

## Personal Search under Article 340 of the Customs Code of Ukraine: an Analysis of Judicial Practice

Volodymyr M. Bozhko\*

*Poltava Law Institute of Yaroslav Mudryi National Law University  
Poltava, Ukraine*

*\*e-mail: v.m.bozhko@nlu.edu.ua*

### **Abstract**

*The article analyses judicial practice regarding the application of Art. 340 of the Customs Code of Ukraine, which governs legal relations concerning personal searches of individuals during customs control at Ukraine's customs border. The relevance of this study stems from the fact that personal searches, as an exceptional form of customs control, constitute interference with private life and may infringe the constitutional right to personal integrity, particularly given that the results of such searches may subsequently be used as evidence in criminal proceedings. The article provides a comparative analysis of the procedure governing personal searches under the Customs Code of Ukraine, personal searches under the Code of Ukraine on Administrative Offences, and searches conducted under the Criminal Procedure Code of Ukraine. The study presents the results of a comprehensive analysis of the legal positions adopted by the Supreme Court concerning the legal nature and grounds for conducting personal searches as an exceptional form of customs control authorised by a written decision of the head of the customs authority, where there are reasonable grounds to believe that a person crossing the customs border of Ukraine is concealing contraband or goods that violate customs regulations. Particular attention is devoted to the admissibility of evidence obtained during customs control, including personal search reports, as well as to the criteria used by courts to assess the legality and justification of personal searches, given that the sole statutory basis for conducting such searches is the existence of reasonable grounds to believe that a person is concealing prohibited items. As a result of the study, proposals to enhance legal certainty in the application of Art. 340 of the Customs Code of Ukraine were formulated.*

**Keywords:** *personal search; customs control; customs border; right to personal integrity; judicial practice.*

## Особистий огляд, відповідно до статті 340 Митного кодексу України: аналіз судової практики

Володимир Миколайович Божко\*

Полтавський юридичний інститут

Національного юридичного університету імені Ярослава Мудрого

Полтава, Україна

\*e-mail: v.m.bozhko@nlu.edu.ua

### Анотація

Статтю присвячено аналізу судової практики застосування ст. 340 Митного кодексу України, спрямованої на регулювання суспільних відносин щодо проведення особистого огляду фізичних осіб під час проходження ними митного контролю на митному кордоні України. Актуальність теми даного дослідження зумовлена тим, що використання такої виняткової форми митного контролю як особистий огляд фізичної особи зумовлює втручання в її приватне життя й зазіхає на можливе порушення її конституційного права на особисту недоторканність, особливо з огляду на те, що результати такого огляду можуть згодом використовуватися як докази у кримінальному провадженні. Здійснено порівняльний аналіз процедури проведення особистого огляду, врегульованого Митним кодексом України, із процедурою проведення особистого огляду відповідно до Кодексу України про адміністративні правопорушення й особистого обшуку згідно із Кримінальним процесуальним кодексом України. Наведено результати комплексного аналізу правових позицій Верховного Суду щодо визначення правової природи та підстав проведення особистого огляду як виняткової форми митного контролю, який проводиться за письмовим рішенням керівника митного органу, та за наявності достатніх підстав вважати, що особа, яка прямує через митний кордон України приховує предмети контрабанди, чи товари, які є безпосередніми предметами порушення митних правил. Значну увагу приділено оцінці допустимості доказів (протоколів огляду), одержаних у межах митного контролю, а також критеріям, за якими суди оцінюють обґрунтованість застосування особистого огляду, зважаючи на те, що єдиною законодавчою підставою для його проведення є наявність «достатніх підстав» вважати, що особа, яка перетинає митний кордон України приховує предмети контрабанди. У результаті дослідження сформульовано пропозиції щодо забезпечення більшої правової визначеності у застосуванні ст. 340 Митного кодексу України.

**Ключові слова:** особистий огляд; митний контроль; митний кордон; право на недоторканність особи; судова практика.

## **Introduction**

A personal search is an exceptional form of customs control that may be applied to individuals crossing Ukraine's customs border. Given the coercive nature of this measure, strict compliance with the procedural safeguards established by customs and constitutional law is essential to prevent violations of the rights to personal integrity and privacy.

Article 3 of the Constitution of Ukraine recognises the individual, as well as their life, dignity, inviolability, and security, as the highest social values. As emphasised by the Constitutional Court of Ukraine in Decision № 5-r(II)/2022 of June 22, 2022, "human freedom is, a priori, decisive and a priority for respect by the state as a whole and by state authorities", while "the constitutional presumption of human freedom necessitates the justification of any substantial restriction thereof by the state" [1].

The Constitutional Court of Ukraine has repeatedly stressed the close relationship between personal integrity, human dignity, and the right to private life. In Decision № 11-r(II)/2023 of 20 December 2023, the Court stated that the constitutional right to respect for private and family life derives directly from human dignity and guarantees a sphere of autonomous personal existence free from unjustified state interference [2].

Similarly, in Decision № 8-r(II)/2024 of 18 July 2024, the Constitutional Court emphasised that personal liberty and integrity are fundamental constitutional values, noting that violations of these rights have historically served as instruments for broader abuses of human rights [3].

The relevance of this study lies in the need to balance competing public and private interests. On the one hand, the state has a legitimate interest in protecting customs sovereignty, national security, and public safety, particularly under martial law and heightened border-control measures. On the other hand, personal searches involve direct interference with constitutional rights, including the right to personal integrity and the prohibition of arbitrary interference in private life.

