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Historical overview of customs crimes and ways of addressing them

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Abstract

Iran's government suspended the organization, was established to monitor economic activity and trade; but the arrival of great volume of contraband into the country and the inadequacy of the justice system's ability to effectively address; under the act of May 1995, adopted by the government suspended; this is contrary to the principle of the separation of powers mandated to investigate crimes of smuggling and sentenced in this field has been. Despite the plethora of laws related to trafficking in government suspended employees and lack of familiarity with legal principles, as the judge, are responsible for investigating cases, There are many practical problems in the field of investigation and adjudication, In addition, there is specifically addressed by the organization, the firm's growing smuggling.

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Introduction

It goes without doubt that economic security creates relative mental security in society. Everyone likes to have an appropriate job and enough income and this has always been a great concern to governments. But in ailing economies problems hindering the progress and development are inevitable. The most important problem of this kind is the illegal and implausible import of goods. A variety of approaches have been taken to control and investigate customhouse smuggling through awarding court verdicts since the ratification of the first law of smuggling control in 1927. After the victory of the Islamic revolution and the inception of imposed war and special conditions facing the Islamic republic of Iran, goods smuggling extended to broader areas.

In the following the law of punishment of persons involved in the disruption of the country's economic system was ratified on December 10, 1990 followed by ratification of the law of state punishments on goods and foreign currency smuggling by the expediency council on May 2, 1995. The laws replaced the committers' punishment code and its amendments and miscellaneous regulations to supplement the directive of the judiciary on May 30, 1995. According to note 2 of article 4 of state discretionary punishments act, in case of no investigation or lengthening of the trial with no final result during such trial, state discretionary punishment organization subject to the single article of the law of amendment of state discretionary punishment act approved on October 12, 1994 by the expediency council or a separate organization to be appointed by the government may ask the judicial courts or the complaining organization to refer the same case upon request of the complaining organization and take measures according to the crimes and punishments stipulated in the related regulations and this law.

Articles 8 and 9 of the executive bylaw of this law has stated that in areas where there is no judicial court to investigate smuggling cases,

Ta'azirat organization will take measures upon the request of complaining organizations and based on the notification of the smuggling control headquarters until the appropriate judicial authorities are appointed for this purpose. The law of imposing state discretionary punishments was not approved by the guardian council due to lack of conformity to the constitution, interference of the powers and investigation and issuance of verdict by the executive power. The law was hence approved by expediency council (Ahmadi, 2004).

Through a letter to the Supreme Leader on October 9, 2002, member ministers of the central headquarters of controlling goods and foreign currency smuggling asked for the protection of Ta'azirat organization by the head of the judiciary for more extensive collaboration. The Supreme Leader stipulated that all requests were acceptable and appropriate measures should be taken immediately to control the hazardous phenomenon of smuggling. On this basis, state Ta'azirat organization has been working since 1994 with notification of central headquarters of goods and foreign currency smuggling under the supervision of the ministry of the interior. The aim of this paper is research about Historical overview of customs crimes and ways of addressing them

Materials and methods

Risk and error problems

No research has been conducted so far on the competency of state Ta'azirat organization to investigate customhouse crimes and issue verdict accordingly. This research could provide appropriate criteria in relation with investigation and awarding verdict by a governmental organization and the risks and errors and problems of investigation outside the judicial system. Moreover, the study of this law is not intended by researchers since the law of goods and foreign currency control approved in January 2014 was ratified just lately.

Theories

As some of the concerns of the author we can refer to the continued ambiguity on investigation to customhouse crimes and the fact rights of individuals were ignored in practice in the process of facilitated investigation due to the large number of cases in courtrooms and public prosecutor offices, the difference of investigation and contradiction of judgment and now the letter of the law of smuggling control in 2013 and the legitimate interference of a governmental organization in judicial affairs without estimation of manpower and consequence of this law.

Personal interest has encouraged the author to study the actual scope of undefined qualification in contrary to the letter of the constitution of state Ta'azirat organization according to the social and economic roots of establishing qualification for this organization to issue its judgments.

Result and discussion*Regulations Governing Goods and Foreign Currency Smuggling*

Before the establishment of national council assembly (Majlis), leasing the customhouses and exemption of foreign businessmen from paying heavy charges led to chaos in this area. Foreign experts were employed to make improvements in customhouse. After the establishment of national council assembly, factors such as dissatisfaction of the businessmen, who had roles in the victory of the constitution, with the manners of customhouse officials and lack of system activity in diagnosis of smuggling and its types, the government's measures to control smuggling with the aim of earning a higher income than customhouse, make improvements in customhouse, and set ordinary customhouse tariffs and the necessity of an executive guarantee to expedite the process of setting rules and regulations in relation with goods smuggling.

