

TEMPORARY IMPORTATION OF VEHICLES FOR PERSONAL USE INTO THE CUSTOMS TERRITORY: CONSTITUTIONALITY OF THE CUSTOMS LEGAL NORM

Purpose. The purpose of the article is to formulate a legal position regarding the constitutionality of certain provisions of Article 380 of the Customs Code of Ukraine (CCU), which regulate the customs regime for the temporary importation of vehicles for personal use. This is examined in light of the right to property and the principle of the rule of law, which are guaranteed by the Constitution of Ukraine. The study aims to establish the compliance of these norms with the Fundamental Law, particularly concerning the restriction of the right to use temporarily imported property.

Methods. The research utilizes a complex of general scientific and special legal methods. The dialectical method is employed to reveal the interrelation between constitutional guarantees (the right to property and the right to judicial protection) and the public interest, which is realized through customs control. The method of theoretical synthesis is applied to study the basic regulations governing the implementation of the temporary importation customs regime. Crucially, the method of legal phenomenology is used to examine such legal phenomena as state control over the use of property in accordance with the public interest, as well as the legal limitation of the declarant. The description of these phenomena serves as the basis for the conclusion regarding the constitutionality of the analyzed provisions of Article 380 CCU.

Results. The key provision of Part Five of Article 380 CCU, which concerns the restriction of the right to use a vehicle temporarily imported under the relevant customs regime, is analyzed. It is established that a common interpretive error among subjects of interpretation is to mistakenly see the right to transfer the customs regime to another person in the aforementioned CCU provision, whereas the norm only establishes a restriction. Correspondence is revealed between the CCU norms and the provisions of the Convention on Temporary Admission (Istanbul Convention). It is ascertained that inconsistent judicial practice in interpreting the first paragraph of Part Five of Article 380 CCU does not indicate a violation of the constitutional principle of legal certainty. The study proves that Article 380 CCU itself, in terms of restrictions, does not violate the constitutional right to property, as the restriction is based on public and fiscal considerations.

Conclusions. The analysis confirms that the restriction provided for by Part Five of Article 380 CCU is substantiated and lawful. In accordance with Article 19 of the Convention on Temporary Admission, Ukraine, as a Contracting Party, has the right to establish a restrictive norm regarding the circle of third parties who may be granted the right to use the temporarily imported vehicle. This restriction is based on non-economic considerations (fiscal control and combating illegal circulation). Thus, Part 5 of Article 380 CCU does not contradict the norm of paragraph (b) of Article 7 of Annex C to the Convention, and the inconsistent application of the provisions of the first paragraph of Part 5 of Article 380 CCU by courts does not violate the principle of legal certainty. It is established that the provisions of Article 380 CCU do not restrict the realization of the right to property guaranteed by the Fundamental Law of Ukraine.

Key words: Constitution of Ukraine, customs regulation, Customs Code, Istanbul Convention, vehicle, right to use, right to property, principle of legal certainty, constitutionality.

JEL classification: K34, K40, F13.

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Introduction. Judges of the Constitutional Court of Ukraine (CC of Ukraine) exercise their right, stipulated by Part Four of Article 59 of the Law of Ukraine “On the Constitutional Court of Ukraine”, Paragraph 6 of Part One of Article 43 of the Rules of Procedure (CC Resolution, 2018), to address human rights defenders and receive a formed legal position on the merits of the issues raised in constitutional complaints. The method of addressing is actually “ensuring a full and objective consideration of the case and the adoption of a reasoned decision by the CC of Ukraine”. The decisions, if they concern the constitutionality of the provisions of the CCU (Customs Code of Ukraine, 2012) regarding customs rules violation, as a result of a

simple statistical analysis, are most often accepted in favor of the constitutional complaint. Thus the case under study is so interesting from a practical and doctrinal point of view. The separate opinion expressed by the judge-rapporteur on the case, Vasyl Lemak, adds to its relevance. The judge considered it important not only to agree with the court's own conclusion, but above all to pay attention to the methodology of its motivation (Lemak, 2025): the conceptual scheme of assessing the constitutionality of the contested provision of the CCU as a state intervention in the sphere of human rights, namely in the right to property, as well as the totality and constitutionality of intellectual operations during such an assessment, because, as noted, the approaches applied by the Constitutional Court in its decisions, despite their external similarity to the approaches in other decisions of the Court, there is a significant specificity.