Supreme Court case law demonstrates an attempt to balance the protection of state security and customs sovereignty with strict compliance with procedural safeguards governing exceptional forms of customs control. At the same time, legislative inconsistencies and the absence of clear statutory criteria defining "reasonable grounds" for conducting personal searches continue to generate legal disputes and inconsistent enforcement practices.

The growing number of court cases challenging the legality of personal searches further confirms the practical significance of this issue.

In judicial practice, disputes concerning the application of Art. 340 of the Customs Code of Ukraine primarily relate to the admissibility of evidence. Personal search reports and items seized during customs control often constitute key evidence in customs-offence proceedings and criminal cases involving smuggling. Consequently, the admissibility of such evidence depends directly on strict compliance with the requirements established by Art. 340.

These considerations determine both the relevance and practical significance of the present study.

### **Literature review**

The issue of conducting personal searches within the framework of customs control lies at the intersection of customs law, administrative procedure, border security, and human rights standards. Meanwhile, domestic legal scholarship has examined the issues surrounding the implementation of Art. 340 of the Customs Code of Ukraine in a piecemeal manner, primarily through analyzing specific forms of customs control, the grounds for carrying out inspection measures, and the balance between security and human rights protection mechanisms.

One of the most relevant studies about personal searches is that by O.P. Fedotov, which focuses on intelligence as the basis for customs inspections [4]. The author highlights that, while intelligence is an essential prerequisite for enhanced customs controls, the legislation does not provide sufficient clarity on its content, sources, or reliability criteria. The researcher emphasizes the risks of excessive discretion on the part of customs authorities when using intelligence, and highlights the need for procedural safeguards to protect individuals during control measures. In the context of Art. 340 of the Customs Code of Ukraine, this position is particularly important, as the possibility of conducting a personal search is directly determined by the existence of "reasonable grounds" to believe that a person is concealing contraband or goods. However, the author does not analyze judicial practice regarding the application of such grounds, nor does he disclose the criteria by which the courts assess them.

The general theoretical context of customs regulation is explored in the work of V. Harashchuk, O. Dmytryk, and S. Fedchyshyn [5]. This work focuses on updating the definition of key categories relating to the movement of goods across Ukraine's customs border. The authors analyze how the fundamental concepts of customs law have transformed in the context of European integration and the modernization of customs legislation. They draw attention to the need to adapt customs control mechanisms to contemporary security challenges and international standards. However,

this work does not specifically examine the issue of conducting personal searches.

N. Golovai's work explores the theoretical foundations of customs control over the movement of goods and passengers' personal effects [6]. The author describes customs control as a comprehensive system of legal and organizational measures aimed at ensuring the state's customs security and compliance with procedures for moving goods across the customs border. However, the study is predominantly theoretical in nature and only briefly addresses the issue of procedural safeguards when applying the most intensive forms of control, particularly personal searches.

Studies from abroad on the digitalization of security practices are extremely important for understanding the current transformation of border control. Perle Møhl, for example, analyses how the nature of assessing an individual's "suspiciousness" has changed because of digital and biometric systems being used during border control [7]. She emphasizes that modern control is increasingly based on algorithmic risk assessment and the accumulation of personal data rather than direct observation by an official. This is significant for the study of personal searches, given the transformation of the criteria for establishing "reasonable grounds" for interfering with an individual's privacy.

Similar trends can be observed in the work of Bruno Martins, Kristoffer Lidén, and Maria Jumbert [8]. The researchers argue that modern border control is shifting increasingly towards digital monitoring systems, risk analysis, and processing large datasets, rather than physical inspections. However, the authors emphasize that digitalization does not eliminate the problem of discretion; it merely changes its form. This is because decisions on the application of coercive measures continue to be taken by officials based on their interpretation of risk indicators. This is relevant to analyzing Ukrainian practice in applying Art. 340 of the Customs Code of Ukraine, where courts frequently assess whether there is reasonable suspicion and whether there is sufficient factual evidence to conduct a personal search.

Michael Mora-Rodríguez examines the communicative and behavioral aspects of how suspicion arises during customs checks [9]. He analyses the structure of police interactions in the border zone between Spain and France, demonstrating that suspicion develops gradually through interaction between officers and individuals. The researcher emphasizes that the decision to intensify checks is often based not only on formal criteria but also on behavioral characteristics, manner of communication, and situational factors. These findings are relevant to the study of Ukrainian judicial practice, where the justification for a personal search is often also

linked to "suspicious behavior", raising questions about the clarity and verifiability of such grounds.

Thus, an analysis of the academic literature reveals a lack of comprehensive research dedicated specifically to analyzing the judicial implementation of Art. 340 of the Customs Code of Ukraine. Existing works predominantly address general issues of customs control, specific aspects of preventive inspections and border security, or the digitalization of control procedures. Domestic scholarship lacks a systematic analysis of the criteria courts use to determine "reasonable grounds" for a personal search, the procedural safeguards for individuals, the admissibility of evidence obtained from such searches, and the relationship between customs control and the standards that protect the right to privacy and human dignity. This gap makes further research into the judicial practice of applying Art. 340 of the Customs Code of Ukraine particularly relevant.

### **Materials and Methods**

This study aims to provide a thorough analysis of the legal basis for conducting personal searches as an exceptional form of customs control. Such searches are carried out by the head of the customs authority or their deputy when there is reasonable suspicion that a person crossing the Ukrainian customs border is carrying contraband or goods that violate customs regulations.

