**Summary to the Decision of the Second Senate of the Constitutional Court of Ukraine No. 1-r(II)/2025 dated January 15, 2025 in the case upon the constitutional complaint of Artur Boiarov regarding the compliance of paragraph 1 of Article 380.5 of the Customs Code of Ukraine (regarding the protection of customs interests of Ukraine) with the Constitution of Ukraine (constitutionality)**

A. Boiarov appealed to the Constitutional Court of Ukraine to declare paragraph 1 of Article 380.5 of the Customs Code (hereinafter, the “Code”) as inconsistent with the Constitution of Ukraine (unconstitutional).

According to paragraph 1 of Article 380.5 of the Code, “temporarily imported vehicles for private use may be used on the customs territory of Ukraine exclusively by citizens who imported the said vehicles into Ukraine for their private needs”.

The Constitutional Court of Ukraine emphasises that, having a wide discretion in regulating customs affairs, the Verkhovna Rada cannot act arbitrarily, however is obliged to implement constitutional values, in particular the rule of law (Article 8.1 of the Constitution), in terms of proportionality and with a balance between the protection of Ukraine's customs interests and the protection of individual human rights and freedoms.

The Constitutional Court of Ukraine states that under the provisions of the Istanbul Convention, the issue of imposing restrictions (or granting permission) on the use of a private vehicle imported into the customs territory of Ukraine by other persons belongs to the margin of appreciation of the states that have acceded to the Istanbul Convention.

The Constitutional Court of Ukraine states that the disputed provision of the Code as a normative construction makes it impossible (prohibits) for citizens to transfer the right to use temporarily imported private vehicles in the customs territory of Ukraine to other persons (both resident and non-resident citizens), except for those private vehicles that, according to the Law “On the Customs Tariff of Ukraine” No. 2697-IX dated October 19, 2022, are classified according to the Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA).

The legislative measure defined by paragraph 1 of Article 380.5 of the Code - restrictions in the form of a ban on the transfer to other persons of the right to use temporarily imported private vehicles in the customs territory of Ukraine - does not violate the essence of the right to property, since, although it imposes certain restrictions on its exercise in terms of use, it does not provide for the application of unlawful deprivation of property rights prohibited by the Constitution of Ukraine (Article 41.4).

The Constitutional Court of Ukraine concludes that the provision of paragraph 1 of Article 380.5 of the Code does not contradict Article 57.1 of the Constitution of Ukraine, according to which “everyone is guaranteed the right to know his or her rights and obligations”.

Taking into account the intention of the legislator, the Constitutional Court of Ukraine concluded that the purpose of the said legislative measure is constitutionally justified, as it is aimed at realization of such constitutional values as protection of economic sovereignty of Ukraine in terms of customs interests of the state and the state's desire to balance the budget of Ukraine (Article 95.3 of the Constitution). These constitutional values constitute a significant public interest, the protection of which determines the legitimacy of the purpose of the challenged provision of the Code.

The Constitutional Court of Ukraine notes that the disputed provision of the Code as a legislative measure also meets the criterion of necessity in a democratic society: in order to achieve a legitimate goal, the legislator applied the least burdensome means of interfering with the exercise by citizens of their rights to own, use and dispose of their property, namely, temporarily imported private vehicles; this measure is compatible with the obligations assumed by Ukraine under international treaties, in particular the Istanbul Convention.

The conclusion that the legislator chose the least burdensome means of interfering with individual property rights is also based on the fact that the disputed provision of the Code should be understood in conjunction with other provisions of the Code, which grant a citizen the right to choose the customs regime under which he/she intends to place a private vehicle, as well as the right to change the chosen customs regime. In addition, the disputed provision of the Code, which establishes restrictions by prohibiting the transfer by citizens of the right to use temporarily imported private vehicles in the customs territory of Ukraine to other persons (both resident and non-resident citizens), provides for exceptions, namely, the prohibition does not apply to private vehicles classified under heading 8903 (yachts and other floating craft for leisure or sport; rowing boats and canoes).

It should also be noted that the legislator did not establish legal liability for the transfer of a private use vehicle temporarily imported into the customs territory of Ukraine into the possession, use or disposal of a person who did not directly import such a vehicle into the customs territory of Ukraine, if the person who imported the private use vehicle into the customs territory of Ukraine is in the vehicle.

The interference with property rights established by the disputed provision of the Code is temporary in nature, as it restricts the right to transfer a temporarily imported private use vehicle for use by other persons only during the period of stay of such vehicle in the customs territory of Ukraine.

Thus, the Constitutional Court of Ukraine declared paragraph 1 of Article 380.5 of the Customs Code of Ukraine as compliant with the Constitution of Ukraine (constitutional).

**Supplementary information:**

- The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950;

 - First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms;

- Convention on the Temporary Importation of 1990 (Istanbul Convention) and Annexes A, B.1-B.9, C, D and E to the Istanbul Convention, adopted on June 26, 1990 in the city of Istanbul.

**Cross-References:**

Constitutional Court of Ukraine:

 - no. 3-r(І)/2019, 05.06.2019;

 - no. 1-r(II)/2022, 06.04.2022;

 - no. 6-r(II)/2022, 22.06.2022;

 - no. 9-r(II)/2022, 16.11.2022;

 - no. 6-r(I)/2023, 06.09.2023.

**European Court of Human Rights:**

 - *Krayeva v. Ukraine*, no. 72858/13, 13.01.2022;

 - *Marckx v. Belgium*, no. 6833/74, 13.06.1979;

 - *Rysovskyy v. Ukraine*, no. 29979/04, 20.10.2011;

 - *Beyeler v. Italy*, no. 33202/96, 05.01.2000;

 - *Del Río Prada v. Spain*, no. 42750/09, 21.10.2013.