

RESPONSIBILITY FOR EXCEEDING THE TERM OF TEMPORARY IMPORT OF GOODS, INCLUDING VEHICLES FOR PERSONAL USE, COMMERCIAL VEHICLES OR THE TERM OF TEMPORARY EXPORT OF GOODS OR LOSS OF VEHICLES AT CUSTOMS CODE OF UKRAINE

Ukraine, even in the conditions of martial law, which has repeatedly been forced to continue, performs its main functions, the defense of its borders, the protection of life, health, freedom and other rights and freedoms of a person and a citizen from the aggressor – the Russian Federation, and also continues to engage, including, and preventive activities regarding the observance and protection of established customs rules. The article is devoted to the analysis of the content of Art. 281 of the Customs Code of Ukraine at the current stage.

The **purpose** of the article is to analyze the composition, type and amount of fines for exceeding the term of temporary importation of goods, including vehicles for personal use, commercial vehicles or the term of temporary export of goods or loss of vehicles under the customs legislation of Ukraine. The specifics of the specified type of offense are specified. The source of the establishment of such responsibility was analyzed, the object of protection, the objects of the offense, the purpose of such protection of relations, its objective side, the subjective side of the offense, the subject of the specified offense, as well as the types and amounts of fines for its commission were determined. The **methods** used are dialectical, which is a methodological basis, a general scientific method of a systematic approach, dogmatic, formal-legal. The **results**. A general description of the norm provided for in Article 281 of the Criminal Code of Ukraine is given, a systematic analysis of penalties for committing the specified offense, its type and size is carried out. The provisions of the law, the practice of the application of the norm are analyzed with examples of refusal in appeal proceedings and leaving the penalty on the guilty party, as well as recognition of the person as innocent of the committed acts at the time of the decision by the relevant authorities. **Conclusions**. The norm regarding the establishment of responsibility for exceeding the period of temporary importation of goods, including vehicles for personal use, vehicles of commercial purpose or the period of temporary export of goods or loss of vehicles, is not always correctly interpreted in practice, and therefore the theoretical acquisitions of science and the experience that is being formed as a result of consideration of cases on the merits, will help to avoid mistakes by the law enforcer and ensure the principle of legality regarding the application of the provisions of the specified article, may be useful for saving legal protection measures, so that courts do not consider identical cases with the same result – leaving the case in the same framework, which were also before its review.

Key words: exceeding the term of temporary importation of goods, composition of the offense, recovery.

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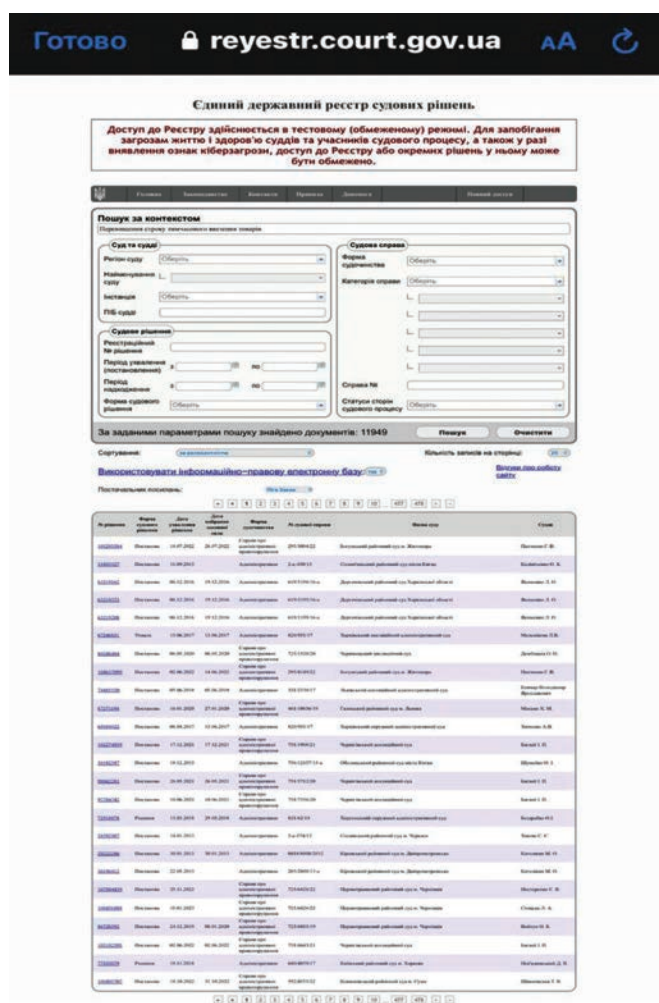
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Introduction. The country does not live an isolated life, life activities, as a rule, are ensured by the presence of international relations, including in the field of economy. States evaluate the benefit from the use of labor by spheres of activity and enter into interstate relations, which, on the one hand, can minimize the costs of wages or raw materials, on the other hand, it makes the state dependent on the presence or absence of a certain supply of goods. The rate of increase of productive forces requires an appeal to the customs rules, related to them social relations. The study of customs affairs continues to be a relevant topic, the subject of consideration of the theory and practice of Ukraine's foreign economic activity, recognized as an independent institute in the field of management with the aim of establishing benefits for the state, society, man, economy and related spheres of social life (Berezovska, 2022).