The following research methods were employed in writing this article:

1. Formal-legal and systemic analysis methods were used to interpret the mandatory requirements of Art. 340 of the Customs Code of Ukraine, which sets out the preconditions necessary for a lawful personal search ("reasonable grounds"). These methods enabled the procedural guarantees established by law regarding state interference with citizens' rights to personal integrity and privacy to be systematised, as well as the legal positions of the Supreme Court regarding such interference.
2. The comparative legal method was used to distinguish between a personal search as an exceptional form of customs control and a personal search as defined in the Code of Ukraine on Administrative Offences, as well as a search of a person as an investigative measure conducted under the Criminal Procedure Code of Ukraine. The analysis focuses on identifying the similarities and differences in their authorisation and the scope of procedural safeguards during their execution.
3. The method of generalising case law enabled an analysis of the legal positions adopted by the Criminal and Administrative Cassation Courts within the Supreme Court in recent years.

This approach ensured the analysis was highly objective and reliable, and enabled the distinction to be made between statutory requirements and judicial interpretation. It also identified practical problems in the application of Art. 340 of the Customs Code of Ukraine.

## **Results and Discussion**

### ***A comparative analysis of personal searches conducted in accordance with the Customs Code of Ukraine, the Ukrainian Code on Administrative Offences, and the Ukrainian Criminal Procedure Code***

In accordance with Art. 340 of the Customs Code of Ukraine, a personal search is an exceptional form of customs control carried out by written order of the head of the customs authority (or their deputy). This order is issued if there are reasonable grounds to believe that a person crossing the customs border of Ukraine, or present in the customs control zone or transit zone of an international airport, is concealing contraband items or goods that directly breach customs regulations or are prohibited from being imported into, exported from, or transited through Ukraine.

Article 340 of the Customs Code of Ukraine provides a detailed outline of the procedure for conducting a personal search. It also specifies the requirements for the private room in which the search is to be carried out, the report to be drawn up following the search, and the rights of the person subject to the search.

On August 26, 2025, the Cabinet of Ministers of Ukraine approved the draft of the new Customs Code of Ukraine by a formal decision and forwarded the text to the European Commission for assessment [10]. Article 671 of the draft [11], titled "Personal Search", was developed by experts from the Ministry of Finance and the State Customs Service of Ukraine based on EU customs legislation. It reproduces the provisions of Art. 340 of the current version of the Customs Code verbatim.

It is worth noting that the EU Customs Code [12] contains no provisions for regulating the physical search of individuals passing through customs controls at the European Union's external borders. This gap in the legal framework is not an oversight, but a deliberate decision by the EU legislator. The application of the legal principle "expressio unius est exclusio alterius" is decisive in this case: if the EU legislators had intended to harmonise such procedures, they would have been explicitly included in the list of control measures. The absence of such regulation means that the EU Customs Code has not introduced a unified procedure for conducting personal searches.

However, since personal searches directly affect fundamental human rights, particularly the right to privacy and physical integrity, the procedural

rules governing their conduct are exclusively established by the national administrative, criminal, and criminal procedure legislation of each EU Member State. Regardless of the content of national legislation, interference by customs authorities with fundamental human rights is subject to strict scrutiny by the Court of Justice of the EU and the European Court of Human Rights. This requires reasonable, individualised suspicion and compliance with the principle of proportionality.

A comparative analysis of personal searches authorised under the Customs Code of Ukraine, the Code of Administrative Offences, and the Code of Criminal Procedure of Ukraine revealed the following similarities and differences.

All these procedures constitute an interference with an individual's right to personal integrity and private life. According to the consistent legal stance of the European Court of Human Rights, such interference must fulfil three conditions: it must be carried out "in accordance with the law", "pursue legitimate aims" (i.e. serve a legitimate purpose), and be "necessary in a democratic society" (see para. 47 of the ECtHR judgment in *Savini v. Ukraine*) [13].

All the above procedures also have one thing in common: ensuring compliance with legal procedures is essential to guarantee the lawfulness of state intervention. Breaching any mandatory procedural requirement may constitute grounds for declaring the evidence obtained inadmissible under the 'fruit of the poisonous tree' doctrine. Examples of such breaches include failing to comply with the requirement for equal gender representation, improperly involving witnesses, and – in criminal proceedings – the absence of mandatory video recording or a defence lawyer. In criminal proceedings, this is expressly provided for in Art. 87 of the Ukrainian Code of Criminal Procedure.

A key distinction between personal searches carried out under administrative procedures and procedural coercion in criminal proceedings is that the latter requires the highest level of procedural safeguards for the person subject to it. After all, the consequences may include criminal liability and significant subsequent restrictions on liberty. This is precisely why interventions carried out under the Code of Criminal Procedure of Ukraine are usually authorised by a judicial body (an investigating judge), ensuring an independent prior review of the necessity and proportionality of the intervention. In contrast, a personal search is usually authorised by an official from an executive authority based on an administrative decision. While administrative procedures can ensure a quick response for border or law enforcement controls, the lack of prior judicial review necessitates

stringent internal procedural safeguards, such as decisions being made in writing and a medical professional being present to examine the body. These safeguards are intended to compensate for the lower legitimacy standard. However, if such a search is used to gather criminal evidence covertly, there is a risk of violating the principle of admissibility of evidence, since the authorisation standard used for the initial intervention does not meet the requirements of the Code of Criminal Procedure of Ukraine.

