

American Journal of Social and Humanitarian Research

**Vol. 7 Issue** 11 | **pp.** 131-139 | **ISSN:** 2690-9626
**Available online @** https://globalresearchnetwork.us/index.php/ajshr

*Article*

# From A Fine-Only Model to Differentiated Sanctions: Proportionality of Administrative Penalties for Customs Offences in Uzbekistan

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**Abstract:** Purpose. This article assesses whether the penalties for administrative customs offences in Uzbekistan comply with the constitutional principle of proportionality and substantiates legislative proposals to secure that compliance. Design/methodology/approach. Using formal-legal, systemic-structural, comparative and statistical methods, the study examines the 27 customs-related articles of the Code on Administrative Liability, three draft laws, customs authorities' case statistics for 2021–2025, the legislation of the European Union, the Russian Federation and China, and the case law of the European Court of Human Rights and the Court of Justice of the European Union. Findings. In every customs-related article of the Code the principal penalty is a fine, which prevents the individualisation of penalties for procedural and first-time violations. In 2025, 99.9 per cent of the cases decided by customs authorities fell under four offences recorded through an automated information system and punished by fixed fines. A pending bill would cut the nominal total of fines by roughly one-third but would distort the relative severity of sanctions for comparable conduct. Originality/value. The article substantiates introducing the administrative warning as an alternative penalty in Articles 227 and 227[12], together with objective criteria for its use; proposes two criteria for identifying duplicative offences; and argues for making confiscation optional for first-time non-declaration and for creating liability for failure to submit advance electronic information. It shows that reforming the penalty system means differentiation rather than mere mitigation — a finding relevant to other post-Soviet jurisdictions that inherited a fine-only model.

**Keywords:** Principle of proportionality; administrative penalty; administrative warning; customs offence; fine; confiscation; alternative sanction; advance electronic information; Uzbekistan.

**Citation:** ugli Yusupov S. L. From A Fine-Only Model to Differentiated Sanctions: Proportionality of Administrative Penalties for Customs Offences in Uzbekistan. American Journal of Social and Humanitarian Research 2026, 7(11), 131-139.

Received: 09th Aug 2026
Revised: 10th Sep 2026
Accepted: 20th Oct 2026
Published: 13th Nov 2026

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## 1. Introduction

Proportionality is a universally recognised requirement of customs law. The Revised Kyoto Convention requires that the severity of a penalty depend on the seriousness of the offence and on the offender's record [1]. The Union Customs Code obliges EU Member States to provide for penalties that are "effective, proportionate and dissuasive" [2]. The Court of Justice of the European Union has held that a fine exceeding the value of the goods, imposed on a tourist for what was essentially a technical breach, violated the principle of proportionality [3]. Nevertheless, the European Commission has found that Member States' customs penalty systems still diverge sharply [4]. Its proposal to reform the Union Customs Code would therefore introduce a common minimum core of non-criminal sanctions [5].

Under Article 20 of the Constitution of the Republic of Uzbekistan, legal measures applied by state bodies to individuals must be based on the principle of proportionality and be sufficient to achieve the aims laid down by law [6]. In the customs sphere this requirement deserves particular attention: in all twenty-seven customs-related articles of the Code on Administrative Liability (hereinafter the CAL) the principal penalty is a fine, so the official deciding a case effectively has only one instrument at hand. This model, inherited from the Soviet period, is also found in other states of the region.

Recent policy decisions aim to change this. Law No. O‘RQ-1116 of 4 February 2026 added Article $24^1$ on the administrative warning to the CAL [7]. Presidential Decree No. PF-250 of 17 December 2025 called for extending this penalty to the customs sphere [8], and Presidential Decree No. PF-175 of 27 August 2026 set the task of reducing all fines by an average of one-half on the basis of proportionality [9]. Uzbekistan is thus at the starting point of a transition away from the fine-only model, which makes it a useful case study.

In international scholarship, proportionality is usually understood as a three-stage test: a measure must be suitable for achieving a legitimate aim, necessary, in that no less restrictive but equally effective means is available, and proportionate in the strict sense, meaning that the benefit gained outweighs the harm to the right concerned [10]. Barak treats this last stage as a balancing of the benefit gained by the measure against the harm it causes to the right concerned [11]. State actions must be prescribed by law and restrict individual rights to the minimum extent [12]. Measures restricting rights must not be excessive in relation to the aim pursued [13]. For administrative penalties this test is especially important. Under the Engel criteria, a penalty labelled “administrative” in domestic law may constitute a “criminal charge” within the meaning of Article 6 of the European Convention on Human Rights, depending on the nature of the offence and the severity of the penalty [14]. In customs matters, the European Court of Human Rights found in *Ismayilov v. Russia* that confiscating the entire amount of undeclared cash in addition to a fine was a disproportionate interference with the right to property [15]. The Court reached the same conclusion in *Gabrić v. Croatia* [16]. It did so again in *Grifhorst v. France* [17].