Article 380 of the CCU examined by the Constitutional Court is entitled "Features of the temporary import of citizens of vehicles for personal use and commercial purposes into the customs territory of Ukraine". The complainant questioned the constitutionality of the paragraph of the first part of the fifth article, which provides that temporarily imported vehicles for personal use may be used on the customs territory of Ukraine only by citizens who imported the mentioned vehicles into Ukraine for their personal needs.

Therefore, based on the results of the doctrinal analysis and interpretation of the norms of the Constitution of Ukraine, the CCU, the study of the practice of the Constitutional Court of Ukraine, and the general points of view expressed in the scientific legal literature, the author of this article prepared answers to the key questions of the constitutional complaint of Boyarov Artur Volodymyrovych regarding the compliance of the paragraph 1 of the part 5 of the article 380 of the CCU with the Constitution of Ukraine.

Literature review. Berezovska N. concluded that the establishment of liability for exceeding the period of temporary import of goods, including vehicles for personal use, vehicles for commercial purposes or the period of temporary export of goods or the loss of vehicles, is not always correctly interpreted in practice (Berezovska, 2023). Therefore, the acquisition of legal science and experience, formed as a result of the consideration of cases by courts on the merits, will help to avoid mistakes by the law enforcement officer and to ensure the principle of legality in the application of the provisions of the specified article, may be useful for saving judicial protection measures.

In an article devoted to the constitutional foundations of the modernization of customs legislation (Dorofeieva, 2019), Dorofeieva L.M. examined the system of legal regulation of the activities of domestic customs authorities and focused on the features of the regulatory framework in this area and concluded that it is laws as a form of expression of legal norms have a leading role in regulating customs activities. These laws, in turn, should be based exclusively on the basic principles defined by the Constitution of Ukraine, and further development and modernization of customs legislation should take place in accordance with the chosen course for European integration by adapting domestic legislation to international standards.

Nazarko A. in his report draws attention to the ... principle, according to which constitutional norms are norms of direct action, that is, they are applied directly when resolving issues, in particular in the field of customs relations (Nazarko, 2023). Thus, it is concluded that the Constitution is the basis for legislative activity in the field of customs regulation. Although the Constitution of Ukraine does not directly regulate the activities of customs authorities, its norms are of fundamental importance for customs legislation. In particular, Part 1 of Article 67 of the Constitution of Ukraine establishes that everyone is obliged to pay taxes and fees in the manner and amounts determined by law.

Voitenko Y. and Voitenko I. (2024) also emphasize that the provisions of the Constitution of Ukraine are norms of direct effect, i.e., they do not require additional legislative definition. Researchers cite examples when the constitutional principle of the rule of law is able to change the practice of the court without making additional changes to the current legislation. As it becomes clear from a review of scientific publications, their authors mainly study the constitutionality of the norms of the Civil Code, which establish administrative liability for violation of customs rules. This is also prompted by the practice of the Constitutional Court of Ukraine. In other publications devoted to the customs regime of temporary import, the authors analyze the legal regulation of this regime in the context of international trade relations and national legislation (Hyrka and Shulhan, 2023). There are also no research efforts to find a balance between legal regime restrictions and the rights of the user of the customs regime of temporary import.

What right is restricted in Article 380 of the Customs Code?

1. The subject of the constitutional complaint claims that the norm of Part 5 of Article 380 of the CCU imposes restrictions on (1) "the right to use a vehicle (hereinafter referred to as a vehicle) within the

framework of the temporary import regime”, and not on (2) “the right to transfer the use of the temporary import regime itself to another person and to assume obligations under such a customs regime by the relevant person”.

