

## APPLICATION OF THE RULE OF LAW PRINCIPLE IN THE CONSIDERATION OF CASES OF VIOLATION OF CUSTOMS REGULATIONS: NATIONAL AND INTERNATIONAL ASPECT

*The subject matter of the study is the segmental manifestation of the rule of law principle in court cases on bringing to administrative liability for violation of customs rules both at the national and international levels. The purpose of the study is to investigate the practical application of the rule of law principle in cases of administrative liability for violation of customs rules. Methodology. In the course of the research, the author used general and special method of system analysis, the dialectical method, the formal logical method, and the structural and functional method, as well as a number of empirical methods. In particular, the method of comparison was used to study the subject matter of the article in comparison with national and international case law. The results of the study showed the need for: qualitative consideration of the rule of law principle in terms of the need to reform the provisions of the Customs Code of Ukraine with a view to taking into account proportionality as an element of the rule of law principle. Conclusion. The article examines the main features of the application of the rule of law principle in cases of bringing to liability for violation of customs rules. The author states the need for amendments to the Customs Code of Ukraine to establish individualization of penalties. The author makes a conclusion that national practice and international judicial practice are identical and that the basic principles are used to restore justice and restore citizens' rights.*

**Key words:** rule of law principle, proportionality, administrative proceedings, international experience, international standards, sanctions, customs law, individualization of rules, legal principles, application mechanism, procedural support, guarantees, court practice, fairness, justice, cases on violation of customs rules.

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**Introduction.** The relevance and novelty of this article lies in the practical aspect of the application of the general principle of the rule of law, which, with the development of globalization and the primacy of human rights, is gaining practical importance and concrete implementation.

The Merriam Webster Dictionary defines the rule of law as an authoritative doctrine, principle, or precept that applies to the facts of a given case. At the same time, acceptance of the rule of law is described as taking into account the most persuasive opinion, taking into account precedents, reasons and policies (*Merriam-Webster Dictionary*).

Segmental implementation of the rule of law and its components affects the judicial system through the comprehensive implementation and application of the principles of justice. This is manifested in ensuring equal access to court, objectivity of court decisions, transparency of procedural rules and independence of the judiciary. The notion of justice forms the basis of the rule of law and is an integral part of any legal system that strives for democracy and human rights protection.

Ukrainian scholars have unanimously emphasized the importance of fairness, transparency, equal access to justice and judicial independence as key components of the rule of law in the judiciary. Their views indicate that without these elements, it is impossible to achieve true justice and protection of citizens' rights.

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S.P. Holovaty, a retired judge of the Constitutional Court of Ukraine and member of the European Commission for Democracy through Law, notes that the rule of law is an idea of exclusively natural law, the doctrine of natural law, i.e. an idea that arose from the recognition of one fact: a person as a creature of nature is born with certain rights and freedoms that no one gives him or her and no one has the right to take away from him or her. And these rights and freedoms are called fundamental, which are inalienable (S.P. Holovaty, 2006).

Professor P. M. Rabinovich noted that the rule of law can be interpreted as the priority of human rights in society and is manifested mainly in the following features of state and public life: enshrining in the constitutional and other laws of the state fundamental human rights (laws that contradict human rights and freedoms are non-legal laws); dominance in public and state life of such laws that express the will of the majority or the entire population of the country, while embodying universal values and ideals – first of all, the right to freedom of expression, «a person is allowed to do everything that is not expressly prohibited by law»; mutual responsibility of the individual and the state (Rabinovich P.M., 1997).

An interesting interpretation of the rule of law principle is that of the US scholar Raz Joseph, who believes that the rule of law is often rightly opposed to arbitrary power and is essentially a negative value. The law inevitably creates a great danger of arbitrary power – the rule of law is designed to minimize the danger created by the law itself. Similarly, the law can be unstable, unclear, retrospective, etc., and thus violate people's freedom and dignity. The rule of law is also designed to prevent this danger. Thus, the rule of law is a negative virtue in two senses: conformity to it does not cause good except to avoid evil, and the evil that is avoided is an evil that could only be caused by the law itself (Raz Joseph, 1979).

To summarize, the rule of law in the above interpretations can be considered a measure of justice based not only on the law, but also on other social regulators such as customs, moral norms, traditions, legal doctrines, judicial practice, etc., which can both develop and limit the implementation of a legal norm to achieve the essence of regulation of social relations.

