of authorized state entities, if available), technical and technological documentation on the composition, physical and chemical properties of the goods, information on the main technological stages of their production and destination [17].

Stage 3. Sampling and samples (if necessary). Taking samples and trial items of drugs containing narcotic drugs, psychotropic substances, or precursors is carried out in accordance with the provisions of Art. 84 Tax Code and articles 356 and 357 of the Customs Code of Ukraine [9] upon written request of the owner of medicinal products containing narcotic drugs, psychotropic substances, or precursors or his authorized representative, and with the permission of the customs authorities (part 1 of article 355). As well as taking samples (trial items) is carried out by officials of the customs authority in the framework of customs control procedures (part 4 of article 366). The act of taking samples (trial items) of goods in triplicate is drawn up.

Stage 4. Sending of samples (trial items) and their documentation to the customs laboratory. Selected samples of drugs containing narcotic drugs, psychotropic substances, or precursors are securely packed and sent to the laboratory together with the previously prepared shipping documents. At the same time, the act on sampling and samples of goods is provided in the form of the original, other documents "in the form of copies, certified by the customs authority [17]. For each sample taken (trial item) a separate customs security is attached.

Stage 5. Executing of research by the customs laboratory. The research of drugs containing narcotic drugs, psychotropic substances, or precursors in the implementation of customs control is made within 10 days from the date of their receipt. The choice of method (methodology) for implementing research (examinations) is the responsibility of the expert [17].

Stage 6. Preparation of expert conclusions on the results of research. In the conclusion of the results of the examination the following must be indicated: the place and date of the examination; by whom and on the basis of which document the examination was carried out; questions asked to the expert; objects of research; information and documents provided by the expert; the content and results of the examination with an indication of their execution; evaluation of results, examination itself, conclusions and their justification. In the case of research of medicinal products containing narcotic drugs, psychotropic substances, or precursors in the implementation of customs control and customs clearance, the conclusion is drawn up in two copies [17]. The expert makes a conclusion in writing on his own behalf. The essence of his research and the rationale for answering the questions posed are presented in the conclusion. The expert's opinion is not mandatory for the customs official; in the case of this person's disagreement with the expert's conclusion, a justification for such disagreement must be provided [9].

Stage 7. Sending of the conclusion of the customs laboratory according to the results of the examination. The conclusion of the expert of the customs laboratory is delivered to the customs authority, with a mandatory mark in the register of findings issued on the requests for the examination of medicines containing narcotic drugs, psychotropic substances, or precursors, by mail or other means of information technology [17].

Conclusion. Examination of drugs containing narcotic drugs, psychotropic substances, or precursors is an important part of their customs control and customs clearance. The purpose of this examination is to obtain a scientifically grounded, properly procedural expert opinion on the facts that it has identified, which, together with other sources of evidence, will be assessed by a customs official or court. Examination of drugs containing narcotic drugs, psychotropic substances, or precursors is not a forensic examination, and it can be attributed to a special class of examinations, since it has the characteristic features inherent only in it: subject, tasks, objects, and research methods. The procedure for the appointment and execution of customs examinations of drugs containing narcotic drugs, psychotropic substances, or precursors must comply with international requirements, including international standards (methods) of implementation of expert research.

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SUMMARY

TESTING OF DRUGS IN THE IMPLEMENTATION OF CUSTOMS CONTROL IN UKRAINE: LEGAL ASPECTS

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The purpose of the study is to analyze certain aspects of the legal regulation of the examination of medicines containing narcotic drugs, psychotropic substances, or precursors in the field of customs. To achieve this goal, we analyzed the number of customs examinations carried out, new narcotic compounds identified for the first time. An analysis of the understanding of the definition “examination” and “customs examination” in the scientific literature. Two directions of the implementation of expert examinations of medicines containing narcotic drugs, psychotropic substances, or precursors in the field of customs were identified, its concept was defined. It is proposed to attribute the investigative examination to the methods of customs control. It was found out that this examination is not a forensic examination, and it can be attributed to a special class of examinations, since it has characteristic features inherent only in it: subject, tasks, objects, and research methods. Seven stages of the implementation of expert examinations of medicinal products containing narcotic drugs, psychotropic substances, or precursors during customs control are highlighted and their procedural order is analyzed.

Keywords: customs examination, drugs containing narcotic drugs, psychotropic substances, or precursors, customs control, customs control methods.