1(1). In Part 5 of Article 380 of the CCU, the legislator in the course of customs regulation indeed restricted the right to use “vehicles for personal use”, because there are indicated vehicles of a specific commodity group in accordance with the Ukrainian Classification of Commodities of Foreign Economic Activity (UCC FEA), established a circle of users, and outlined the purpose of use (paragraph 1 of Part 5 of Article 380 of the CCU, paragraph 3 of Part 5 of Article 380 of the CCU).

Regarding temporarily imported vehicles, the right to use can be transferred to another person. In accordance with the paragraph 3 of part 5 of Article 380 of general rule of temporarily imported personal vehicles cannot be transferred to the possession, use or disposal of other persons. The exception, according to the commented article of the CCU, is only personal vehicles classified under commodity heading 8903 of the Ukrainian Classification of Goods for Foreign Economic Activities (“Yachts and other floating crafts for leisure or sports; rowing boats and canoes”).

Regarding the range of possible users of temporarily imported personal vehicles. They include three categories of persons, namely (a) citizens (according to the CCU, these are any individuals: citizens of Ukraine, foreigners, stateless persons) who directly imported vehicles into Ukraine, or, in other words, users of the right to temporary import of vehicles (b) resident citizens with the appropriate permission from the user of the right to temporary import of vehicles, (c) non-resident citizens with the appropriate permission from the user of the right to temporary import of vehicles.

Regarding the purpose of use. The standardization of the purpose is intended to guarantee the constancy of the characteristic of a vehicle as such that (a) it is a vehicle for personal use, i.e. it satisfies personal, not commercial needs (clause 60 of article 4 of the CCU – “exclusively for personal use, and not for industrial or commercial transportation of goods or passengers for a fee or free of charge”), (b) it satisfies the personal needs of “a citizen who imported the vehicle into Ukraine” or, in other words, “a user of the right to temporary importation”.

1(2). “The right to transfer the use of the temporary importation regime” - this phrase was constructed by the complainant. It reflects a mistaken understanding of the content of paragraph b of article 7 of Annex C to the Convention on Temporary Admission (1990), which is entitled “The Annex on Means of Transport”. From the above-mentioned norm, the text of the second paragraph of the fifth article of 380 of the CCU there is borrowed the rule according to which third parties may use a temporarily imported vehicle for private use. A Contracting Party to the Convention may provide in its national legislation for the possibility of such use “on behalf of and in accordance with the instructions of the user of the right to temporary importation” (Convention on Temporary Admission, 1990). It is important to note that it is the user of the right to temporary importation who directly imports the vehicle and who has the right to grant third parties permission to use the vehicle already imported under the temporary importation regime on his own behalf and in accordance with his own instructions.

Paragraph b of article 7 of Appendix C states that a vehicle for private use may be used by third parties, but provided that they have the appropriate permission (here, for better understanding, it would be worth adding the word “from” - A.M.) of the user of the right to temporary importation. A logical interpretation of this provision would protect the complainant from the erroneous perception of the phrase “permission of the user of the right to temporary importation” used in the Convention and the CCU as one that grants the right to use the right of temporary importation to a third party, while he is granted the right to use the vehicle, that is, to operate the vehicle in accordance with its technical characteristics. Thus, “each of the Contracting Parties may, upon request, authorize the transfer of the right to temporary importation to any other person” (Article 8 of the Convention). But this is a general rule, while the provision of paragraph b of Article 7 of Annex C is special and applied specifically to cases of temporary importation of private-use vehicles.

