

Review Paper

Normative and Law Enforcement Aspects of Customs Debt Reasons (On Example of Albania)

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ABSTRACT

The research aims to conduct a complex analysis of the legal acts and statements in the regulation of customs debt in the Albania Republic legislation. During the research, the following methods were used: the legal analysis, structural, systemic, and functional methods of juristic generalization as well as the comparative method. The research presents a comparative analysis of normative legislations on the reasons for customs debt in the Customs Codex of Albania Republic (CAR) of 1999 and the Customs Codex of Albania Republic (CCAR) of 2014. Especial attention was devoted to the judicial practice analysis of the Higher Court of Albania Republic addressing the customs debts. The most frequent cause of this sphere is related to the causes of customs debt, the relation of the administrative and judicial order of the case investigation on the customs debt as well as reasons for the customs debt and its calculation. The research stated that administrative orders of implementation concerning the Albania customs workers also have several issues. Due to the immense number of issues, caused by the definitions and enforcement of Albanian customs law during the court case review related to the customs debt, the authors suggest developing a respective law enforcement norm on the level of practice generalization of the Higher Court of Albania Republic and formed separate recommendations on its content, which determines the practical value of the research.

HIGHLIGHTS

- ① The research relevance is predefined by the necessity to properly comprehend the normative basis of law enforcement on the customs debt as the incorrect implementation of law statements may cause major unlawful debts as customs fares as well as insufficient income of the taxes to the treasury.

Keywords: Import, export, declaration, court verdict, generalization of judicial practice, administrative order of case investigation

The importance of the customs debt reason investigation in the normative field of Albania Republic legislation is determined by several factors. The first of them is related to the differences in law regulation of custom debt in the Customs Codex of Albania Republic (1999) and the Customs Codex of Albania Republic (2014). The second factor is related to the major number of issues, relevant during the enforcement of respective norms of customs legislation as subjects, which import/export goods through Albania customs, which defines the need for the analysis of conflicts on the lawful reasons for the

customs debt both in juristic and in administrative fields. As such, a theoretical overview of the norm reasons for the customs debt as well as an analysis of the juristic and administrative practice during this category case investigation will not only allow the highlight of the relevant issues during customs debt but also propose ways of their removal.

Even though the Customs Legislation of Albania

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Republic has the definition of the moment when customs debt occurs, in practice the comprehension of the definition varies greatly not only on the defendant and victim sides but by the judges of a single Higher Court Collegium of the Albania Republic (CCAR).

The modern state of customs debt reasons normative regulation on an example of Albania Republic research is insufficient as recent studies have analyzed either separate aspects of customs activity, not related to the customs debt enforcement or had little to no relation to more general topics, such as economic development, international taxation, and unethical bank activity.

The research aims to conduct a systemic analysis of legal norms of the codified customs legislation of Albania Republic, related to the reasons for the customs debt as well as its enforcement practices.

MATERIALS AND METHODS

The author used the juristic analysis method to describe the normative statements of the codified customs legislation of the Albania Republic, related to the legal regulation of reasons for the customs debt as well as the presentation of court verdict contents of the CCAR, related to the enforcement of customs debt. During the analysis of the issues, relevant when disputing the removal of customs debt in the administrative order, the legal analysis method was also used. The structural method allowed to form the most used categories of customs debt cases in the CCAR practice as well as in the administrative order of relevant disputes by the customs bodies. The systemic and functional method was used to define the three elemental schemes of normative statements fixation on the reasons for the customs debt. The juristic generalization allowed the author to form the most common practical issues which occur during the law enforcement in the customs debt as subjects of customs and staff of the respective customs services of the Albanian Republic. The comparative method was used to compare the CAR 1999 and CAR 2014 and highlight separate similar and different tendencies in normative regulation of customs debt reasons at each stage of the codified legislation of Albania Republic development.

The methodology of customs debt cause issues in the legislation of Albania was formed by the principle of juristic methods to the system of normative and law enforcement materials, which allowed the implementation of the aim of the research.

RESULTS

During the research of the normative reasons for the customs debt in Albanian customs legislation, it is necessary to first mention the adoption of the CAR 2014 to replace the CAR 1999 in 2014. Even though the new CAR 2014 was in effect for a long time, several statements of CAR 1999 are worthy of attention as the approach of Albanian law enforcement is of peculiar interest at least from the purely publicist-financial law.