The purpose of the article is to analyze the composition, type and amount of fines for exceeding the term of temporary importation of goods, including vehicles for personal use, commercial vehicles or

the term of temporary export of goods or loss of vehicles under the customs legislation of Ukraine. The tasks are to indicate the specifics of the specified type of offense. To analyze the source of establishing such responsibility, to determine the object of protection, the objects of the offense, the purpose of such protection, its objective side, the subjective side of the offense, the subject of the specified offense, as well as to establish the types and amounts of fines for its commission. The methods used are dialectical, which is a methodological basis, a general scientific method of a systematic approach, dogmatic, formal-legal.

The source of establishing responsibility for the offense provided for in Article 481 of the Customs Code of Ukraine. Article 281 of the Customs Code of Ukraine (Customs Code, 2012) has been in effect since 2018 (ZU “On Amending...”, 2018), but until now, with rare exceptions, it has not been subject to the close attention of scientists, although the search in The register of court decisions on the phrase “exceeding the term of temporary importation of goods” contains 478 pages with 27 decisions on each (Unified State Register of Court Decisions, November 30, 2023):



Therefore, the disclosure of the content of the specified offense indicates the novelty of the topic and the relevance of scientific solutions, the importance of the interpretation of provisions for practice.

Exceeding the period of temporary importation of goods, including vehicles for personal use, commercial vehicles or the period of temporary export of goods or loss of vehicles is considered illegal according to the current Customs Code of Ukraine. All violations of customs rules are provided for in the Customs Code of Ukraine.

The Customs Code of Ukraine in Chapter 68 “Types of violations of customs rules and liability for such offenses” provided for Article 481 “Exceeding the term of temporary importation of goods, including vehicles for personal use, commercial vehicles or the term of temporary export of goods or loss of vehicles” (Customs Code, 2012).

Object of protection. The object of protection against the offense provided for in Article 281 of the Customs Code of Ukraine is relations regulated by legislation in the field of customs regulations. Customs

rules are established by the Customs Code of Ukraine and other normative legal acts, represent the established procedure for moving certain items across the customs border of Ukraine, which are often specified in the norm itself, and the disclosure of the meaning of concepts in Art. 4 of the Customs Code of Ukraine “Definition of basic terms and concepts” (Customs Code, 2012).

Subjects of the offense. The subject of the offense provided for in Article 481 of the Customs Code of Ukraine is goods, including vehicles for personal use and commercial vehicles. Clause 57 of Article 4 of the Customs Code establishes that goods are any movable things, including those to which the law applies the regime of immovable property (except commercial vehicles), currency values, cultural values, as well as electricity, which is moved by power lines. Article 60 of Article 4 of the Customs Code of Ukraine established that vehicles for personal use are land vehicles of commodity items 8702, 8703, 8704 (with a total weight of up to 3.5 tons), 8711 in accordance with UTK ZED (Customs Tariff of Ukraine, 2022) and their trailers of commodity item 8716 according to the UCT of the ZED, watercraft and aircraft registered in the territory of the relevant country, owned or temporarily used by the relevant citizen and imported or exported by this citizen in the amount of no more than one unit per commodity item exclusively for personal use, and not for industrial or commercial transportation of goods or passengers for a fee or free of charge Article 59 4 of the Customs Code of Ukraine defines commercial vehicles as “any vessel (including self-propelled and non-self-propelled lighters and barges, as well as hydrofoil vessels), hovercraft, aircraft, motor vehicle (motor vehicles, trailers, semi-trailers) or railway rolling stock used in international transport for the carriage of persons for a fee or for the industrial or commercial carriage of goods for a fee or free of charge, together with their normal spare parts, accessories and equipment, as well as lubricants and fuels contained in their normal tanks during their transportation together with commercial vehicles” (Customs Code, 2012).