As an interim conclusion, let us note that the provision of part five of Article 380 of the CCU does indeed impose restrictions on “the right to use the vehicle under the temporary importation regime”. However, it does not establish the right to “transfer the use of the temporary import regime itself to another person and the assumption of obligations under such a customs regime by the relevant person”. Instead, it provides for the user of the temporary import right (the person responsible for compliance with the requirements of the customs regime of temporary import) the right to allow the use of the vehicle by

third parties (see also the text of a separate opinion of Judge Vdovichenko of the Constitutional Court of Ukraine, according to which a non-resident citizen who has imported a vehicle for personal use into the customs territory of Ukraine and placed it under the customs regime of temporary import, may transfer this vehicle for use to a third party – a non-resident (Vdovichenko, 2015)).

Convention on Temporary Admission and the Customs Code of Ukraine

2. From the analysis of paragraph (b) of Article 7 of Annex C to the Convention, the complainant sees that a Contracting Party under this Convention has the right to allow or prohibit the use of temporarily imported vehicles only by resident persons. While Part 5 of Article 380 of the CCU contrary to (1) this norm of international law and (2) the Constitution, prohibits such use by all persons without exception, including non-resident citizens.

2(1). Part 5 of Article 380 of the CCU does indeed contain a general rule according to which the use of temporarily imported vehicles for personal use by third parties is prohibited. But not “to all persons without exception”: the second paragraph of Part 5 of Article 380 of the CCU allows such use by third parties (resident citizens and non-resident citizens), but exclusively by means of transport classified under commodity heading 8903 according to UCC FEA, namely “yachts and other floating craft for leisure or sports; rowing boats and canoes”. However, it is worth recognizing that in this part, domestic legislation complies with the Convention to a lesser extent than the act of European customs law (Riashentseva, 2020), which is Commission Delegated Regulation (EU) No. 2015/2446 of 28 July 2015 (Regulation, 2015).

At the same time, the above restriction, in our opinion, does not contradict the Convention. After all, Article 19 of the Convention provides that its (Convention – A.M.) provisions “shall not prevent the application of prohibitions and restrictions arising from national laws and regulations and basing on considerations of a non-economic nature, such as considerations of morality or concern for public order, considerations of public safety, hygiene or public health, or considerations of veterinary or phytosanitary order, related to the protection of wild species of animals and plants threatened with extinction (destruction), or considerations of the protection of copyright and industrial property.”

A significant limitation on the use of vehicles for personal use by third parties is associated with “considerations of a non-economic nature,” namely the need to ensure public order (in the broad sense of this concept) in the field of temporary import and, importantly, re-export of motor vehicles with European license plates. In such circumstances, temporary importation correlates with the conventional concept of the customs regime of temporary importation, which provides for “the application of prohibitions or restrictions of an economic nature on importation” (Article 1 of the Convention).

When acceding to the Convention in 2004, Ukraine, as a Contracting Party to the Convention, did not make any reservations (Verkhovna Rada of Ukraine, 2004), and the rules of temporary importation provided for by the then-current CCU of 2002 did not undergo any changes. Only in 2009 there were made some amendments to it: in Article 161 such a measure was added to guarantee the delivery of “transit” goods to the customs authority of destination as “transportation under the terms of the Convention on Temporary Importation (Istanbul, 1990) with the use of an ATA carnet” (Verkhovna Rada of Ukraine, 2009); Article 211 was supplemented by part two, according to which in the case of temporary importation of goods under the terms of the Convention on Temporary Importation (Istanbul, 1990), the guarantee of their stay in the customs regime of temporary importation is carried out in accordance with the provisions of the mentioned Convention.

As for the currently valid CCU, the scientific literature expresses the point of view according to which “the CCU of 2012 mostly meets the requirements of ... the Istanbul Convention (with all annexes)” (Shulha, 2014). In cases where there is a discrepancy between the norms of the CCU and the provisions of the Convention, we must consistently apply Article 19 of the Convention, according to which its provisions “do not create obstacles to the application of prohibitions and restrictions arising from national laws and regulations and based on considerations of a non-economic nature; if the restrictions and prohibitions are of an economic nature - the principle of part three of Article 1 of the CCU: “If an international treaty of Ukraine, the consent to be bound by which has been granted by the Verkhovna Rada of Ukraine, establishes rules other than those provided for by this Code and other laws of Ukraine, the rules of the international treaty of Ukraine shall be applied.”