The Customs Code of the Republic of Albania (1999) has a separate chapter "Customs debt", which consisted of five paragraphs. The CAR 1999 chapters were related to the issues of ensuring the covering the customs debt, reasons for the customs debt, enforcement of the customs debt (customs debt transaction to the bookkeeping system and notification of the debt sum, terms, and order of payment to the debt holder), order of customs debt payment and release from payment. The reasons for the customs debt are traditionally categorized into reasons for the customs debt during the import and export of goods. Overall, the norm systems, which regulated the issues, were created by the following scheme: – the description of reasons for the customs debt; –fixation of a moment when the customs debt occurs due to such reasons; –determination of categories, which are deemed debt holders by customs debt.

Most of the reasons why the customs debt occurs under the Customs Code of the Republic of Albania (1999) were related to the customs debt during import. Such reasons are the realization of goods, which are subject to the import fee, unlawful import on the customs territory of Albania Republic, which are subject to the import fee, removal of goods, which are subject to customs control, temporary storage of goods, which are subject to the import fee. Failure to abide by these laws and free usage of these goods and is subject to the import fee on conditions, distinct from the norms stated in the law, is also considered a reason.

An example of the occurrence of customs debt during the import of goods under the Customs Code of the Republic of Albania (1999) is an import of goods to the Albanian Republic, subject to import fee without customs declaration. Coming back to the Customs Code of the Republic of Albania (2014), it is worth mentioning that statements, which would regulate the causes for the customs debt, in comparison to the previous codex, are not as described and detailed. The contents of these regulations also differ substantially as the categorization of reasons for customs debt during import and export remains the same.

As such, in part 1 of article 72 of the Customs Code of the Republic of Albania (2014) such a reason is stated for the customs debt as selling non-Albanian goods, which are subject to the import fees within specified customs modes. Article 75 of the Customs Code of the Republic of Albania (2014) includes such a reason for the customs debt as due to the failure to meet the customs duties.

Article 76 regulates the goods export customs debt, which ratifies the reason for the customs debt as a result of selling goods, subject to the export fees within, for example, export mode. As such, during the import as well, a group of reasons for the customs debt during goods export due to the failure to meet certain customs duties is also present in the Customs Code of the Republic of Albania (2014) (article 77 of CAR 2014).

Overall, while comparing normative regulation of reasons for the customs debt in the customs codex of Albania, it is possible to conclude that:

- (a) both in Customs Code of the Republic of Albania (1999) and Customs Code of the Republic of Albania (2014) the legislator kept the approach of defining main provisions for the reasons for the customs debt as follows:
 - the description of reasons for the customs debt;
 - fixation of the moment when the customs debt occurs due to such reasons;
 - determination of categories, which are deemed debt holders by customs debt;
- (b) both in CAR 1999 and CAR 2014 the division of the customs debt during import and export of goods remains the same;

- (c) reasons for the customs debt both in CAR 1999 and CAR 2014 are not identical.

During the comparison of normative provisions in Customs Code of the Republic of Albania (1999) and Customs Code of the Republic of Albania (2014), it is worth mentioning that CAR 1999, point 9 articles 8² had the definition of the “customs debt” in a level of general provisions. In the current CAR 2014, along with the general provision, this definition is absent.

Then the author deems it necessary to focus on the juristic practice, related to the enforcement of customs debt. For this research, a verdict of the CCAR was selected and analyzed. Most of the court verdicts, which were or are reviewed by the CCAR, are related to the definition of the moment when the customs debt occurs.

The verdict of the CCAR from 5th June 2009 #00-2008-586 can serve as an example. The core of the dispute was in the correct employment of certain norms, stated in part 3 of article 246 of the CAR 1999, which provisioned the requirement of stating the customs debt over the span of three years (Decision of the Supreme..., 2009). For the correct implementation of the CAR 1999, it is necessary to clearly define the moment when the customs debt occurs.

In the reviewed court verdict, the company, which filed a complaint in the respective customs body, was sure, that the three-year term of the notice on the customs debt was not timely. It is important, that during the description of the victim’s position in the court complaint such terms, as “moment when the customs debt occurs” and “moment when the notice to pay the debt was presented” were used without the proper definition of what was implied.

The defendant’s position on the moment of customs debt occurrence in the CCAR court verdict on the case 5th June 2009 #00-2008-586 is more detailed and is described as follows: the moment of customs debt occurrence should be deemed as the day when the customs violation was registered after the proper confirmation by the Turkish customs officials (Decision of the Supreme..., 2009).