In the national literature, general issues of administrative liability are covered by Khamedov, Khvan and Tsay [18]. Qarshiboyev also addresses these issues in his textbook on administrative liability [19]. The specific features of liability for violations of customs rules are examined by Kobzar-Frolova [20]. Gumenyuk traces how the institution of administrative liability for violations of customs legislation has developed [21]. Aliyarov notes that a fine imposed without regard to the offender's financial situation loses its preventive function and becomes a disproportionate economic coercive measure [22]. These works, however, do not examine the system of customs administrative penalties comprehensively from the perspective of proportionality, the administrative warning and the current reform of administrative liability legislation, and the international literature has scarcely addressed customs penalty systems in Central Asia. This article seeks to fill that gap. It proceeds from three requirements that the proportionality principle imposes on the design of administrative liability: the penalty must correspond to the nature of the conduct; the same conduct must not be penalised under several articles of the code; and comparable conduct must attract comparable penalties [23].

The aim of this article is to substantiate legislative proposals to ensure the proportionality of administrative penalties in the customs sphere. It addresses three research questions: (1) to which customs offences, and under what conditions, can the administrative warning be applied; (2) does the bill reducing fines preserve the relative severity of sanctions for comparable conduct; and (3) which offences and sanctions in the CAL fail to meet the proportionality requirement? Section 2 describes the methodology, Section 3 presents the results, Section 4 discusses them, and Section 5 concludes.

## 2. Methodology

The normative basis of the study comprises the Constitution, the CAL, the Customs Code, Laws No. O‘RQ-1075 and No. O‘RQ-1116, Presidential Decrees No. PF-122, PF-57, PF-250 and PF-175, and Presidential Order No. F-30. Three draft laws were analysed: two prepared with the author's participation (on the administrative warning and on advance electronic information) and one on the reduction of fines. The comparative material includes the legislation of the Russian Federation and China, the EU directive on carriers' obligations and EU customs reform documents, judgments of the European Court of Human Rights and the Court of Justice of the European Union, and international customs standards. Russia was selected because it shares a common legal heritage with Uzbekistan, China because it has a single statute governing administrative penalties, and the EU because it has the most developed practice of applying the proportionality principle.

The statistical basis consists of data for 2021–2025 on cases decided by customs authorities themselves (information systems of the Customs Committee). Cases decided by courts fall outside the scope of the analysis. To estimate the change in the nominal total of fines, the 2025 case structure was assumed to remain constant, and the current and proposed fines for each offence were multiplied by the number of cases.

The formal-legal method was used to analyse the text of sanctions and dispositions; the systemic-structural method to identify overlaps between articles and the relative severity of sanctions; the comparative method to compare national and foreign legislation; and statistical analysis to assess how articles are applied in practice and how the nominal total of fines would change.

## 3. Results

### *3.1. Proportionality requirements and current sanctions*

Under the current rules, a fine is imposed even where a violation is committed for the first time, through negligence, causes no damage and is immediately rectified; and the fixed fines attached to offences recorded through the Unified Automated Information System (UAIS) make it impossible to tailor the penalty to the offender and the conduct. This does not fully meet the international standard requiring the severity of a penalty to depend on the seriousness of the offence and the offender's record (Standard 23 of Specific Annex H, Chapter 1 of the Revised Kyoto Convention), and it conflicts with the necessity stage of the proportionality test: a less restrictive but equally effective instrument — a warning — is not provided for by law.

### *3.2. Applying the administrative warning to Articles 227 and 227[12] of the CAL*

Under Article 24[1] of the CAL, an administrative warning is a formal reprimand issued to an offender in written (electronic) form. It is applied where the person sincerely repents and their actions show no signs of other offences, may not be imposed on the same person more than once within a year, and currently applies only to certain road traffic offences [24]. The warning does not duplicate existing institutions: exemption from liability for a minor offence under Article 21 of the CAL is not a penalty and can be granted only by a court, while termination of proceedings under paragraph 11 of Article 271 is available only to business entities. A first-time, harmless procedural violation committed by an ordinary citizen or an official is covered by neither.

The programme approved by Decree No. PF-250 provides for drafting a bill to introduce the administrative warning for participants in foreign economic activity who commit, for the first time, offences such as violating the regime of a customs control zone or failing to submit reports (Annex 5, para. 31). Under the bill prepared with the author's participation, Articles 227 and 227[12] are added to the list in part three of Article 24[1] of the CAL, and the sanctions of these articles provide for an administrative warning as an alternative to a fine, the amount of which remains unchanged.