2(2). The issue of compliance/incompliance with the Constitution of Ukraine of the rule of part 5 of Article 380 of the CCU is considered in the following two sections.

Thus, in accordance with Article 19 of the Convention, Ukraine as a Contracting Party has established a rule-restriction regarding the circle of third parties who may be granted the right to use a temporarily imported vehicle. This rule-restriction is based on considerations of a non-economic nature. Therefore, part 5 of Article 380 of the CCU in this regard does not contradict the rule of paragraph (b) of Article 7 of Annex C to the Convention.

Judicial practice of interpreting the CCU and the principle of legal certainty

3. Courts interpret the norm of paragraph 1 of part 5 of Article 380 of the CCU in different ways. Therefore, (1) does paragraph 1 of part 5 of Article 380 of the CCU correspond to part 1 of Article 57 of the Constitution of Ukraine, according to which “everyone is guaranteed the right to know their rights and obligations”, (2) does the different interpretation of paragraph 1 of part 5 of Article 380 of the CCU violate the principle of legal certainty?

3(1). The different interpretation by the courts of the provisions of paragraph 1 of part 5 of Article 380 of the CCU regarding the fact that “temporarily imported vehicles for personal use may be used on the customs territory of Ukraine exclusively by citizens who imported the said vehicles into Ukraine for their personal needs” does not indicate the inconsistency of the specified norm of part 1 of Article 57 of the Constitution, according to which “everyone is guaranteed the right to know their rights and obligations”.

3(2). The unequal application by courts of the provisions of paragraph 1, part 5, article 380 of the CCU, in our opinion, does not violate the principle of legal certainty.

This principle is one of the basic principles of European law and is often used in the practice of the Court of Justice of the EU and the European Court of Human Rights. In the status of a general principle of law, it should also be perceived by the national legal system (Bohachova, 2016).

The rule of law as certainty is characterized by at least three founding principles belonging to the so-called procedural natural law (Matvieieva, 2010): i) “the law is directed towards the future”; ii) “the law is understandable”; and iii) “the law is general” (Holovaty, 2006). The degree of clarity which the wording of national laws must provide – and which can in no way cover all unforeseen circumstances – depends to a large extent on the content of the particular instrument, the scope of the law and the number and status of those to whom it is addressed (paragraph 31 of the the European Court of Human Rights of Nov 25, 1999 in Case of Hashman and Harrup v. the United Kingdom (Case of Hashman and Harrup v. the United Kingdom, 1999, § 31).

Legal certainty should be characterized as “a universal legal principle, the effect of which extends to such important areas of legal relations between the state and the individual as the implementation and provision of human and citizen rights and freedoms, the establishment of legal liability, the grounds and procedure for bringing it to bear, the inadmissibility of actions and inaction aimed at unjustified restriction of human rights and freedoms, the establishment of proportionality of restrictions applied to the individual, the exercise of powers by state authorities within the limits determined by the Constitution and laws of Ukraine” (Bohachova, 2013).

Therefore, the unequal interpretation by the courts of the norm of paragraph 1 of part 5 of Article 380 of the CCU does not indicate its inconsistency with part 1 of Article 57 of the Constitution of Ukraine. The unequal application by the courts of the provisions of paragraph 1 of part 5 of Article 380 of the CCU does not violate the principle of legal certainty.

Article 380 of the CCU and restrictions on the exercise of the right of ownership

4. The complainant with the status of a non-resident was denied the acquisition of the rights and obligations of a person responsible for compliance with the requirements of the customs regime for the temporary import of a car for personal use, owned by the complainant by right of ownership. Therefore, does paragraph 1 of part 5 of Article 380 of the CCU correspond to part 1 of Article 41 of the Constitution of Ukraine?