A first instance court’s position is of peculiar origin, which stated, that to determine the moment when the customs debt occurs and when it is not possible to clearly define the moment, it is necessary to employ part 2 of article 229 of the CAR 1999,

which regulates the situation and ensures, that the moment of debt occurrence is the moment of the goods arrival to the customs officials. Moreover, it is necessary to address the rules of taxation (Decision of the Supreme..., 2009).

Appellation institutions yet again employed part 3 of article 236 of the CAR 1999 and determined the moment of debt occurrence as the moment of verbal inspection of respective goods (Decision of the Supreme..., 2009).

CCAR did not support the appellation court position and noted, that under articles 216, 229, and 230 of the CAR 1999, the customs debt occurs when the customs officials, based on the proper information, can determine whether there is a customs debt or no (Decision of the Supreme..., 2009).

CCAR has done a detailed investigation of every case condition, such as – it was determined, that during the verbal inspection of all goods, the customs officials had no sufficient proof to determine a customs debt, which forces the staff to address the Turkish customs officials in writing, that being the source of the goods. As a response, the Turkish customs officials confirmed the invalidity of the respective customs documents as they did not represent the actual value of disputed goods, which was the starting point of determining the moment of the customs debt in the case. As such, the defendant made an administrative act, which forced the victim to properly pay the customs debt within the three-year term, as provisioned in the CAR 1999 (Decision of the Supreme..., 2009).

What is interesting, during the verdict announcement, one of the judges did not agree with it and voiced a different opinion, in which he supported the appellation course position. Judge A. Muskai reminded that under part 2 of article 216 of the CAR 1999 the customs debt occurs on the date of the customs declaration. Overall, judge A. Muskai deems the position of the appellation court judge in this case lawful and rightful (Decision of the Supreme..., 2009).

The author would like to note that juristic practice is an important determinant in the aspect of law enforcement of any kind, and customs debt matters are no exception. It is necessary to include the fact, that after the moment of dispute and before the CCAR investigation, seven to eight years may pass,

and as such the analysis of the Customs Code of the Republic of Albania (1999), which was in effect before 2014, is still relevant. It is also worth noting, that during the determination of a moment when the customs debt occurred, both parties and the judges consulted the customs legislation several times, which determined the three-year term for the notification of a debt holder about a valid customs debt. Such a provision is also available in the Customs Code of the Republic of Albania (2014) (in part 1 of Article 97 of the CAR), and therefore the practice of its application by the CCAR, set out in the court decisions made earlier, should be considered relevant and necessary for research.

Regarding some problems of the administrative procedure of dispute resolution regarding the emergence of customs debt, the author decided to choose the final audit report on the financial audit of Vlora Customs, which recorded some practical issues of recovery of the studied type of debt by the customs authorities of the Republic of Albania (in particular, the Vlora Customs) (Final Audit Report..., 2018).

The first of them is related to the violation of the provisioned deadlines for the collection of customs debt in set amounts, which are quite significant. In this regard, the customs control body of Vlora was tasked to develop a specific program not only with a list of measures aimed at repayment of customs obligations but also with an indication of the deadlines for their implementation and a list of officials responsible for their implementation (Final Audit Report..., 2018).

It was also determined that the customs officials of Vlora in some cases did not properly monitor the collection of customs duties for certain categories of goods. Such a situation in the future may lead to larger customs debts, and therefore the issue of the responsible attitude of the Vlora customs authority staff in terms of timely and proper collection of customs duties has become particularly important (Final Audit Report..., 2018).

Summarizing the above mentioned material, the author would like to emphasize that in the court practice at the level of the CCAR there are many problematic issues regarding the grounds for customs debts. Generalizing such practice and providing recommendations on how to resolve the

relevant disputes in certain cases would not only greatly facilitate the consideration of this category of cases, but would also allow to development of some approaches to the unification of the application of customs legislation in this area. First of all, this concerns the issue of the moment of the customs debt, how to understand and interpret the relevant legal provisions in the presence of different positions of the plaintiff and the defendant, as well as the procedure for calculating and collecting customs debt obligations.

DISCUSSION

The division of the results of this research from the contents of the studies, related to international trade, is determined by the sphere of the research – this research is devoted to the public financing sphere. At the same time, it is necessary to note, that international trade is the factor, which causes the need for customs regulation, hence mentioning the contents of the works devoted to international trade was required.