In this regard, given the complexity of this principle, and taking into account global trends in the development of legal doctrine, legislators are mostly trying to enshrine the rule of law at the constitutional level.

Ukraine is no exception in this case. In accordance with the Basic Law of Ukraine, human rights and freedoms and their guarantees determine the content and direction of the state's activities. The state is accountable to the individual for its activities. The establishment and maintenance of human rights and freedoms is the main duty of the state (Article 3, part two); the principle of the rule of law is recognized and applied in Ukraine. The Constitution of Ukraine has the highest legal force. Laws and other regulatory acts are adopted on the basis of the Constitution of Ukraine and must comply with it (Articles 8(1) and 8(2)); «constitutional rights and freedoms are guaranteed and cannot be abolished» (Article 22(2)); «human and civil rights and freedoms are protected by the courts» (Article 55(1)) (Constitution of Ukraine, 1996).

At the same time, the provisions of the Constitution of Ukraine are norms of direct effect, i.e., they do not require additional legislative definition.

This article, as already mentioned, aims to analyze the implementation of the rule of law as a fundamental principle on the example of court proceedings on customs rules violations, since this case clearly demonstrates the essence of this phenomenon. First, given the importance of customs law for society, including economic development, social protection, legal stability, security and international integration. And secondly, given the complex legal nature of customs law, which contains both national and international character, allowing to regulate relations in the field of movement of goods across state borders, ensuring a proper balance between national interests and international obligations.

### **National court practice**

According to general statistics, violations of customs rules are constantly increasing, which leads to an increase in the number of court cases on violation of customs rules. And this is where the question arises as to the application of sanctions to violators, their amount and proportionality to the offence.

The fact is that the history of Ukrainian constitutionalism knows several cases when the Constitutional Court of Ukraine questioned the compliance of sanctions proposed by the Customs Code of Ukraine (Customs Code of Ukraine, 2012) with the rule of law, proportionality and fairness.

For example, in the Decision of the Constitutional Court of Ukraine of July 21, 2021 No. 3-p(II)/2021 in case No. 3-261/2019 (5915/19) on the constitutional complaint of O. A. Odintsova on the compliance

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of certain provisions of the second paragraph of Article 471 of the Customs Code of Ukraine with the Constitution of Ukraine (constitutionality), which addressed similar issues, it is stated «the application of the confiscation of these goods under the disputed provisions of Article 471 of the Code in cases of administrative offenses is not carried out in accordance with all the principles and guarantees of criminal proceedings, in particular, constitutional guarantees in criminal proceedings to ensure the fairness of sentencing are not taken into account, which indicates the excessive and arbitrary nature of such an administrative penalty» (*Decision of the Constitutional Court of Ukraine, 2021*).

In the Decision of the Constitutional Court of Ukraine dated 5 July 2023 No. 5-p(I)/2023, adopted in the case on constitutional complaints of A. Dushenkevych, A. Frank, I. Yarosh. Yarosh on the compliance with the Constitution of Ukraine (constitutionality) of the second paragraph of the first part of Article 483 of the Customs Code of Ukraine (regarding individualization of legal liability of a person for a customs offence), in which the Court declared the second paragraph of the first part of Article 483 of the Customs Code of Ukraine (*Decision of the Constitutional Court of Ukraine, 2023*) as inconsistent with the Constitution of Ukraine (unconstitutional).

For the most part, these decisions are due to the fact that, as a general rule, which is reflected in part two of Article 61 of the Constitution of Ukraine, legal liability of a person is individual (*Constitution of Ukraine, 1996*).

Instead, the disputed provisions of part one of Article 483 of the Customs Code of Ukraine establish mandatory confiscation of goods that are direct objects of customs rules violation. At the same time, the provisions of the Code of Ukraine on Administrative Offences and the Customs Code of Ukraine do not define procedural mechanisms that would allow the court to mitigate the measure of administrative liability determined by the second paragraph of part one of Article 483 of the Customs Code of Ukraine depending on the existence of mitigating circumstances or allow not to impose it (*Code of Ukraine on Administrative Offences, 1984; Customs Code of Ukraine, 2012*).

