

Abstract

for the dissertation of Zarembo Sergey Aleksandrovich submitted in fulfillment of the requirements for the degree of Candidate of Legal Sciences in the specialty 5.1.2 "Public Law (State Law) Sciences" on the topic "Administrative Acts in the Activities of Customs Authorities"

The Federal Customs Service of Russia (FCS of Russia) and customs authorities carry out their functions through various legal forms, the main of which are administrative acts produced in the course of their activities. In accordance with current legislation, the FCS of Russia has significant exclusive rule-making, law enforcement, and enforcement powers, which should play a decisive role in achieving target benchmarks for economic security and national development priorities. Reports on the performance of the FCS of Russia (2018–2023) indicate that legal work is generally regarded as one of the priorities for the development of customs authorities.

At the same time, striking a balance between public interests (stemming from issues of economic security and economic sovereignty of the Russian Federation) and the interests of private individuals (related to their participation in civil transactions and foreign economic activity) is more important than simple quantitative indicators of customs authorities' functions realized through administrative acts. This balance should be fair and proportionate to the constitutionally enshrined objectives of regulation, taking into account the high level of conflict that often arises in the interaction between customs authorities and private individuals. In this regard, it is necessary to address the existing shortcomings related to rule-making and rule application within the customs authorities, which, to varying degrees, affect both the efficiency of customs authorities' activities and the interests of individuals and legal entities.

Improving the system of administrative acts within the customs service should be regarded as one of the most important tools for modernizing customs administration and reducing (or minimizing) conflicts in customs relations.

The structure of the dissertation includes an introduction, three chapters divided into six sections, a conclusion, and a bibliography. The introduction outlines the relevance of the research topic, formulates its goals and objectives, defines the object and subject of the study, describes the degree of development of the scientific problem, and presents the theoretical and methodological basis of the research, its scientific novelty, as well as its theoretical and practical significance, including the results of the approbation of findings. The first chapter analyzes the theoretical and methodological foundations of administrative acts of customs authorities. Administrative acts of customs authorities are presented as a specific type of administrative acts. The concept, essence, and content of this category of acts are formulated, the requirements for them are considered, and their system is examined. The second chapter explores the peculiarities of normative and non-normative administrative acts of customs authorities. The third chapter is dedicated to the study of issues concerning the quality of administrative acts of customs authorities, particularly in terms of ensuring their effectiveness and legality. The conclusion summarizes the key findings drawn from the research results.

As a result of the research:

- the author's approach to the concept of an administrative act in the activities of customs authorities, its essence, content, and requirements is presented, along with the formation of the corresponding conceptual framework, taking into account modern approaches to public administration and management;
- the attributive characteristics of administrative acts in the activities of customs authorities are substantiated, based on the peculiarities of their legal nature;
- the systemic relationships and specific characteristics of the system of administrative acts are justified, with administrative acts produced by customs authorities being part of this system, as well as the direct influence of the general system of administrative acts on the acts of customs authorities;
- regarding the system of administrative acts of customs authorities, higher-level systems subject to mechanisms of interaction and mutual coordination

are identified, and it is demonstrated that acts of customs authorities have a legal impact of a certain content and orientation on public relations in the customs sphere as a result of interaction within different types of systems and with the external environment;

- the need for legislative regulation of the system of administrative acts is substantiated, which will provide a reliable typology of acts, clarity in their form and production procedures, corresponding to the idea of the most effective regulation and overall strengthening of the national legal system;

- the peculiarities and validity of departmental rulemaking by the FCS of Russia are identified, the systemic unity and interconnection of normative administrative acts of customs authorities are established, methodological shortcomings in the formation of legal and technical requirements for the preparation of the text of draft normative acts are identified, and ways to address them are proposed;

- in the context of departmental rulemaking by the FCS of Russia, it is proposed to consider a legal experiment as a form of approbation of draft regulations to assess their effects, usefulness, and feasibility within the established parameters for scaling, which ultimately ensures the validity of rulemaking decisions based on the results of modeling and forecasting the situation;

- theoretical and methodological approaches to non-normative acts formed in the activities of customs authorities are substantiated, with potential prospects for their future use in building a general model of such departmental acts, ensuring their legality and effectiveness;