The choice of these two offences rests on four considerations. First, both are procedural: Article 227 penalises violation of the regime of a customs control zone, and Article 227[12] penalises failure to submit reports on goods under customs control or located in free customs zones and free warehouses, and failure to keep records of such goods; in neither case are goods concealed from control or customs payments reduced. Second, the sanction of Article 227 is among the lowest in the customs sphere, whereas the minimum fine under Article 227[12] is seven times the base calculation amount (BCA): an official cannot be fined less even for a one-day delay in submitting a report, and only a court may impose a lower penalty. Third, these offences are not widespread: customs authorities considered a total of six cases under Article 227[12] in 2021–2025. Fourth, Order No. F-30 makes the provision of alternative penalties a priority [25], and under Decree No. PF-175 a "warning for the first mistake" rule will apply to financial penalties on business entities from 1 January 2027 (para. 4(v)).

Because "sincere repentance" in Article 24[1] is an evaluative concept, it is proposed that methodological guidelines supplement it with objective criteria: (a) the person has acknowledged the violation; (b) the violation has been remedied; and (c) no customs payment arrears have arisen. Jurisdiction must also be addressed. Under part three of Article 245 of the CAL, cases concerning offences committed in the course of business activity are heard by courts; in practice, therefore, a warning to an employee of a business entity would be issued by a court, and the aim of resolving liability quickly and simply would not be achieved. Cases under Articles 227 and 227[12] should therefore be added to the exceptions in part three of Article 245.

### *3.3. The bill on reducing fines*

Decree No. PF-175 requires a bill reducing fines to be submitted within three months (para. 10). Pursuant to this task, customs offences and the fines attached to them were reviewed. The results indicate that, in view of the nature of certain offences and the requirement of proportionality, the fines for them should be reduced (Table 1).

**Table 1.** Proposed reduction of fines in customs-related articles of the CAL (multiples of the BCA)

| CAL article (part) | Current fine | Proposed fine | Reduction of upper limit (times) |
|---|---|---|---|
| 227[1] (pt. 1); 227[5]; 227[6] | 1–3 / 3–5 | 1–2 / 1–3 | 1.5 / 1.7 |
| 227[1] (pt. 2); 227[2] (pt. 1) | 2–5 / 3–7 | 1–3 / 2–4 | 1.7 / 1.8 |
| 227[2] (pt. 2, repeat) | 5–7 / 7–15 | 3–4 / 4–8 | 1.8 / 1.9 |
| 227[7] | 3–7 / 7–15 | 2–4 / 4–8 | 1.8 / 1.9 |
| 227[10] (pt. 2); 227[13] (pt. 3); 227[22] (pt. 2) | 3 (fixed) | 2 (fixed) | 1.5 |
| 227[12] | — / 7–10 | — / 4–6 | — / 1.7 |
| 227[15] (pt. 1) | 3–7 / 5–10 | 2–4 / 3–5 | 1.8 / 2.0 |
| 227[15] (pt. 2, repeat) | 7–10 / 10–20 | 3–5 / 5–10 | 2.0 / 2.0 |
| 227[16] (pt. 1) | 5 (fixed) | 3 (fixed) | 1.7 |
| 227[17] (pt. 1) | 5–10 / 7–15 | 3–5 / 4–8 | 2.0 / 1.9 |
| 227[17] (pt. 2, repeat) | 10–15 / 15–30 | 5–8 / 8–15 | 1.9 / 2.0 |

Source: compiled by the author; reduction ratios calculated by the author. Fines are given as "citizens / officials"; under Article 227[12] liability applies to officials only. BCA — base calculation amount, the statutory unit used to set fines in Uzbekistan.

Three observations follow from the table. First, most of the conduct covered by the bill is procedural and does not reduce customs payments; the bill does not affect offences punishable by confiscation. Second, all four offences recorded through the UAIS are covered: in 2025 they accounted for 29,149 of the 29,165 cases (99.9 per cent) decided by customs authorities. According to the author's calculation, if this case structure persists, the nominal total of fines will fall from 87,577 BCA to 58,363 BCA, i.e. by roughly one-third (33.4 per cent). Third, upper limits of fines decrease by a factor of 1.5–2 (1.7 on average), and the most common fixed fines by a factor of 1.5; under Article 227[12] the minimum fine falls from seven to four times the BCA.