Purpose of protection. Regarding the purpose of protection against the specified offense, the protection of customs rules should be highlighted; education of the participants in relations in the spirit of respect for established customs rules; prevention of the commission of the specified offense by all participants of relations in the field of customs law, both by persons who have already been brought to justice, and by those persons who will not commit acts in view of bringing others to justice.

The objective side of the offense. The objective side of the offense is provided for in Article 481 of the Customs Code of Ukraine and includes 6 parts.

Thus, part 1 provides for “Exceeding the term of temporary importation of goods, including vehicles for personal use, vehicles of commercial purpose into the customs territory of Ukraine, or the term of temporary export of goods, except vehicles for personal use, outside the customs territory established in accordance with this Code of Ukraine for no more than three days.”

Part 2. Article 281 of the Customs Code of Ukraine provides for actions in the event of the commission of an offense provided for in part one of this article by a person who, within a year, was prosecuted for committing such an offense, as well as exceeding the term of temporary importation of goods, including vehicles for personal use, vehicles means of commercial purpose to the customs territory of Ukraine or the period of temporary export of goods, except vehicles for personal use, outside the customs territory of Ukraine for more than three days, but not more than ten days.

The existence of a time interval in the prescribed cases is a sufficient condition for recognizing the guilt of a person.

Thus, on August 15, 2022, Case No. 607/3596/22 prov. No. A/857/8819/22, where it was stated that the culprit “exceeded the term of temporary importation of the commercial vehicle imported by him into the customs territory of Ukraine by more than three days, but not more than 10 days. The specified actions have signs of violation of the customs rules provided for in Part 2 of Article 481 of the Customs Code of Ukraine. Yu.B. Prykhodko, head of the Department of Combating Contraband and Customs Offenses of Lviv Customs. 01.02.2022 issued a resolution on violation of customs rules No. 0134/20900/22, by which PERSON_1 was found guilty of committing a violation of customs rules, provided for in part 2 of Article 481 of the Customs Code of Ukraine, and an administrative fine in the amount of UAH 5,100 was imposed. According to Part 2 of Article 481 of the Customs Code of Ukraine, administrative responsibility for exceeding the term established in accordance with this Code for the temporary import of goods, including vehicles for personal use, commercial vehicles to the customs territory of Ukraine or the term for the temporary export of goods, except for vehicles for personal use, for border of the customs territory of Ukraine for more than three days, but not more than ten days. According to Part 1, Article 108 of the Cus-

toms Code of Ukraine, the term of temporary importation of goods is established by the customs authority in each specific case, but must not exceed three years from the date of placing the goods under the customs regime of temporary importation. The term of temporary importation of vehicles for commercial purposes is established by the customs authority, taking into account the fact that these vehicles must be exported outside the customs territory of Ukraine after the end of the transport operations for which they were imported. Therefore, the customs authority in each specific case must establish the term of temporary importation of a commercial vehicle and its final date and prove such established term to the person who imports the vehicle in a way available to him, which must be confirmed by evidence, and after determining such a term and in case of its violation, this person may be liable under Art. 481 of the Customs Code of Ukraine. The defendant did not provide any evidence of the establishment by the customs authority of the term of temporary importation of the vehicle of the brand “VAN HOOL”, r/n NUMBER_1 (“Stebnyk - Poznań” shuttle bus) to the plaintiff. The statement in the disputed resolution that the bus was imported under the customs regime of “temporary importation for up to 20 days” and had to be delivered by it to the customs authority at the border by January 14, 2022, is not supported by any evidence (College of judges of the Eighth Administrative Court of Appeal, 2022).

Part 3 of Art. 481 of the Customs Code of Ukraine provides for actions in the form of exceeding the term of temporary import of goods, including vehicles for personal use, and vehicles of commercial purpose into the customs territory of Ukraine or the term of temporary export of goods, except for vehicles of personal use, outside the customs territory of Ukraine by more than for ten days, but not more than twenty days.