4(1). According to part 1 of Article 41 of the Constitution of Ukraine, everyone has the right to own, use and dispose of their property, the results of their intellectual and creative activities.

According to Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, every natural or legal person has the right to peacefully possess his property; no one may be deprived of his property except in the interests of society and on the conditions provided for by law and the general principles of international law (paragraph one); however, as noted in its Decision of the Constitutional Court of Ukraine No. 3-p(II)/2021 of July 21, 2021 in case No. 3-261/2019(5915/19, this provision in no way limits the right of the state to enact such laws as it deems

necessary to exercise control over the use of property in accordance with the general interests or to ensure the payment of taxes or other fees or fines (paragraph two) (Constitutional Court of Ukraine, 2021). Restricting the use of temporarily imported personal vehicles on the customs territory of Ukraine exclusively by citizens who imported them, for personal needs, is designed to ensure state control over the use of property in accordance with the general interests: customs security, road safety, etc.

4(2). Paragraph 1, Part 5, Article 380 of the CCU, as well as the provisions of Chapter 55 of the Code in general, do not resolve issues of exercising the right to property. The Chapter is entitled “Passage and taxation of goods imported (sended) by citizens to the customs territory of Ukraine». The legal possession of goods, thus, is a sufficient basis for the customs authority to perceive the person-owner as one for whom, by virtue of the very fact of customs declaration of goods for the purpose of importation into the customs territory of Ukraine, the corresponding subjective customs rights and legal obligations arise. In the case under consideration, as a person bound by the obligations of the customs regime of temporary importation, which, in turn, provides for a number of advantages in comparison with the «non-temporary», «final» importation, characteristic of the customs regime of import.

When the legislator considered it necessary to take into account the presence or absence of ownership of a vehicle, and not the separate right to own or use it, he directly indicates this. In particular, in paragraph 5, part 4, art. 380 of the CCU, which speaks of the right of resident citizens who are on temporary consular registration in consular office of Ukraine abroad to temporarily import into the customs territory of Ukraine under a written obligation to re-export subject to a written declaration in accordance with the procedure provided for by the legislation of Ukraine for citizens, one vehicle for personal use, classified under the relevant commodity heading in accordance with the UCC FEA for a certain period without paying customs duties. The specified vehicles may be temporarily imported into the customs territory of Ukraine subject to submission to the customs authority of documents confirming the citizen’s ownership of such vehicles and their registration in the territory of the relevant country.

Thus, it can be concluded that paragraph 1 of part 5 of Article 380 of the CCU corresponds to part 1 of Article 41 of the Constitution of Ukraine.

Conclusions. Following the results of the consideration of the case, the Constitutional Court of Ukraine recognized paragraph 1 of part 5 of Article 380 as being in accordance with the Constitution of Ukraine (is constitutional) - see the decision of the Second Senate No. 1-p(II)/2025 of January 15, 2025 (Constitutional Court of Ukraine, 2025). Thus, the author’s legal position was confirmed in the collegial opinion of the judges of the constitutional control body.

The paper analyzes the restriction established by part 5 of Article 380 of the CCU on the right to use a vehicle under the temporary import regime. It is noted that the subjects of interpretation often mistakenly believe that this norm allows transferring the right to use the customs regime to another person. Further study of this issue in legal science could focus on developing clear recommendations for unifying the interpretation of the norm in order to avoid errors in law enforcement.

The conformity of the MC norms with the provisions of the Convention on Temporary Admission has been established: Article 19 of the Convention allows Ukraine, as a Contracting Party, to determine restrictions on the circle of third parties who may use a temporarily imported means of transport, taking into account non-economic considerations. Thus, Part 5 of Article 380 of the CCU does not contradict paragraph (b) of Article 7 of Annex C to the Convention. A promising direction of research is the analysis of the impact of non-economic considerations on the formation of customs restrictions in the context of Ukraine’s international obligations.