РЕЗЮМЕ

ЭКСПЕРТИЗА ЛЕКАРСТВЕННЫХ НАРКОТИЧЕСКИХ СРЕДСТВ ПРИ ОСУЩЕСТВЛЕНИИ ТАМОЖЕННОГО КОНТРОЛЯ: ПРАВОВОЙ АСПЕКТ

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Целью исследования явился анализ отдельных аспектов правового регулирования проведения экспертизы лекарственных средств, содержащих наркотические средства, психотропные вещества или прекурсоры в сфере таможенного дела. Для достижения указанной цели проанализировано количество проведенных таможенных экспертиз впервые идентифицированных новых наркотических соединений.

Проведен анализ понимания термина «экспертиза» и «таможенная экспертиза» в научной литературе. Выделены два направления производства экспертиз лекарственных средств, содержащих наркотические, психотропные вещества или прекурсоры в сфере таможенного дела, установлено понятие экспертизы. Предложено отнести исследуемую экспертизу к методам таможенного контроля. Выявлено, что указанная экспертиза не является судебной экспертизой и ее следует отнести к особому классу экспертиз, поскольку она имеет присущие только ей характерные признаки: предмет, задачи, объекты и методы исследования. Выделены семь этапов производства экспертиз лекарственных средств, содержащих наркотические, психотропные вещества или прекурсоры при осуществлении таможенного контроля и проанализирован их процессуальный порядок.

რეზიუმე

სამკურნალო ნარკოტიკული საშუალებების ექსპერტიზა საბაჟო კონტროლის განხორციელების დროს: სამართლებრივი ასპექტი

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კვლევის მიზანს წარმოადგენდა ნარკოტიკული საშუალებების, ფსიქოტროპული ნივთიერებების ან პრეკურსორების შემცველი სამკურნალო საშუალებების ექსპერტიზის ჩატარების რეგულაციის სამართლებრივი ასპექტების ანალიზი საბაჟო სფეროში. ამ მიზნით გაანალიზებულია პირველად იდენტიფიცირებული ახალი ნარკოტიკული შენაერთების საბაჟო ექსპერტიზების ჩატარებული რაოდენობა, ასევე გაანალიზებულია გაგება ტერმინებისა “ექსპერტიზა” და “საბაჟო ექსპერტიზა” სამეცნიერო ლიტერატურაში. გამოყოფილია ნარკოტიკული საშუალებების, ფსიქოტროპული ნივთიერებების ან პრეკურსორების შემცველი სამკურნალო საშუალებების ექსპერტიზის წარმოების ორი მიმართულება, დადგენილია ექსპერტიზის ცნების არსი. ავტორების მიერ შეთავაზებულია გამოკვლეული ექსპერტიზის მიკუთვნება საბაჟო კონტროლისათვის. გამოვლენილია, რომ აღნიშნული ექსპერტიზა არ წარმოადგენს სამართლო ექსპერტიზას და იგი მიკუთვნებულ უნდა იქნას ექსპერტიზის გამორჩეული კლასისათვის, აქვს რა მხოლოდ მისთვის დამახასიათებელი ნიშნები: კვლევის საგანი, მიზნები, ობიექტი და მეთოდები. საბაჟო კონტროლის განხორციელების დროს გამოყოფილია ნარკოტიკული საშუალებების, ფსიქოტროპული ნივთიერებების ან პრეკურსორების შემცველი სამკურნალო საშუალებების ექსპერტიზის წარმოების შვიდი ეტაპი და გაანალიზებულია მათი პროცესუალური თანმიმდევრობა.

DETERMINATION OF THE INITIAL MOMENT OF LIFE OF A PERSON IN UKRAINE

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Investigating the legislation of Ukraine in the part of the initial moment of human life. Based on the foregoing, it is advisable to enshrine at the legislative level the initial point of life protection – from 25 weeks from the moment of fertilization, when the body of a newborn can exist and develop without the mother’s body.

It is also proposed to make changes to part 1 of Art. 50 The Law of Ukraine «Basics of the Legislation of Ukraine on Health Protection» of 19.11.1992 № 2801-XII, in particular, to replace in the text «Operation of induced abortion (abortion) can be carried out at the request of a woman in health care facilities in pregnancy for no more than 12 weeks, as an exception for medical purposes, when there is a real threat to the life of a woman in

the future birth or before the birth of a child - no more than 13 weeks, but it is possible and a later term, based on medical indications» and to make changes to other laws and by-laws. This will improve the demographic situation in the country, preserve the health of women for whom late-term abortion can be dangerous infertility or even result in death.

Among the important issues of patient protection in Ukraine [39; 52], the study of the initial moment of human life remains insufficiently investigated.

The focus of the work is the importance of determining the initial moment of human life in Ukraine. Various points of view and normative definitions of the initial moment of human life are considered. This is important for the criminal law qualifi-