Thus, it follows from the content of the sanction of part one of Article 483 of the Customs Code of Ukraine that the legislator has defined a measure of administrative liability that is not fair and consistent with a legitimate purpose.

The absence of individualization of sanctions is inherent in many articles of the Customs Code of Ukraine (in particular, Articles 471, 483), which contain non-alternative sanctions, thus excluding the assessment of an individual situation by the court, thus creating obstacles to judicial discretion (*Customs Code of Ukraine, 2012*).

On this basis, the Constitutional Court of Ukraine concluded that such legislative regulation contradicts the principles of a democratic society based on the rule of law (in a democratic society based on the rule of law) (*Decision of the Constitutional Court of Ukraine, 2023*).

Following these decisions, the court practice, in the absence of amendments to the current legislation, in view of the need to comply with the rule of law, began to apply a single type of punishment – confiscation of goods directly related to the administrative offence, to ensure a fair balance between the general interests of society and the requirements for the protection of fundamental rights of a person, which will be both sufficient to punish a person for the violation and to ensure compensation for the violated rights, given that

This example demonstrates how the constitutional principle of the rule of law can change court practice without adopting additional amendments to the current legislation.

At the same time, the best way to resolve this situation would certainly be to amend the provisions of the articles that do not specify individualized sanctions, since in this case, the negative consequences are felt not only by people, but also by the entire state, which does not receive the relevant financial revenues.

#### **International case law**

In explaining the international aspect of the topic, we should first of all refer to Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that everyone has the right to peaceful enjoyment of his possessions; no one shall be deprived of his property except in the public interest and subject to the conditions determined by law and the general principles of international law. However, these provisions shall in no way limit the right of a State to enact such laws as it deems necessary to control the use of property in the general interest or to enforce the payment of taxes or other duties or penalties (*Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1952*).

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In the judgement in the case of *Krayeva v. Ukraine* dated 13 January 2022 (application no. 72858/13), the European Court of Human Rights, having found that the amount of the fine imposed on the applicant for violation of customs regulations (part one of Article 483 of the Customs Code of Ukraine) constituted an excessive interference with her right to property, contrary to the requirements of Article 1 of Protocol No. 1 to the Convention, noted, in particular, that «under Article 483(1) of the Customs Code of Ukraine, under which the applicant was found guilty, a fine equal to the value of the goods was itself an excessively large sum and the confiscation of the goods were mandatory measures without any exceptions. The lack of any discretion in this case did not allow the Ukrainian courts to assess the individual situation, thus rendering any assessment meaningless. The Court has already noted that such a rigid system is not capable of striking the necessary fair balance between the requirements of the general interest and the protection of an individual's property rights (*Judgment of the European Court of Human Rights, 2022*).

As a result, the European Court of Human Rights found excessive interference with the applicant's property rights, contrary to the requirements of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (*Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1952*). The Grand Chamber of the Supreme Court reviewed the decision, the person's application was partially satisfied, the decision of the court of appeal was canceled and the case of an administrative offense under Part 1 of Article 483 of the Code of Criminal Procedure was sent for a new trial to the court of appeal (*Y. Luhansky, 2024*).

The European Court of Justice (CJEU) also has experience in considering similar cases, often emphasizing in its judgements the need to comply with the principle of proportionality in relation to customs and administrative violations. For example, in the case of *Pascoal & Filhos Lda v Fazenda Pública*, the court found that the sanctions for misdeclaration of goods were disproportionate and should have been reduced in accordance with the actual harm (*case Pascoal & Filhos Lda v Fazenda Pública.1997*).

In the case of *United States v. Bajakajian*, Antonios Bajakajian attempted to export more than \$357,144 without declaring it, in violation of federal law requiring the declaration of amounts in excess of \$10,000. The US government attempted to confiscate the entire undeclared amount. The U.S. Supreme Court ruled that the forfeiture of the entire amount was excessive and violated the Eighth Amendment. The Court found that although Bajakajian had committed an offence, the forfeiture of the entire amount of money was disproportionate to the nature of the offence. In this case, the Supreme Court applied the rule of law principle by protecting the rights of individuals from disproportionate and excessive punishment by the government. The court ensured that even in the event of a violation of the law, the individual's rights to a fair and proportionate process remain protected. The rule of law principle has been used to establish the limits of the government's power to confiscate property, protecting individual rights from excessive punishment (*United States v. Bajakajian , 1998*).