- directions for increasing the predictive value of assessments of administrative acts, as well as their ex ante evaluation, and for strengthening the practice of analysis in general are substantiated;

- it is substantiated that assessing the effectiveness of an act solely by its compliance with formal legal requirements is insufficient, as such compliance does not guarantee effectiveness nor does it imply the possibility of measurement. In this regard, directions for strengthening expert assessments of the act, including

financial and economic expertise and the analysis of socio-economic and other consequences of its adoption, are proposed;

- the peculiarities of the mechanism for ensuring the legality of administrative acts, based on judicial and extrajudicial legal mechanisms for identifying and addressing violations of legality requirements, are identified, and directions for its improvement are proposed;

- measures for improving the current legislation on administrative acts in general, and administrative acts of customs authorities in particular, are proposed.

The theoretical and methodological justification of administrative acts of customs authorities was primarily carried out in accordance with doctrinal views on administrative acts. The concept of an administrative act as a legal category is directly related to the concept of public administration, representing the legal form of its implementation. Public administration manifests itself in administrative decisions, which take the form of legal acts, a part of which consists of administrative-legal acts being the result of the development and adoption of administrative decisions within the framework of executive-administrative state intervention.

Administrative acts of customs authorities act as a part of the general system of administrative acts as a legal form of public administration. They correspond to this system in terms of the volume and content of the requirements imposed, which concern both substantive and formal, (including regulatory) components, and are aimed at ensuring the legality of the acts issued.

In the first case, the study identifies the following positions: compliance of customs authorities' administrative acts with current legislation; their focus exclusively at the federal level; compliance of acts issued by customs authorities with the acts of higher authorities; competence-based justification, which is determined by the current legislation in the field of customs regulation and administration,

and is specified by the powers for issuing administrative acts granted to the FCS of Russia in the relevant foundational statute. At the same time, the issued

act must have clear limits, binding the author of the act in terms of preventing the restriction (or violation) of the competence and operational independence of various levels of the customs authorities system. Additionally, legal justification requires that the state-authoritative will must be clearly aligned with the purposes of the act, its grounds, the mechanism of its implementation, and its legal consequences, while also excluding negative regulatory effects.

From a formal and procedural perspective, the acts of customs authorities are issued in accordance with technologies and procedures that, on the one hand, are independently established by customs authorities, and on the other hand, are clearly integrated into the overall rule-making process defined by acts of the Government

of the Russian Federation with the elements such as the structure of rule-making, various types of legal reviews, and approvals of the procedure for issuing acts. The technologies and procedures for producing non-normative acts may also be developed independently or base on legislation that establishes a unified procedure for their issuance. It is equally important to consider the form of the issued act, as the decision on its form has significant implications for the formal and procedural justification of the act, as well as for optimizing its structure to better convey the meaning and content of the act, and to comply with systematization requirements. The quality of the act is further determined by the requirements of legal drafting technique, particularly in terms of the presentation of legal material and compliance with mandatory formal requisites.

The specificity of customs authorities' acts is characterized by: the concretization of the empowered subject expressing the will of the state; the subject matter of public administration, which, within the framework of general goals, tasks, and functions, encompasses its own set of issues to be regulated through the use of administrative acts; the corresponding scope of necessary and sufficient powers in the subject matter; and the procedures for producing administrative acts of various legal natures and orientations, which, nevertheless, are based on universal norms and rules.

As a result of the study of the legal nature and features of administrative acts, the following definition of an administrative act of customs authorities has been formulated: a unilateral, legally authoritative, subordinate expression of will by authorized subjects within the customs authorities system. This expression of will must be articulated strictly within the limits of the subject's competence established by current legislation, directed toward either rule-making or rule-implementation, and must take a legally prescribed form, issued within the framework of established procedures, and align with the goals, tasks, and functions of public administration within the customs authorities' area of competence.