This is precisely why the Supreme Court has repeatedly emphasised the fundamental difference between a personal search carried out as part of customs control and a search of a person, which constitutes an investigative (procedural) action under the Code of Criminal Procedure of Ukraine. In its ruling of 13 March 2025 on Case № 138/1081/23, the Criminal Cassation Court emphasised that a personal search, as defined in Art. 340 of the Customs Code of Ukraine, is not equivalent to a search of a person as defined in Art. 237 of the Code of Criminal Procedure of Ukraine [14]. This legal position determines the scope of the procedural safeguards applicable to individuals during customs control.

The Supreme Court justifies the application of less stringent procedural safeguards in border and customs zones on the basis that individuals crossing the state border are deemed to have consented to certain restrictions on their rights, as well as to obligations associated with the special legal regime of customs control. According to the Supreme Court, when a citizen knowingly enters an area subject to special legal regulation (i.e. undergoes border and customs control), they accept the risk of exceptional control measures being applied, including a personal search. The Cassation Criminal Court's legal position explains why, although constitutional rights are preserved, they are subject to stricter, less guaranteed rules that are necessary to ensure state security and sovereignty at the customs border. By contrast, in criminal proceedings, a personal search is a coercive measure not based on such implicit consent, and is therefore subject to a higher level of procedural safeguards. Thus, the individual effectively 'consents' to a different level of procedural safeguards than those applicable in general criminal proceedings, legally justifying the absence of a ruling by an investigating judge and the mandatory participation of a defence lawyer.

A personal search is an exceptional form of customs control, intended to detect any contraband or prohibited goods being transported across the customs border. In contrast, a search of a person under the Code of Criminal Procedure of Ukraine is an investigative measure carried out to locate and seize items or documents relevant to specific criminal proceedings. Such a search is usually "incorporated" into measures such as arrest or the search of a dwelling or other premises.

The procedure for conducting a personal search under the Customs Code of Ukraine differs significantly from that under the Code of Administrative Offences. While the Customs Code of Ukraine clearly regulates searches at the customs border and requires a written decision from the head of the customs authority, the Code of Administrative Offences contains less detailed procedural requirements. Academic literature even contains well-founded criticism of the current legislation in this area. Consequently, although they exist, the procedural safeguards in the form of requirements for witnesses are less stringent than those in the Customs Code of Ukraine and the Code of Criminal Procedure of Ukraine.

***The legal framework for conducting personal searches under Ukrainian customs law: an analysis of legislation and case law***

Article 340 of the Customs Code of Ukraine outlines clear yet ambiguous conditions for carrying out personal searches. Adherence to these conditions is essential for ensuring the legality of the procedure and the admissibility of any evidence obtained.

In accordance with Art. 340(1) of the Customs Code of Ukraine, a personal search may only be carried out if the following conditions are met simultaneously.

Firstly, a written decision by the head of the customs authority or their deputy is required to lawfully conduct a personal search. Unlike a search of a person in criminal proceedings, however, this decision is administrative in nature and is not subject to prior review by an investigating judge. Nevertheless, judicial practice shows that the absence of such a decision renders the search report inadmissible as evidence. Even if the factual circumstances (the discovery of contraband) are confirmed, the procedural defect in the document legitimising interference with a person's rights renders the search report inadmissible as evidence. Lawyers frequently highlight this violation in their cassation appeals, including in Case № 138/1081/23. In its ruling of 13 March 2025, the panel of judges of the Second Chamber of the Cassation Criminal Court of the Supreme Court stated that "the references in the appeal to non-compliance with the rules of personal search due to the absence in the case file of a decision by the head of the customs authority are not valid, since the defence did not express any interest in obtaining this decision and did not file the relevant motions during the implementation of the requirements of Art. 290 of the Code of Criminal Procedure of Ukraine, or during the conduct of the trial and appeal proceedings" [15].

As stated in the Odessa Administrative Court of Appeal's ruling of October 1, 2013, "the discovery and removal of a "Vacheron Constantin" watch from

Person\_2's wrist essentially constitutes a personal search of the individual". At the same time, the panel of judges established that, on 26 December 2007, neither the Head of Boryspil Customs nor their representative issued a decision to conduct a personal search of the claimant. Therefore, the panel of judges agrees with the court of first instance's conclusion that the defendant, an inspector from Boryspil Customs' Customs Clearance Department № 1, violated the requirements for conducting a personal search when searching the claimant [16].

Since Art. 340 of the Customs Code of Ukraine states that this decision is a prerequisite, disregarding it makes the whole process unlawful. This means that the seized items are deemed to have been obtained in a material breach of the law and are therefore inadmissible as evidence.

Admittedly, the Criminal Cassation Court and the Administrative Cassation Court within the Supreme Court take different approaches to this matter. The Criminal Cassation Court adopts a stricter formalistic approach to compliance with the requirement for a written decision by the head of the customs authority or their deputy, considering procedural perfection to be mandatory. In contrast, when considering cases of administrative offences relating to breaches of customs regulations, the Administrative Court of Cassation adheres to its general legal position set out in para. 44 of the 9 December 2021 Decision. According to this, "a breach of the procedure for adopting an act should not, in itself, give rise to legal consequences for its validity, except in cases expressly provided for by law" [17]. However, if the procedural violation does not restrict a citizen's fundamental rights (e.g. the right to defence or the right to receive information on the grounds for the inspection) and constitutes a technical error (e.g. minor deficiencies in the drafting of the report), it may not be recognised as grounds for setting aside the decision on the violation of customs regulations.

The wide variety of approaches taken by the courts means that lawyers must have a clear understanding of whether a breach is substantive (i.e. infringing key individual rights that affect the outcome of the customs inspection) or procedural (arising from a technical inaccuracy). Generally, the courts proceed on the basis that only substantial violations, which directly affect the individual's rights and the admissibility of evidence, constitute grounds for declaring the personal search procedure unlawful.