In another case – *Canada (Attorney General) v. Igloo Vikski Inc.* on the issue of classification of goods under the customs tariff, namely hockey sticks imported by Igloo Vikski Inc. and determination of whether these goods fall under a certain category of the customs tariff with different customs rates, the Supreme Court of Canada applied the rule of law principle through: equality before the law; legality and legal certainty, transparency of the judicial process and independence of the judiciary (*Canada (Attorney General) v. Igloo Vikski Inc, 1998*).

These examples demonstrate the unity of approaches aimed at implementing the rule of law at both the national and international levels.

**Conclusions.** As a result of the study of national and international judicial practice of applying the rule of law in cases of prosecution for violation of customs rules, it was found that the rule of law is fundamental to ensuring fairness in the legal system. It includes equal access to the courts, objectivity of court decisions, transparency of procedural rules and independence of the judiciary. The rule of law ensures fairness, equality before the law and protection of citizens' rights and freedoms, which are fundamental requirements of a democratic society.

The Ukrainian court practice on the application of the Customs Code of Ukraine to take into account the principle of proportionality as an element of the rule of law and the decisions of the Constitutional Court of Ukraine demonstrate the importance of individualizing liability for violation of customs rules. Sanctions that do not take into account the individual circumstances of the case have been recognized as unconstitutional, as they contradict the rule of law. At the same time, it is



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noteworthy that Ukrainian courts, without amending the current legislation, based on this principle, were able to quickly respond and change the practice towards human rights and freedoms and ensuring compliance with this principle.

International experience also confirms the importance of the rule of law in law enforcement. In international courts, this principle is manifested through the requirement of fairness, transparency and objectivity in decision-making. International standards require that national legislation and judicial practices comply with universal values and principles, which enshrines the rule of law at the international level.

Adherence to the rule of law in judicial proceedings is a prerequisite for achieving justice, equality and legal security in a society committed to democracy and human rights.

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## ЗАСТОСУВАННЯ ПРИНЦИПУ ВЕРХОВЕНСТВА ПРАВА ПРИ РОЗГЛЯДІ СПРАВ ПРО ПОРУШЕННЯ МИТНИХ ПРАВИЛ: НАЦІОНАЛЬНИЙ ТА МІЖНАРОДНИЙ АСПЕКТ

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*Предметом дослідження є сегментальний прояв принципу верховенства права у судових справах про притягнення до адміністративної відповідальності за порушення митних правил як на національному, так і на міжнародному рівнях. Метою дослідження є дослідження практичного застосування принципу верховенства права у справах про адміністративну відповідальність за порушення митних правил. **Методи дослідження.** У ході дослідження автори використовували загальний та спеціальний метод системного аналізу, діалектичний метод, формально-логічний метод та структурно-функціональний метод, а також низку емпіричних методів. Зокрема, метод порівняння був використаний для вивчення предмета статті в порівнянні з національною та міжнародною судовою практикою. **Результати дослідження** показали необхідність якісного розгляду принципу верховенства права з точки зору потреби реформування положень Митного кодексу України з метою врахування пропорційності як елемента принципу верховенства права. Автори зазначають про необхідність внесення змін до Митного кодексу України для встановлення індивідуалізації покарань. Висновки статті також вказують на ідентичність національної практики та міжнародної судової практики, де основні принципи використовуються для відновлення справедливості та захисту прав громадян.*

*У висновку можна зазначити, що стаття досліджує основні ознаки застосування принципу верховенства права у справах про притягнення до відповідальності за порушення митних правил. Автори дійшли висновку, що національна практика та міжнародна судова практика є ідентичними і основні принципи використовуються для відновлення справедливості та захисту прав громадян. На основі цього дослідження національна практика без внесення змін до чинного законодавства змогла швидко реагувати і змінювати практику у бік захисту прав і свобод людини та забезпечення дотримання цього принципу.*

**Ключові слова:** принцип верховенства права, пропорційність, адміністративне провадження, міжнародний досвід, міжнародні стандарти, санкції, митне право, індивідуалізація правил, правові принципи, механізм застосування, процедурна підтримка, гарантії, судова практика, справедливість, правосуддя, справи про порушення митних правил.