### *3.4. Duplicative offences and offences that have lost their social danger*

The requirement that the same conduct not be penalised under several articles calls for removing from the code offences that meet either of two criteria: (1) duplication, i.e. the conduct is fully covered by another, more specific article of the code; and (2) loss of social danger, i.e. the circumstances in which the offence could be committed have changed and no cases have been recorded under the article for years (Table 2).

**Table 2.** Duplicative customs-related articles of the CAL and articles that have lost their social danger

| Article | Upper limit of fine (BCA) | Articles covering the conduct and their upper limits (BCA) | Application in practice |
|---|---|---|---|
| 227[3] (repealed in 2025) | 7 | 227[4] — 15, repeat 30 | 2 cases in 2021–2025 (1 in 2023; 1 in 2025) |
| 227[7] | 15 | 227 — 5; 227[4] and 227[8] — 15, repeat 30; 227[13] — 10, repeat 20 | 3 cases in 2022; 1 in 2023; 1 in 2024 |
| 227[17] | 15, repeat 30 | 227[10] — 7; 227[18] — 15, repeat 30 | No cases in 2021–2025 |
| 227[6] | 5 | Has lost its social danger | No cases recorded |

Source: compiled by the author on the basis of data from the Customs Committee's information systems.

The validity of these criteria is confirmed by Article 227[3]: the author proposed its removal in his 2024 study (p. 67), and the article was repealed by Law No. O‘RQ-1075 of 10 July 2025 [26]. The disposition of Article 227[7] on violating the procedure for customs clearance is couched in general terms, whereas the specific acts committed during clearance are covered by Articles 227, 227[4], 227[8] and 227[13] (p. 66 of the same study); as a result, conduct for which no liability is established may be punished as a "violation of procedure", which runs counter to the requirement of legal certainty. Violation of the procedure for destroying goods under Article 227[17] is covered by Articles 227[10] and 227[18]; no such separate offence exists in the legislation of the Russian Federation, Kazakhstan or Belarus (p. 65 of the same study). The conduct under Article 227[6] — a vessel mooring without authorisation alongside a vessel under customs control — can occur only at the "River Port" post of the Surkhandarya regional customs administration, where cargo is carried by the vessels of a single organisation and the area is controlled by the Border Troops (p. 65 of the same study).

### *3.5. Confiscation and advance electronic information*

Part one of Article 227[22] of the CAL provides for mandatory confiscation, together with a fine, for non-declaration or incorrect declaration of goods. If an individual fails to declare goods exceeding the duty-free allowance, the entire value of the goods is forfeited to the state and a fine is imposed, even though the customs payments due represent only a small fraction of the goods' value [27]. Business entities have a "second chance": in 2025, 1,735 cases under part one of Article 227[22] were terminated under paragraph 11 of Article

271 and the goods returned to their owners, whereas an ordinary citizen loses the goods on the first mistake.

The opposite situation exists for advance information. Articles 17 and 206 of the Customs Code require advance information on goods, means of transport, passengers and their baggage to be submitted [28], but the CAL attaches no sanction to this obligation. At present such information is submitted for only 29.6 per cent of air cargo and 36.9 per cent of passengers and their baggage. Decree No. PF-122 set the task of closing this gap [29]. Decree No. PF-57 reaffirmed this task [30]. The bill prepared with the author's participation provides for a fine of five times the BCA for air and rail carriers or their authorised persons who fail to submit such information, submit it late or submit it incorrectly.

## 4. Discussion

The results show that the problem of customs penalties lies not only in the size of fines but in the lack of instruments for differentiating penalties. Aliyarov describes the approach of Article $24^1$ as "a cautious but limited solution" (p. 85); the proposal extends its scope to two procedural offences. It is also consistent with foreign practice: in the Russian Federation the sanctions for precisely these two offences include a warning [31]. In China, no penalty need be imposed for a first-time violation with minor consequences that is promptly corrected [32]. The approach of the Court of Justice in *Commission v Hellenic Republic* likewise confirms that a substantial financial penalty for a technical violation may be disproportionate.

The objection that a warning unduly softens liability is unfounded. A warning is a recorded administrative penalty: under Article 37 of the CAL a person who has received one is deemed to have been penalised for one year, and any new offence within that period counts as a repeat offence. Such a person should also be regarded as no longer meeting the "first time" condition of paragraph 11 of Article 271. The fact that courts often confine themselves to a warning for persons who carry other people's goods across the border for a fee, which encourages repeat offending [33], shows that the error lies not in the warning itself but in applying it to intentional, profit-driven conduct.