It is also important that the individual is provided with a written decision from the head of the customs authority or their deputy for their information. An analysis of case law shows that it is important to confirm that the individual has been made aware of the decision, for example, by adding a note to the decision itself.

The second mandatory condition for the lawful application of a personal search is that there must be "reasonable grounds to believe that the citizen is concealing contraband or goods that directly constitute a breach of customs regulations, or that are prohibited from being imported into, exported from, or transported in transit through, Ukraine". While the Customs Code of Ukraine does not provide an exhaustive list of "reasonable grounds", this wording requires customs officials to possess specific, objective facts or information that justify such interference with an individual's right to personal integrity. These grounds must relate to a suspicion that goods are being concealed that constitute a breach of customs regulations or are prohibited from being moved across the border.

This provision is the most contentious, giving rise to a significant number of administrative disputes. The problem stems from the fact that the current customs legislation contains no regulatory clarification or an indicative list regarding the legal concept of "reasonable grounds". This term's vagueness creates considerable scope for discretionary personal searches and abuse of power by customs officials. In practice, officials may rely on operational intelligence, risk profiles, or their own assessment of suspicious behaviour during customs checks. Without clear legal regulation, challenging a decision on a personal search in the administrative courts becomes a dispute in which the parties seek to prove or disprove the objective existence of grounds for conducting such a search.

In the absence of clear criteria, courts hearing administrative disputes must carry out an "ex post facto" assessment of the reasonableness and objectivity of the actions taken by customs officials. If the customs authority cannot prove that, at the time the decision to conduct an inspection was taken, there was objective evidence indicating a high risk of concealment, the decision to conduct the inspection may be deemed unlawful. This underlines the urgent need to clarify the legal concept of "reasonable grounds" by amending Art. 340(1) of the Customs Code of Ukraine.

Despite the absence of a clear legislative definition of the term "reasonable grounds", an analysis of the Supreme Court's legal positions has revealed the following five criteria that the Court uses to assess the lawfulness of a personal search:

1. The requirement for objective information to exist: The Court proceeds on the basis that "reasonable grounds" cannot be based solely on the subjective suspicions or intuition of a customs official. There must be objective information (e.g. operational data, risk analysis results, or information from law enforcement agencies) indicating a high risk of concealment, specifically in relation to that person at the time the decision to search is made.

In particular, the ruling of the Kharkiv Administrative Court of Appeal, dated 26 September 2013, states: "The report from the Security Service of Ukraine in the Sumy region provides reasonable grounds for believing that the claimant may be transporting prohibited items across the border in her car or on her person, and therefore a search of the vehicle and a personal search were justified" [18].

2. Proper documentation of the reasons: although customs legislation does not expressly require the reasons to be set out in detail in the written decision of the head of the customs authority ordering a personal search, judicial practice effectively requires the customs authority to document the reasons so that they can be submitted to the court to prove that the decision was legal.

3. Direct link to smuggling (breach of customs regulations): the grounds must relate to a suspicion of concealing contraband or items that breach customs regulations or are prohibited from being moved. Grounds that are not directly related to these conditions cannot be deemed sufficient for the application of such an exceptional form of customs control.

The Odessa Administrative Court of Appeal's ruling of 27 March 2013 rightly notes: "The court of first instance correctly concluded that the aforementioned forms of customs control are applied when there are reasonable grounds to believe that a person crossing the Ukrainian customs border, or present in the customs control zone or transit area of an international airport, is concealing contraband or goods prohibited from export by Ukraine" [19].

4. Exceptional nature: The Court regards a personal search as an exceptional form of customs control. This means that the customs authority must demonstrate that less intrusive methods of control, such as questioning the person, examining their documents, or inspecting their belongings, were either impossible or ineffective in detecting concealment.

The Volyn Regional Court of Appeal ruling of May 13, 2013 states: "Contrary to Articles 339 and 340 of the Customs Code of Ukraine, the customs inspectors failed to exercise their authority to inspect and re-inspect hand luggage and baggage. Furthermore, in accordance with Articles 318, 320 and 544 of the Customs Code of Ukraine, within the limits of their powers, the customs inspectors could have requested a written declaration" [20].

5. The burden of proof lies with the customs authority. In the event of a judicial challenge to a decision to conduct a personal search, it is the responsibility of the customs authority to prove that there were "reasonable grounds". The court will conduct an "ex post facto" review to determine

whether these grounds existed and were reasonably justified at the time the decision was made.

Even when there is a written decision and reasonable grounds, strict compliance with the procedural safeguards set out in Articles 340(2-5) of the Customs Code of Ukraine is crucial for the legitimacy of a personal search. In other words, before the search begins, the customs official must present the person with a written decision authorising the search and inform them of their rights and obligations. They must also invite the person to voluntarily surrender any concealed or undeclared goods. The fact that the person has been informed of the decision and their rights, and has refused to surrender the goods voluntarily, must be certified by a note or entry on the decision itself, signed by the official.

Since "no written decision authorising the personal search was produced during the claimant's personal search by a customs official", the claimant was not informed of his rights and obligations during the search. He was also not asked to voluntarily hand over the undeclared goods. No report was drawn up in the form established by the central executive authority responsible for formulating and implementing state tax and customs policy. This report was not signed by the customs official who conducted the search, the citizen who underwent the search, or the witnesses present during the search. Such inaction on the part of the senior state inspector was classified by the Suvorov District Court of the city of Kherson as a "gross violation of the procedure for conducting a personal search, as provided for in Art. 340 of the Customs Code of Ukraine" [21].