The first law of national council assembly about smuggling is the law of provinces and cities and the directive of rulers approved on December 17, 1907. The law is related to smuggling of goods and determining penalty accordingly.

The laws ratified after this law until ratification of the penal law of smugglers in 1933 were: article 4 of Tobacco Law approved on September 28, 1915, article 5 of the law of amendment of Tobacco Tax approved on March 27, 1924, article 4 of the law of government monopoly of sugar and tea and imposing a tax of 2 Rials on each three kilograms of sugar and sugar products approved on May 31, 1925, article 25 of public penal law approved in 1928 and abolished on March 2, 1932, article 19 of state budget law of document number 1304, articles 1, 2, 3 of the law of prohibition of gold and silver export from borders approved in October 1926 in relation with smuggling (Beh Kish, 2004).

The said law was abolished following the 12-article law approved under this title on March 7, 1929. The law added pecuniary punishment to imprisonment for this crime.

In the amendments of 1974, articles 39 through 42 were abolished and the regulations related to punishment of smugglers of the export-prohibited goods and exclusive goods were included in its article 1 so that according to these amendments the said article covered the punishment for any type of goods smuggling such as smuggling the export-prohibited goods, the import-prohibited goods, the goods liable to government revenues and exclusive goods.

The Law of Foreign exchange Transaction of Approved on December 31, 1935

The direct and clear text of article 1 of this law prohibited purchasing, selling, transferring and any other kind of transactions in relation with foreign currencies and exporting them.

The prescribed penalty was imprisonment and payment of pecuniary punishment in twice as much as the price of the prohibited object of transaction.

The Law of Transferring Foreign Currency Exchanges to Bank Melli Iran Approved on March 15, 1958

According to this law, any kind of foreign currency purchasing, selling and transfer, including notes, checks, money orders, etc. were liable to this law. The transfer of foreign currencies in banks to outside the country was subject to obtaining the approval of Bank Melli Iran. The criminal prosecution of violators was subject to the complaint of Bank Melli Iran and the committers would be sentenced to pecuniary punishment equivalent to 50% of the price of the object of prohibited transaction.

State Monetary and Banking Law Approved on July 9, 1972

Money and credit council was established according to article 1 of this law. The central bank of Iran was established according to article 28 of this law which delegated all powers of Bank Melli Iran to this bank and all foreign currency transactions were subject to authorization of this bank.

According to section A of article 42 of this law, purchasing and selling foreign currency and any kind of banking operation leading to the transfer of foreign currency or obligations in this regard, or the import or export of foreign currency or the currency of the country was prohibited if the regulations of central bank were not observed. Violators were sentenced to pay pecuniary punishment in 50% of the price of the prohibited transaction.

The Law of Punishment of Violators of the Country's Economic System Approved on October 11, 1990

The law has been ratified in 2 articles and 8 notes. According to section A of article 1, smuggling and distribution of foreign currency in a way that disturbs the monetary or foreign currency system of the country is regarded as crime and subject to the punishments stipulated in this law.

According to section D of this article, any measure aiming to export the cultural heritage or national wealth is regarded as smuggling even if the goods are not removed from the country. In this case, any good considered to be removed from the country will be regarded as smuggled goods and confiscated in favor of the government.

Rules of Selling and Illegal Export of Caviar

Based on note 5 of the single article of the law of articles of association of fishery and hunting cartilaginous fish approved on June 8, 1954, selling and exporting caviar and sturge on cartilaginous fish is prohibited without the authorization of the government and violators will be prosecuted according to the smugglers penal code.

Smuggling of Alcoholic Drinks

The law of punishment of smugglers considers alcoholic drinks among exclusive goods due to the requirements of the ruler on the time of enactment. The law considers the import of alcoholic drinks as prohibited transactions. Under the note 21 of the 1949 budget law, the legislature had stressed that the import of any alcoholic drinks to the country was prohibited and the importer was subject to the regulations of customhouse smuggling regulations.

After the Islamic revolution, the imports of alcoholic drinks to the country had been included in article 145 of Ta'azirat law approved in 1983 which sentenced the committers to 74 lashes (Barzegar, 2002).