M.M. Parthiban *et al.* (2020) made scientific research, in which the interrelation of the Global Customs Organization and international trade in the context of future paradigms is investigated. M.M. Parthiban *et al.* (2020) note, that Global Customs Organization constantly tries to implement measures, that simplify and harmonize customs procedures, aimed to expedite international trade. Such activity of the Global Customs Organizations was especially important during the COVID-19 pandemic.

The fundamental research of M. Fabio is related to the European Union customs law, in which a practical overview of customs and trade legislation of the selected region is conducted. Scientists devoted attention to the fact, that current organizations specializing in international trade, are facing substantial issues of modernizing delivery procedures, proper customs planning, reducing customs spending, and simplification of customs officials' relations. It is important, that in this work M. Fabio (2020) developed a practical operative tool that allows conducting an effective management of each operation, which theoretically may cause a customs debt.

J. Vanhoeyveld *et al.* (2020) devoted the publication to the issues of fraud detection in the customs

sphere. The researchers emphasize the fact that in practice customs officers use standard programs and algorithms to detect fraud, which is not effective. In this regard, J. Vanhoeyveld *et al.* (2020) have developed a scheme that will solve the described problem.

As a rule, scientists focused on the activities of the World Customs Organization, customs legislation of the European Union, fraud in the customs sphere, etc., while this research deals with regulatory and practical issues of customs debt in the Republic of Albania.

A narrower specificity of the study, which is most relevant to the subject of this work, is the scientific works related to certain issues of customs debt. Ź. Gwardzińska and E. Gwardzińska (2021) studied the enforcement of customs debt in the European Union. K. Truel and E. Maganaris (2015) published research in which they considered the consequences of the impact of violations of the customs legislation of the European Union on international transactions. In this aspect, K. Truel and E. Maganaris (2015) also mentioned the regulatory regulation of customs debt in the European space and described some novelties in this area.

The work of O. Shaaban (2015) concerning the relationship between the causes of a customs debt and value-added tax is interesting. Having analyzed the regulatory framework for the collection of these two types of payments in the legislation of the European Union, O. Shaaban (2015) concluded that they are parallel in nature.

M. Lupi (2019) not only described the reform of the customs legislation of the European Union in 2016 but also, among other issues, a digitalization of customs clearance or calculation of payments, considered the grounds for the customs debt.

Thus, previous scientific works in the field of customs debt collection concerned such aspects as normative regulation of customs debt, enforcement of customs debt in the European space and review and analysis of the relevant judicial practice, the relationship between the causes of a customs debt and value-added tax, the grounds for customs debt in the European Union.

As for the works that were relevant to the analysis of Albanian legislation, the author mentions the following. A.M. Fernandes *et al.* (2021) describe the

customs reform in the Republic of Albania. A review of the state of compliance with standards and codes by public authorities in Albania was prepared with the support of the International Monetary Fund (IMF, 2006). S. Veliu and M.A. Kocibellinj (2018) comprehensively analyzed the problems of e-governance implementation in Albania.

The publications concerning the review of Albanian legislation are somewhat limited in nature – they address certain aspects of customs reform, the state of compliance with standards and codes, or the implementation of e-governance.

CONCLUSION

The research provides a comprehensive review of the regulatory and law enforcement aspects of the grounds for customs debt both in the customs codified legislation of the Republic of Albania and in the case law of the Supreme Court of this country. Special attention is devoted to the problems of customs debt collection in the administrative order by employees of the relevant customs services.

The main regulatory grounds for the emergence of customs debt at the level of the CAR 2014 include the placement of non-Albanian goods subject to import duties within the framework of specifically defined customs regimes, failure to fulfill certain types of customs obligations both for import and export of goods, etc.

The reasons for the emergence and repayment of customs debt are often considered in the courts of the Republic of Albania. The complexity of the correct resolution of this category of cases is primarily due to the ambiguous interpretation of the relevant norms of customs legislation not only by the victim and the defendant in the case but also by the judges of the same panel.

Most of the problems of the administrative procedure for consideration of disputes on the emergence and repayment of customs debts in the Republic of Albania relate to the performance by customs officials of their official duties properly, because it is the customs officials who must timely respond to possible violations of customs legislation and prevent the emergence of large customs debts.

As a result of the research, the author is convinced of the need to develop a law enforcement guideline at the level of the Supreme Court of the Republic

of Albania, which would address the problematic issues of customs debt collection based on the analysis of judicial practice in this area.

A comparative analysis of the norms of the CAR 2014 and the Customs Code of the European Union concerning the procedure for the recovery of customs debt is an interesting area for further scientific research.

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