Failure to comply with the requirements of Art. 340(3) of the Customs Code of Ukraine regarding the proper recording of a person's offer to voluntarily surrender goods and/or their refusal may be used as a basis for challenging the admissibility of the evidence in question, since it infringes their right to choose and have this duly recorded. However, this breach may not be grounds for rejecting evidence if it is proven beyond a doubt that the goods were concealed.

The Customs Code of Ukraine establishes several procedural safeguards to minimise violations of a person's honour and dignity during a personal search. The procedure must be carried out in a private room, and third parties not involved in the search must not be allowed to observe it. A personal search must be carried out by a customs official of the same sex as the person being searched, in the presence of at least two witnesses of the same sex. This is a mandatory requirement to ensure confidentiality and objectivity.

An analysis of case law has shown that claimants often challenge the results of a personal search on the grounds of a breach of the witness

appointment requirements (for example, if customs officials, their subordinates, relatives of the person subject to the search, or other interested parties are appointed). After all, witnesses must be impartial. Breaches of these requirements call into question the objectivity of the personal search procedure record and may result in the evidence being deemed inadmissible, infringing the individual's right to an objective record of the procedure.

A unique feature of the customs procedure is the strict requirement that personal searches must be carried out exclusively by a medical professional. This provision directly guarantees physical safety and the medical legitimacy of the procedure, given that customs operations may require contraband concealed inside the body to be detected. Therefore, the Customs Code of Ukraine sets out a stricter, albeit highly specialised, standard for protecting a person's health during a personal search than the general rules set out in the Code of Criminal Procedure of Ukraine.

In addition, before the start of the personal search, the individual has the right to familiarise themselves with the procedure for conducting it, and to provide explanations, submit requests, and make statements. These must be recorded by the customs official in the report.

In accordance with Art. 340 of the Customs Code of Ukraine, the report of a personal search must be signed by the customs official who conducted the search, the person who underwent the search, any witnesses present, and any medical professionals involved. The person who underwent the search has the right to make a statement, which must be recorded in the report.

In its ruling of March 17, 2009, the High Administrative Court of Ukraine rejected the appellant's argument regarding alleged violations committed against him during a personal search. The court concluded that there was no written record of the search and no entry in the logbook to that effect. Based on this, the court concluded that no such search had occurred [22].

In its ruling of August 13, 2015, the Kherson Regional Court of Appeal rejected the appellant's argument regarding several violations committed against him during the personal search. "The senior inspector of the State Fiscal Service conducted customs control in the form of an oral interview regarding the presence of goods subject to mandatory declaration when crossing the Ukrainian customs border, as documented in the interview Report № 0106/50801/15. According to the Report, which was signed by the appellant without comment, he voluntarily handed over the money he had concealed in his jacket pocket at the request of the customs officer; therefore, there was no need to conduct a personal search" [23].

In accordance with Art. 340(8) of the Customs Code of Ukraine, a copy of the report shall be provided to the individual. Failure to do so constitutes a breach of the individual's procedural rights. However, the Administrative Court of Cassation considers such breaches in the context of their materiality and impact on the overall lawfulness of customs official's actions.

As the Criminal Court of Cassation points out, since a customs inspection is a supervisory rather than an investigative measure, seizing items following such an inspection does not constitute a search. Therefore, a detention report does not need to be drawn up under Art. 208 of the Code of Criminal Procedure of Ukraine, provided the person was not detained.

### ***Restrictions on the conduct of personal searches for certain categories of persons***

In accordance with Art. 340(9) of the Customs Code of Ukraine, the following individuals are exempt from personal search: the President of Ukraine; the Speaker of the Verkhovna Rada of Ukraine; Members of the Verkhovna Rada of Ukraine; the Prime Minister of Ukraine; the First Deputy Prime Minister of Ukraine; the President and judges of the Supreme Court; the President and judges of the Constitutional Court of Ukraine; the Minister for Foreign Affairs of Ukraine; and the Prosecutor General, as well as their travelling companions. However, exempting the "family members" of senior officials from the exceptional form of customs control applied to all other persons could be seen as a violation of the constitutional principle of equality before the law. Granting senior officials and their family members a legal privilege that exempts them from customs control, even in such an exceptional form, could be used as grounds for legal action in cases where ordinary citizens are subjected to disproportionate searches.

The phrase "family member" is used repeatedly throughout the text of the Customs Code of Ukraine, not only in Art. 340(9), but also in Articles 359, 383, 384, 385, 386, 389, 391, 392, 580, and 587. However, the Customs Code does not specify which individuals are considered family members. An analysis of domestic legislation has revealed legal uncertainty regarding who should be considered "family members" of the officials. According to Art. 3 of the Family Code of Ukraine, a family consists of persons who live together, share a household, and have mutual rights and obligations. A married couple is considered a family even if they do not live together for valid reasons, and a child belongs to their parents' family even if they do not live with them.

According to Art. 64 of the Housing Code of Ukraine, a tenant's family members include their spouse, children, and parents. Other persons may

also be recognised as members of the tenant's family if they permanently reside with and run a joint household with the tenant. According to sub-para. 14.1.263 of para. 14.1 of Art. 14 of the Tax Code of Ukraine, a natural person's family members include their parents, spouse, and children (including adopted children) – these persons are classified as first-degree relatives – as well as their siblings, maternal and paternal grandparents, and grandchildren – these persons are classified as second-degree relatives.