It has been found that the different interpretation by the courts of paragraph 1 of Part 5 of Article 380 of the CCU does not indicate its inconsistency with Part 1 of Article 57 of the Constitution of Ukraine and does not violate the principle of legal certainty. It has been found that Article 380 of the CCU does not limit the right of ownership guaranteed by Part 1 of Article 41 of the Constitution of Ukraine. In legal science, it is worth investigating how the norms of customs legislation interact with constitutional guarantees of property rights, especially in the context of the balance between public and private interests.

Further research may be aimed at studying judicial practice to identify the reasons for the different interpretations of the rules of the customs regime of temporary importation by customs authorities and declarants and developing mechanisms to ensure the unity of such practice.

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ТИМЧАСОВЕ ВВЕЗЕННЯ ТРАНСПОРТНИХ ЗАСОБІВ ОСОБИСТОГО КОРИСТУВАННЯ ЯК ПРЕДМЕТ КОНСТИТУЦІЙНОГО ПРОВАДЖЕННЯ

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Мета. Метою статті є формування правової позиції щодо конституційності окремих положень статті 380 Митного кодексу України (МК), які регулюють митний режим тимчасового ввезення транспортних засобів особистого користування, з огляду на гарантовані Конституцією України право власності та принцип верховенства права. Дослідження спрямоване на встановлення відповідності зазначених норм Основному Закону, зокрема в частині обмеження права користування тимчасово ввезеним майном.

Методи. У дослідженні застосовано комплекс загальнонаукових та спеціально-юридичних методів. Метод діалектики використано для розкриття взаємозв'язку між конституційними гарантіями (правом власності та правом на судовий захист) та публічним інтересом, реалізованим через митний контроль. Метод теоретичного синтезу застосовано для вивчення базових приписів, що регулюють реалізацію митного режиму тимчасового ввезення. Ключовим став метод правової феноменології, що дозволив дослідити такі правові феномени, як державний контроль за користуванням майном відповідно до публічного інтересу, а також правове обмеження декларанта. Опис цих феноменів став підґрунтям для висновку щодо конституційності аналізованих положень статті 380 МК.

Результати. Проаналізовано ключове положення частини п'ятої статті 380 МК, яке стосується обмеження права користування транспортним засобом, увезеним у рамках митного режиму тимчасового ввезення. Встановлено, що поширене серед суб'єктів тлумачення помилково вбачає у зазначеному приписі МК право передавати митний режим іншій особі, тоді як норма лише встановлює обмеження. Виявлено відповідність між нормами МК та положеннями Конвенції про тимчасове ввезення (Стамбульської конвенції). З'ясовано, що неоднакова судова практика тлумачення норми абзацу 1 частини 5 статті 380 МК не є свідченням порушення конституційного принципу правової визначеності. У дослідженні доведено, що сама по собі стаття 380 МК у частині обмежень не порушує конституційного права власності, оскільки обмеження ґрунтується на публічних та фіскальних міркуваннях.

Висновки. Аналіз підтвердив, що обмеження, передбачене частиною п'ятою статті 380 МК, є обґрунтованим та правомірним. Згідно зі статтею 19 Конвенції про тимчасове ввезення, Україна як Договірна Сторона має право встановлювати норму-обмеження щодо кола третіх осіб, яким може бути надано право використання тимчасово увезеного ТЗ. Це обмеження ґрунтується на міркуваннях неекономічного характеру (фіскальний контроль та боротьба з нелегальним обігом). Таким чином, частина 5 статті 380 МК не суперечить нормі пункту (b) статті 7 Додатка С до Конвенції, а неоднакове застосування приписів абзацу 1 ч. 5 ст. 380 МК судами не порушує принципу правової визначеності. Установлено, що положення статті 380 МК не обмежують реалізацію передбаченого Основним Законом України права власності.

Ключові слова. Конституція України, митне регулювання, Митний кодекс, Стамбульська конвенція, транспортний засіб, право користування, право власності, принцип правової визначеності, конституційність.



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