Part 4 of Article 481 of the Customs Code of Ukraine provides for actions in the form of exceeding the term of temporary import of goods, except vehicles for personal use, into the customs territory of Ukraine or the term of temporary export of goods, except for vehicles of personal use, outside the customs territory of Ukraine by more than twenty days

Part 5 of Art. 481 of the Customs Code of Ukraine provides for actions in the form of exceeding the term of temporary import of vehicles for personal use and vehicles of commercial purpose into the customs territory of Ukraine by more than twenty days, but not more than thirty days.

Part 6 of Article 281 of the Criminal Code of Ukraine provides for actions in the form of exceeding the term of temporary importation of vehicles for personal use and vehicles of commercial purpose into the customs territory of Ukraine by more than thirty days, as well as the loss of these vehicles, including their disassembly.

So, for example, the Bohunsky District Court of Zhytomyr in case No. 295/5004/22; 3/295/2203/22 dated 07/14/2022 indicated: “The fault of PERSON_1 in committing an administrative offense provided for in Part 6 of Article 481 of the Customs Code of Ukraine, namely exceeding the term of temporary importation of vehicles for personal use and vehicles of commercial purpose at customs the territory of Ukraine for more than thirty days, confirmed by: protocol on violation of customs regulations No. 0169/101000/22 dated 01.06.2022; by report note acting the head of the Department of Combating Contraband and Violation of Customs Rules; certificate of registration of the vehicle series NUMBER_4; customs declaration; an extract from the database of the ZMK dispatcher and the passenger checkpoint, according to which the vehicle specified above was imported on 04.12.2021 in the mode of “temporary import for up to 60 days” and was not exported outside the customs territory of Ukraine; written explanations of PERSON_1, in which he specifically stated that he is asking to accept from him for the needs of the Armed Forces of Ukraine a vehicle - a passenger car of the brand “RENAULT” of the model “MEGANE”, Polish registration number plate NUMBER_2, body No. NUMBER_3, manufactured in 2004, imported by him to the territory of Ukraine under the “Temporary importation for up to 60 days” regime, however, due to a number of reasons, including family ones, he was not taken out of the territory of Ukraine in time; vehicle registration documents - RENAULT passenger car, MEGANE model, Polish registration number plate NUMBER_2, body No. NUMBER_3, year of manufacture, 2004, green color, engine cylinder volume 1461 cm³; with a photo plate of the seized vehicle” (Case No. 295/5004/22, 2022), that is, he indicated the disposition of the article and the factual data that prove the commission of the offense.

But not always in practice, the case of exceeding the term of temporary importation of vehicles is considered in accordance with the requirements of the legislation of Ukraine, which subsequently leads to the abandonment of the appeal without satisfaction.

Thus, the Chernivtsi Court of Appeal in Case No. 725/7176/22 of January 16, 2023 stated that “According to the protocol on violation of customs rules No. 0559/40800/22 of November 9, 2022, during

customs control, in accordance with information of the software and information complex “Accounting of vehicles at checkpoints for automobile traffic” EAIS SFS established that PERSON_1, who entered the territory of international automobile checkpoint “Mamalyga” of Chernivtsi customs on 06/24/2018, entered the territory of customs on 06/24/2018 the territory of Ukraine through the international automobile checkpoint of the Sumy Customs, a car of the brand “VW Golf”, registration plate of Poland “NUMBER_1”, in the customs regime of temporary import for a period of up to 1 year. However, as of November 9, 2022, the vehicle of the VW Golf brand, Polish registration number plate “NUMBER_1”, is not considered exported outside the customs territory of Ukraine and continues to be in the territory of Ukraine after exceeding the period of temporary importation. The appellate court takes into account that at the time of import of the vehicle on June 24, 2018, the disposition of Art. 481 of the Criminal Code of Ukraine provided for liability for exceeding the term of temporary import of goods into the customs territory of Ukraine or the term of temporary export of goods outside the customs territory of Ukraine established in accordance with this Code. The sanction of any of the three parts of this article in that edition was milder than the sanction of Part 6 of Art. 481 of the Criminal Code of Ukraine in the current edition. 481 of the Criminal Code of Ukraine was amended on November 8, 2018, and currently this article contains 6 parts. The revision of Part 6 481 of the Criminal Code of Ukraine entered into force on August 22, 2019. According to the provision of Part 6 481 of the Civil Code of Ukraine, liability is established for exceeding the term of temporary importation of vehicles for personal use and commercial vehicles into the customs territory of Ukraine by more than thirty days, as well as the loss of these vehicles, including their disassembly. Such violations are subject to a penalty in the form of a fine in the amount of ten thousand tax-free minimum incomes of citizens or confiscation of such vehicles. According to Art. 58 of the Constitution of Ukraine (Constitution, 1996), laws and other normative legal acts do not have retroactive effect in time, except for cases when they mitigate or cancel the responsibility of a person. No one can be held responsible for actions that were not recognized by law as a crime at the time of their commission. In accordance with Article 3 of the Customs Code of Ukraine, when carrying out customs control and customs clearance of goods, vehicles for commercial purpose moving across the customs border of Ukraine, exclusively the norms of the laws of Ukraine and other normative legal acts on customs issues, valid on the day of their adoption, are applied customs declaration by the revenue and duties authority of Ukraine. In the event that the legislation of Ukraine provides for the possibility of performing customs formalities without submitting a customs declaration, the norms of the laws of Ukraine and other normative legal acts on state customs affairs, valid on the day of performing such formalities, shall apply. The norms of the laws of Ukraine, which mitigate or cancel the responsibility of a person for violating customs rules, provided by this Code, have a retroactive effect in time, that is, their norms also apply to offenses committed before the adoption of these laws.