In accordance with Art. 1 of the Ukrainian Law on the Prevention of Corruption, a declarant's family members include two groups of people:

1. The declarant's spouse and children until they reach the age of majority, regardless of whether they live with the declarant; and
2. Any other people who live with the declarant, share a household with them, and have mutual rights and obligations with them (except for people whose rights and obligations are not of a family nature), including people who live with the declarant but are not married to them.

To ensure legal certainty when applying the provisions of the Customs Code of Ukraine, we recommend amending the Code to specify the legal basis for applying the term "family member". Furthermore, we recommend removing the reference to "family members" in Art. 340(9) of the Customs Code of Ukraine to better implement the principle of equality in the regulation of personal searches as an exceptional form of customs control for family members of senior Ukrainian officials. The Constitutional Court of Ukraine emphasises in its Decision № 11-r(II)/2023 of December 20, 2023 that "the constitutional principle of equality, established by Articles 21 and 24 of the Constitution of Ukraine, applies to all components of the Ukrainian legal order, and it guarantees the equality of all people in their dignity and the inalienability of their fundamental rights. The introduction of legislative restrictions on the exercise of constitutional rights and freedoms cannot contradict this principle", emphasises the Constitutional Court of Ukraine in the paragraph of sub-para. 2.2 of para. 2 of the reasoning section of its Decision № 11-r(II)/2023 of December 20, 2023 [2].

## **Conclusions**

An analysis of judicial practice concerning the application of Art. 340 of the Customs Code of Ukraine demonstrates that Ukrainian courts have developed a relatively consistent approach to personal searches as an exceptional form of customs control.

Judicial practice confirms that strict compliance with procedural safeguards is essential for ensuring the legality of personal searches and the admissibility of evidence obtained as a result. Because personal searches

constitute one of the most intrusive forms of customs control, courts subject their application to particularly rigorous scrutiny.

From the perspective of customs authorities, the legality and sustainability of personal searches depend primarily on compliance with formal statutory requirements, especially the existence of a written decision authorising the search and objective evidence demonstrating reasonable grounds for conducting it.

Supreme Court case law shows that courts apply strict standards when assessing the legality and proportionality of customs officials' actions. Any interference with constitutional rights, particularly the right to personal integrity and the right to respect for private life, must be justified by genuine and objectively verifiable risks rather than hypothetical assumptions.

Although Art. 340 of the Customs Code of Ukraine does not define the concept of "reasonable grounds", this legislative gap is partially compensated for through judicial review, which requires customs authorities to substantiate the legality of their actions with objective evidence.

Considering the Supreme Court's legal positions, defence strategies in disputes concerning the application of Art. 340 should focus primarily on documenting all procedural violations committed during the personal search and challenging the existence of the statutory prerequisites for conducting such searches.

### **Recommendations**

To enhance legal certainty and reduce the risk of abuse by customs authorities, Art. 340 of the Customs Code of Ukraine should be amended. The following amendments are proposed:

1. Introducing a detailed statutory definition of the concept of "reasonable grounds" within Art. 340(1) of the Customs Code of Ukraine, supplemented by a non-exhaustive list of circumstances capable of constituting such grounds.
2. Amending Art. 340(9) of the Customs Code of Ukraine to eliminate unjustified exemptions from personal searches for senior public officials and their family members.
3. Introducing into Art. 4 of the Customs Code of Ukraine a statutory definition of the term "family member" for the purposes of applying Articles 359, 383-386, 389, 391, 392, 580, and 587.

The proposed amendments would improve legal certainty, strengthen procedural safeguards, and promote compliance with the constitutional principle of equality before the law.