The selection of procedural offences for fine reduction is justified: under the German rule cited by Aliyarov, a fine must exceed the economic benefit the offender derived from the unlawful act (p. 82); where there is no benefit, there is no need for a high fine. At the same time, the bill raises three concerns. First, in the customs part the "average two-fold" reduction targeted by the Decree is not fully achieved (1.7 on average). Second, relative severity is distorted: of two offences that currently carry the same sanction (1–3 and 3–5 times the BCA), violating the regime of a customs control zone would remain punishable by a higher fine than failing to stop a means of transport or dispatching it without authorisation (1–2 and 1–3 times the BCA); and while the fixed fine for late declaration falls from three to two times the BCA, the fine for repeating the same conduct (5–10 and 10–15 times the BCA) remains unchanged. These provisions should therefore also be included in the bill — for example, by setting the fine under Article 227 at 1–2 and 1–3 times the BCA, as in Article $227^5$. Third, the two bills must be aligned: the sanction of Article $227^{12}$ should be the same in both — an administrative warning or a fine of four to six times the BCA. Reducing the fines under Articles $227^6$, $227^7$ and $227^{17}$, which are proposed for repeal, may be regarded as an interim measure.

Removing offences carries one risk: the maximum fine under the repealed Article $227^3$ was 7 times the BCA, whereas under Article $227^4$, which covers the same conduct, it is 15 times. If the conduct is classified under the more severe article, the person's position worsens; the sanction of the covering article should therefore be reviewed, or a separate part for less serious cases should be added to it.

The proposal on confiscation is consistent with the settled case law of the European Court of Human Rights. In *Ismayilov v. Russia*, the Court held that confiscating the entire undeclared amount in addition to a fine places an excessive burden on the individual, particularly where the funds are of lawful origin and no other offence has been established. The same reasoning underlies *Gabrić v. Croatia* and *Grifhorst v. France*. Although Uzbekistan is not a party to the Convention, the proportionality requirement in Article 20 of its Constitution calls for the same balance: a penalty must be sufficient to secure the recovery of customs payments and prevent repetition, but must not go beyond that.

Proportionality does not mean mitigation alone: the absence of liability for an important obligation is also a form of disproportion. In the EU, the fine for an air carrier that fails to transmit passenger data is calculated per flight and amounts to thousands of euros [34]; the fine in the bill is considerably smaller and targets the carrier's official. The bill should clarify the unit of offence, the carrier's fault (the carrier should be liable only if it failed to take reasonable steps to verify the information, as provided in Standard 24 of Specific Annex H, Chapter 1 of the Revised Kyoto Convention), the liability of officials of foreign airlines, and the title of the article.

**Limitations.** First, the statistical analysis covers only cases decided by customs authorities; penalty practice in court-heard cases requires separate study. Second, the estimate of the total of fines assumes a constant case structure and does not account for the effect of milder penalties on the number of offences. Third, the author is an official of the Customs Committee and participated in drafting two of the bills analysed (on the administrative warning and on advance electronic information); the views expressed are the author's own and do not necessarily reflect the official position of the Customs Committee.

**Further research.** Depending on the share of persons who reoffend within one year of receiving a warning, the closed list in Article $24^1$ could be extended to other procedural offences — for example, Articles $227^1$ and $227^5$ and part one of Article $227^{10}$. Since, under Article $17^2$ of the CAL, repetition is not taken into account for offences recorded through the UAIS, a graduated liability scheme could be explored: an electronic warning for the first violation within a year, a fixed fine for the second, and an increased fine for subsequent violations.

## 5. Conclusions

The study shows that the use of a fine as the sole principal penalty in the customs-related articles of the CAL does not fully meet the principle of proportionality, and that improving the penalty system means differentiation rather than one-sided mitigation: a warning for procedural and first-time violations and effective measures for intentional and repeated conduct. Articles 227 and $227^{12}$ should therefore be added to the list in part three of Article $24^1$ of the CAL, with an administrative warning as an alternative to a fine and with objective criteria for its use (acknowledgement and remedying of the violation and the absence of customs payment arrears) set out in methodological guidelines. The bill reducing fines is supported, but to preserve the relative severity of sanctions it should also cover Article 227 and parts one and three of Article $227^{10}$, and the sanction of Article $227^{12}$ should be aligned with the bill on the warning. Articles $227^6$, $227^7$ and $227^{17}$ should be repealed without allowing the conduct concerned to be reclassified under articles with more severe sanctions; confiscation under part one of Article $227^{22}$ should be made optional, or first-time non-declaration of non-commercial goods by citizens who pay the customs payments due should be brought under paragraph 11 of Article 271; and liability should be established for failure to submit advance electronic information in air and rail transport. These measures, which are relevant to other jurisdictions that inherited a fine-only model, can increase the proportionality of penalties without weakening the effectiveness of customs control.

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