Norms of the laws of Ukraine, which establish or strengthen responsibility for such offenses, do not have retroactive effect. The Constitutional Court of Ukraine in its decision No. 1-рп/99 dated February 9, 1999 in the case of the retroactive effect of laws and other regulatory legal acts indicates that the law or other regulatory legal act is applied to the event, fact, during its validity which they occurred or took place. Acts of administrative legislation regulate relations that have arisen since the date of their entry into force. According to Part 6 of Art. 481 of the Criminal Code of Ukraine provides for liability for exceeding the term of temporary importation of vehicles for personal use and commercial vehicles into the customs territory of Ukraine by more than 30 days, as well as the loss of these vehicles, including their disassembly. At the same time, at the time of importation of the specified vehicle, such actions as a separate offense were not provided for by law. Considering that, on 24.06.2018, the citizen of India PERSON_2 imported into the customs territory of Ukraine through the “Yunakivka” port of the Sumy Customs a car of the brand “VW Golf”, registration plate of Poland “NUMBER_1”, under the customs regime of temporary import for a period of up to 1 year and after did not take the specified car out of the customs territory of Ukraine within a period of more than ten days, his actions could constitute an administrative offense provided for in Part 3 481 of the Criminal Code of Ukraine in the version that was in force at the time of the car’s importation, therefore grounds for qualification his actions under part 6 481 of the Criminal Code of Ukraine, as requested by the appellant, are absent” (Case No. 725/7176/22, 2023).

Subjective signs of a crime. Subjective features include the subjective side and the subject, which are not directly prescribed by the norm. It seems that with a clearly established period of stay of the property, a person can commit it intentionally, when he was aware of the socially harmful nature of his action, and

anticipated the occurrence of socially harmful consequences and desired or consciously assumed their occurrence. Or also due to carelessness, when a person foresaw the possibility of such consequences, but frivolously hoped for their aversion or did not foresee them, although he should and could have foreseen them.

As for the subject of the violation, it is general, since the legislator did not see the signs of the special in the norm, they do not follow from the content of the norm.

Types and amounts of fines. The second paragraph of the sixth part of Article 481 is recognized as being in accordance with the Constitution of Ukraine (constitutional), according to the Decision of the Constitutional Court No. 6-p(I)/2023 dated 06.09.2023 (Decision of the Supreme Court, 2023).

Regarding the types and amounts of fines, it is better to convey information by placing it in a table:

.1 481 CC of Ukraine	.2 481 CC of Ukraine	.3 481 CC of Ukraine	.4 481 CC of Ukraine	.5 481 CC of Ukraine	.6 481 CC of Ukraine
warning or imposition of a fine in the amount of fifty tax-free minimum incomes of citizens	a fine in the amount of one thousand tax-free minimum incomes of citizens	a fine in the amount of two thousand tax-free minimum incomes of citizens	a fine in the amount of three hundred tax-free minimum incomes of citizens	a fine in the amount of five thousand tax-free minimum incomes of citizens.	a fine in the amount of ten thousand tax-free minimum incomes of citizens or confiscation of such vehicles

Therefore, among the types of charges provided for in Art. 481 of the Criminal Code of Ukraine, the legislator provided only three types: warning, fine, confiscation. The amount of the fine varies depending on the part of the article that applies to a specific person.