## References

- [1] Constitutional Court of Ukraine. (June 22, 2022). *Decision № 5-r(II)/2022 in the case concerning the constitutional complaint of Oleksii Volodymyrovych Abramovych regarding the constitutionality of paragraph 2 of part two of Article 40 of the Housing Code of Ukraine*. Retrieved from <https://zakon.rada.gov.ua/laws/show/v005p710-22#Text>.
- [2] Constitutional Court of Ukraine. (December 20, 2023). *Decision № 11-r(II)/2023 concerning the constitutionality of certain provisions of Article 111(1) of the Criminal Executive Code of Ukraine*. Retrieved from <https://zakon.rada.gov.ua/laws/show/v011p710-23#Text>.
- [3] Constitutional Court of Ukraine. (July 18, 2024). *Decision № 8-r(II)/2024 concerning the constitutionality of Article 615(6) of the Criminal Procedure Code of Ukraine*. Retrieved from <https://zakon.rada.gov.ua/laws/show/v008p710-24#Text>.
- [4] Fedotov, O. P. (2016). Intelligence as A Basis for Customs Inspection. *Problems of Legality*, 132, 124-134. <https://doi.org/10.21564/2414-990x.132.59710>.
- [5] Harashchuk, V.M., Dmytryk, O.O., & Fedchyshyn, S. A. (2023). Movement of Goods Across the Customs Border of Ukraine: Updating the Content of Basic Categories. *Scientific Innovations and Cutting-Edge Technologies*, 1(27), 198-210. [https://doi.org/10.52058/2786-5274-2023-13\(27\)-198-210](https://doi.org/10.52058/2786-5274-2023-13(27)-198-210).
- [6] Golovai, N. (2022). Customs Control over the Movement of Goods and Passengers' Personal Belongings: Theoretical aspects. *Economy and Society*, 36. <https://doi.org/10.32782/2524-0072/2022-36-30>.
- [7] Møhl, P. (2022). Biometric Technologies, Data, and the Sensory Work of Border Control. *Ethnos*, 87(2), 241-256. <https://doi.org/10.1080/00141844.2019.1696858>.
- [8] Martins, B.O., Lidén, K., & Jumbert, M.G. (2022). Border Security and the Digitalisation of Sovereignty: Insights from EU Borderwork. *European Security*, 31(3), 475-494. <https://doi.org/10.1080/09662839.2022.2101884>.
- [9] Mora-Rodriguez, M. (2022). Resolving Suspicion Moment-by-Moment: The Overall Structural Organization of Police Encounters in the Spain – France Border Area. *Language & Communication*, 87, 161-178. <https://doi.org/10.1016/j.langcom.2022.07.006>.
- [10] Ministry of Finance of Ukraine. (August 26, 2025). *The Government Approves the Draft of the New Customs Code of Ukraine for Assessment by the European Commission and Consultations with Business Representatives*. Retrieved from [https://mof.gov.ua/uk/news/uriad\\_pidtrimav\\_proiekt\\_novogo\\_mitnogo\\_kodeksu\\_ukraini\\_iakii\\_napravliaietsia\\_na\\_otsinku\\_ievrokomisiieiu\\_ta\\_dlja\\_konsultatsii\\_z\\_biznesom-5295](https://mof.gov.ua/uk/news/uriad_pidtrimav_proiekt_novogo_mitnogo_kodeksu_ukraini_iakii_napravliaietsia_na_otsinku_ievrokomisiieiu_ta_dlja_konsultatsii_z_biznesom-5295).
- [11] Cabinet of Ministers of Ukraine. (2025). *Draft Customs Code of Ukraine approved on August 26, 2025*. Ministry of Finance of Ukraine. Retrieved from <https://mof.gov.ua/storage/files/Проект%20Митного%20кодексу%20України.pdf>.
- [12] European Parliament & Council of the European Union. (October 9, 2013). *Regulation (EU) No. 952/2013 laying down the Union Customs Code (recast)*. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02013R0952-20200101>.
- [13] European Court of Human Rights. (December 18, 2008). *Saviny v. Ukraine* (Application No. 39948/06). Retrieved from <https://hudoc.echr.coe.int/eng?i=001-90360>.
- [14] Supreme Court of Ukraine, Second Judicial Chamber of the Criminal Cassation Court. (March 13, 2025). *Decision in Case No. 138/1081/23*. Retrieved from <https://reyestr.court.gov.ua/Review/125876619>.
- [15] Supreme Court of Ukraine. (March 13, 2025). *Case No. 138/1081/23*. Retrieved from <https://reyestr.court.gov.ua/Review/125876619>.
- [16] Odesa Administrative Court of Appeal. (2013, October 1). *Ruling in case No. 2-a-31/08/2110*. Retrieved from <https://reyestr.court.gov.ua/Review/34458015>.

- [17] Supreme Court of Ukraine, Administrative Cassation Court. (December 9, 2021). *Decision in Case № 260/63/19*. Retrieved from <https://reyestr.court.gov.ua/Review/101774588>.
- [18] Kharkiv Administrative Court of Appeal. (September 26, 2013). *Decision in Case № 1870/2a-2646/12*. Retrieved from <https://reyestr.court.gov.ua/Review/34240449>.
- [19] Odesa Administrative Court of Appeal. (March 27, 2013). *Decision in Case № 2-a/1570/8630/11*. Retrieved from <https://reyestr.court.gov.ua/Review/30335153>.
- [20] Volyn Regional Court of Appeal. (May 13, 2013). *Decision in Case № 163/603/13-p*. Retrieved from <https://reyestr.court.gov.ua/Review/31109121>.
- [21] Suvorovskiy District Court of Kherson. (2015, April 3). *Decision in Case № 668/3687/15-a*. Retrieved from <https://reyestr.court.gov.ua/Review/43459409>.
- [22] Higher Administrative Court of Ukraine. (March 17, 2009). *Decision*. Retrieved from <https://reyestr.court.gov.ua/Review/3496405>.
- [23] Kherson Regional Court of Appeal. (August 13, 2015). *Decision in Case № 668/2626/15-p*. Retrieved from <https://reyestr.court.gov.ua/Review/48482427>.

### **Volodymyr M. Bozhko**

Doctor of Law, Professor

Head of the Department of Constitutional, Administrative, Environmental, and Labor Law

Poltava Law Institute of Yaroslav Mudryi National Law University

36011, 5 Vitaliia Hrytsaienka Ave., Poltava, Ukraine

e-mail: [v.m.bozhko@nlu.edu.ua](mailto:v.m.bozhko@nlu.edu.ua)

ORCID 0000-0002-3963-8461

### **Володимир Миколайович Божко**

доктор юридичних наук, професор

завідувач кафедри конституційного, адміністративного, екологічного та трудового права

Полтавський юридичний інститут Національного юридичного університету імені Ярослава Мудрого

36011, просп. Віталія Грицаєнка, 5, Полтава, Україна

e-mail: [v.m.bozhko@nlu.edu.ua](mailto:v.m.bozhko@nlu.edu.ua)

ORCID 0000-0002-3963-8461

**Suggested Citation:** Bozhko, V.M. (2026). Personal Search under Article 340 of the Customs Code of Ukraine: an Analysis of Judicial Practice. *Theory and Practice of Jurisprudence*, 1(29), 6-25. <https://doi.org/10.21564/2225-6555.2026.29.361143>.

Submitted: 03.04.2026

Revised: 15.05.2026

Approved: 28.05.2026

Published online: 29.05.2026