The objective relationship between the system of administrative acts of customs authorities and the general system of administrative acts allows the former to be regarded as a subsystem of the latter. Furthermore, the system of administrative acts of customs authorities functions as a subsystem of the system of legal acts of governance, as well as a subsystem of the broader legal acts system, which also extends beyond public administration, and a subsystem of the legislative system (with respect to normative administrative acts of customs authorities). Consequently, higher-level systems exist in relation to the system of administrative acts of customs authorities, where mechanisms of interaction and coordination operate. As a result, the acts of customs authorities interact within various types of systems, as well as with the external environment, providing legal influence of a specific content and orientation on public relations in the customs domain.

The system of administrative acts of customs authorities can be viewed as a set of both normative and non-normative acts, unified by the commonality of goals, objectives, and functions in the field of customs administration and regulation, with its own structure, specific characteristics, and patterns of functioning, both independently and within the broader framework of other systems of legal acts. This system is structured according to administrative acts with varying legal features and other characteristics.

The system is organized based on various types of interconnections between acts, which collectively allow us to speak not merely of a multitude of customs

authorities' acts, but of their systemic integrity, identification in relation to other systems of acts and the external environment, and their integrality, which serves as the foundation for achieving the goals, objectives, and functions of public administration and regulation in the realm of customs relations in all their diversity. This system remains in a state of sufficient dynamic equilibrium, maintaining relative stability in content and structure over a prolonged period, while also identifying the optimal forms of administrative acts. At the same time, the research highlighted the need for stabilizing the forms of acts used, both within the system of customs authorities' acts and within the system of executive power acts as a whole, given their considerable diversity.

Normative administrative acts of customs authorities are formed within the framework of departmental subordinate lawmaking, in accordance with the exercise of functions and powers in a defined area of activity. The corresponding regulatory powers are directly exercised by the FCS of Russia in established cases, with the assistance of other customs authorities, which may participate in drafting proposals for the issuance, repeal, or amendment of normative legal acts of the Ministry of Finance of Russia and the FCS of Russia. The specifics of the departmental lawmaking of the FCS of Russia are also influenced by the significant volume of international regulation. The issuance of value-driven acts, including strategic planning acts, also exerts a certain impact on the departmental lawmaking of the FCS of Russia.

In general, the normative administrative acts of the FCS of Russia can be viewed in their systemic unity and interconnection as a type of legal standard for the functioning of customs authorities, including a standard for the lawmaking activities directly undertaken by the FCS of Russia.

The practical implementation of the normative acts of customs authorities, in conjunction with legislative acts, international regulations, and other normative acts, generates the corresponding legal effect necessary for creating conditions conducive to the development of public relations in the fields of public

administration, business activity, monetary circulation, and other areas. This, in turn, enriches the value of regulatory governance performed by customs authorities.

The justification of regulatory production is grounded in several key aspects: the objectives of the FCS of Russia in preparing normative legal acts and projects in the field of customs; the assignment of relevant competence by existing legislation; the agency's authority to prepare normative legal acts and projects in customs matters, which is sufficiently concrete to serve as a valid basis for the issuance of specific acts (or groups of acts) within the FCS's jurisdiction; and the existence of normative support for the FCS's regulatory production, which correlates with the general regulation of departmental lawmaking. Overall, a positive trend has been identified in the regulatory lawmaking of customs authorities.

In the system of customs authority acts, the concept of "non-normative legal acts" is clearly delineated. This system was established based on an analysis of the set of documents produced in the activities of the FCS of Russia and customs authorities. The analysis revealed insufficient regulatory grounds for their identification, despite certain normative acts hinting at such identification, particularly through the concept of individual legal acts. However, an official normative definition, as well as a unified and universal system or formalization of this category of legal acts, has not been established. One could observe a departmental overcoming of this general regulatory gap, as evidenced by departmental regulation within the customs system, which creates a differentiated multiplicity of regulation. This regulatory morphology excludes uniformity in the legal forms used by executive-administrative authorities, leading to complexity in their legal evaluation, particularly by courts when resolving disputes. This ultimately undermines the protection of the rights, freedoms, and legitimate interests of citizens and organizations.

The concept of "non-normative legal acts" functions as a general category and is further structured into individual acts, acts of an interpretative nature that do not possess normative properties, acts that convey information to interested parties, and organizational acts that do not produce direct legal consequences but support the implementation of the functions and powers of customs authorities. The concept

of non-normative legal acts of customs authorities correlates with the concept of an administrative act of the customs authority, considering its specific legal implementation and organizational-supporting focus. The system and structure of official forms for expressing non-normative acts are ensured by departmental regulation within the customs authorities. The requirements applied to individual acts are relevant, significant, and appropriate concerning the non-normative administrative acts of customs authorities as a whole.