The norm regarding the establishment of liability for exceeding the term of temporary import of goods, including vehicles for personal use, vehicles of commercial purpose or the term of temporary export of goods or loss of vehicles is of interest to people's deputies and in terms of modernity.

Thus, Mykhailo Mykhailovych Laba (IX convocation), Dmytro Valeriyovych Lyubota (IX convocation), Oleksiy Oleksandrovich Kuznetsov (IX convocation) submitted "Draft Law on Amending Article 481 of the Customs Code of Ukraine" No. 7583 of 07/25/2022, which is included in of the agenda under No. 3369-IX dated 05.09.2023 (Project, 2022).

Conclusions. The rule on establishing responsibility for exceeding the term of temporary importation of goods, including vehicles for personal use, vehicles of commercial purpose or the term of temporary export of goods or loss of vehicles is relevant for research, as it is not always correctly interpreted in practice, and therefore theoretical assets science and experience formed as a result of consideration of cases on the merits will help to avoid mistakes of the law enforcer and ensure the principle of legality regarding the application of the provisions of the specified article, may be useful for saving legal protection measures so that courts do not consider identical cases with the same result - leaving the case in the same framework as before its revision.

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ВІДПОВІДАЛЬНІСТЬ ЗА ПЕРЕВИЩЕННЯ СТРОКУ ТИМЧАСОВОГО ВВЕЗЕННЯ ТОВАРІВ, У ТОМУ ЧИСЛІ ТРАНСПОРТНИХ ЗАСОБІВ ОСОБИСТОГО КОРИСТУВАННЯ, ТРАНСПОРТНИХ ЗАСОБІВ КОМЕРЦІЙНОГО ПРИЗНАЧЕННЯ АБО СТРОКУ ТИМЧАСОВОГО ВИВЕЗЕННЯ ТОВАРІВ ЧИ ВТРАТУ ТРАНСПОРТНИХ ЗАСОБІВ ЗА МИТНИМ КОДЕКСОМ УКРАЇНИ

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Україна навіть в умовах воєнного стану, що неодноразово вимушено продовжується, виконує свої основні функції, оборону своїх меж, захист життя, здоров'я, свободи та інших прав і свобод людини і громадянина від агресора – російської федерації, також продовжує займатися, в тому числі, і превентивною діяльністю щодо дотримання та захисту встановлених митних правил. Стаття присвячена аналізу змісту ст. 281 Митного кодексу України на сучасному етапі.

Метою статті є аналіз складу, виду та розмірів стягнень за перевищення строку тимчасового ввезення товарів, у тому числі транспортних засобів особистого користування, транспортних засобів комерційного призначення або строку тимчасового вивезення товарів чи втрату транспортних засобів за митним законодавством України. Вказані особливості вказаного виду правопорушення. Проаналізовано джерело встановлення такої відповідальності, визначено об'єкт захисту, предмети правопорушення, мету такого захисту відносин, його об'єктивну сторону, суб'єктивну сторону правопорушення, суб'єкта вказаного правопорушення, а також встановлені види і розміри стягнень за його вчинення. Використовуються методи діалектичний, який є методологічною основою, загальнонауковий метод системного підходу, догматичний, формально-правовий. Результати. Дається загальна характеристика норми, передбаченої ст.281 МК України, проводиться системний аналіз стягнень за вчинення вказаного правопорушення, його виду і розмірів. Аналізуються положення законодавства, практики застосування норми з прикладами відмовлення в апеляційному провадженні і залишення стягнення на винному, так і визнання особи невинуватою у вчиненні діяння на момент постановлення рішення відповідними органами. Висновки. Норма щодо встановлення відповідальності за перевищення строку тимчасового ввезення товарів, у тому числі транспортних засобів особистого користування, транспортних засобів комерційного призначення або строку тимчасового вивезення товарів чи втрату транспортних засобів, не завжди правильно трактується на практиці, а тому теоретичні надбання науки та досвід, що формується в результаті розгляду справ по суті, допоможе уникнути помилок правозастосувача і забезпечити принцип законності щодо застосування положень вказаної статті, може стати в нагоді для економії заходів судового захисту, щоб суди не розглядали тотожні справи з одним і тим же результатом – залишенням справи в тих самих рамках, які були і до її перегляду.

Ключові слова: перевищення строку тимчасового ввезення товарів, склад правопорушення, стягнення.