The understanding of the effectiveness of customs authorities' administrative acts correlates with the general theoretical methodological positions on effectiveness in law, which should be evaluated in a unified systemic context of public-legal regulation based on criteria of enforceability and transmissibility as universal for organizing normative models of activity. Thus, for public administration, it is essential to differentiate between the effectiveness of regulation and the effectiveness of activities based on these regulations.

One tool for aligning these two areas of effectiveness is the interrelationship between regulatory impact assessment and actual impact. It was noted that the indicators and criteria used in impact assessments pertain not only to the effects of legal regulation as one of the prerequisites for economic stability and growth but also to other factors of socio-economic development. In this context, any indicators and criteria may not directly relate to the assessment of regulatory effectiveness, which will be established within the impact assessment. Accordingly, the impact assessment, especially the predictive evaluation of a particular normative act, must be conducted in systematic relation to the relevant content of the regulation, including general regulatory objectives and functions, other regulatory acts, law enforcement practices, the level and specifics of legal awareness of the regulation's subjects, and the extra-legal context of the act's application. In this regard, one of the most significant tasks is the differentiation of consequences arising from legal regulation and extra-legal factors, which should undoubtedly be considered in the impact assessment.

The effectiveness of regulation undertaken by the FCS of Russia can also be observed through the agency's plans for implementing the Concept of Openness of Federal Executive Authorities, as the practical implementation of transparency ideas and tools can contribute to timely responses to existing and projected regulation.

Considering the diversity of administrative acts by their normative properties, it makes sense to discuss regulation of the FCS of Russia as a whole as the subject of effectiveness evaluation. This position is justified by several factors: the FCS of Russia participates in shaping the general legal order by forming an independent regulatory block within the national legal system, creates regulatory content and space, and develops and uses regulatory measures that are not formalized through legal norms but have a legal form, which testifies to differentiated objects of evaluation and differentiated methods and tools for evaluation, as the effectiveness of the regulation system created by the FCS of Russia in general and the effectiveness of a specific act, method, or regulatory tool cannot be absolutely identical in scope and direction.

Regarding the latter, an analysis of departmental lawmaking within the customs system reveals its predominant formalism, associated with evaluating the formal side of the act, complemented by an analysis of its effects only in established cases. This analysis involves identifying gaps and conflicts in regulation, ensuring the act's mechanisms of implementation and control. In other words, the sufficiency of the act's effectiveness lies in its compliance with formal legal requirements, but such compliance does not guarantee its effectiveness, nor does it imply the possibility of measuring it.

Considering the specificity of the functions and powers of customs authorities, the effectiveness of their administrative acts is influenced, among other things, by the adequacy of public declarations of the FCS's objectives and tasks, derived from acts of the President of the Russian Federation on national goals and tasks of development, and departmental strategic planning acts, integrated into the general system of strategic planning in Russia in relation to the FCS's functions and powers;

compliance with and support from domestic and supranational agreements; participation in the development and coordination of acts on customs regulation.

The issue of ensuring legality within departmental lawmaking is justified by the significant activity of the FCS of Russia in both preparing normative administrative acts and participating in the legislative process and subordinate lawmaking of other subjects. The most significant concerns about the legality of customs authorities' administrative acts pertain to non-normative acts, as evidenced by the high demand for judicial appeals against customs decisions.

Ensuring the legality of customs authorities' administrative acts represents a mechanism that, through a set of legal tools, ensures compliance of the acts with established requirements. Since the system of customs authorities' administrative acts is part of the general system of administrative acts formed within the context of a specific area of regulation, the tools for ensuring legality share common principles across the entire system aimed at optimizing citizens' activities, national development, and security. This mechanism is interpreted in the doctrine of administrative and administrative-procedural law, utilizing judicial and non-judicial legal resources to identify and eliminate (or overcome) violations of legal requirements both within administrative proceedings and outside such frameworks.

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