According to article 1 of Smuggles Penal Code, production or import or export of alcoholic drinks is prohibited and the committers are subject to punishment according to legal requirements, including pecuniary punishments. Therefore, according to majority votes of members of supreme court, the verdict of division 24 of supreme court issued based on theory is mandatory and in accordance with the said article.

Investigation of Customhouse Smuggles in the Iranian Regulations

As regards investigating the crimes associated with smuggling and ratification of the law of imposing governmental discretionary punishments and the stresses of the Supreme Leader on the necessity of dealing with this problem by the government and the order of the Supreme Leader to the head of the judiciary to completely cooperate with the government, the contradiction of judicial investigation and giving judgment by a governmental body is in no way problematic according to the Iranian constitution (Taghvayi, 2009).

This process was being executed within several years with no successful result. Therefore, another method was used in the law of goods and foreign currency smuggling approved in 2013.

The Law of Punishment of Smugglers Approved in 1928

The authority of leniency and withdrawing criminal prosecution of the accused was for the first time anticipated conditionally in the smugglers penal code approved in 1928. Article 5 of the said law granted the authority to the government revenues collection departments to withdraw criminal prosecution of the crime accomplices subject to realization of some conditions by receiving pecuniary punishment and confiscation of goods.

Committers Punishment Code Amended in 1933

According to the amendments made in 1933, article 5 referred to above changed to article 6 and was revised stipulating the conviction constraint due to smuggling on the condition of no criminal record, and finally led to the expansion of the scope of the effect of the said article.

Committers Penal Code Approved in 1974

The amendments of 1974 led to imposing fundamental revision on article 6 in such a way that regulations of this article remained in force until 1995 when the law of imposing governmental discretionary punishments on goods and foreign currency smuggling was ratified (Rajian, 2010).

The revision led to changes such as eliminating the confirmative supervision of the heads of states and provinces from the conditions mentioned in this article and annulment of no-smuggling-records condition in this article.

Despite the above conditions, according to a note attached to the said article, the legislature considered exceptions to the condition of the times of leniency by setting the known amount of 100,000 Rials. The legislature stipulated that if the pecuniary punishment set for smuggling is less than 100,000 Rials and the committer pays the penalty, the smuggled goods will be confiscated. In this case the doer will not be prosecuted criminally even if he has benefited from the exemption mentioned above (Javanmard, 2011).

The Law of Imposing Governmental Discretionary Punishment on Goods and Foreign Currency Smuggling Approved in 1995

According to section B of article 2 of the law of imposing governmental discretionary punishments on the goods and foreign currency smuggling ratified in 1995, if the price of smuggled goods exceeds ten million Rials, the accused will not be criminally prosecuted on the condition that he pays pecuniary punishment in the administrative stage and the goods are confiscated according to the executive bylaw of the law of imposing governmental discretionary punishment on goods and foreign currency smuggling.

The committers subject to section B will be entitled to case complaints in judicial authorities. But if the accused does not pay pecuniary punishment in administrative stage, the case will be referred to judicial authorities for criminal prosecution. If the crime is proved, the accused will be imprisoned. The goods will be confiscated, and the pecuniary penalty will be received (Jafari Langeroudi, 2008).

The Method of Goods and Foreign Currency Smuggling Law Approved in 2013

Chapter 8 of this law deals with competent smuggling investigation authorities through articles 44-52. Investigation of organized and professional crimes in goods and foreign currency, smuggling of prohibited goods and smuggling of goods and foreign currency sentenced with imprisonment or dismissal from civil service is within the competency of courts and public prosecutor offices. Other goods and foreign currency smuggling cases are regarded as violation which should be investigated in Ta'azirat organization (Firooz Jayi, 2009).

If several persons are accused in a criminal case, and the judicial authority is competent to investigate the accusation of one of them, the accusations of other persons will be investigated through these authorities. If the case is referred to Ta'azirat organization but it becomes known that investigating the committed crime is within the competency of judicial authority, the concerned division of supreme authority should immediately issue a writ of its non-competency and refer the case to the competent judicial authority. The above-mentioned writ will be irrevocable after confirmation of the superior authority of the branch in Ta'azirat organization within one week.

Like its preceding law, article 45 of this law has stipulated that all divisions of court and public prosecutor's office, Ta'azirat departments, and their revision branches shall investigate the case and issue final judgment within one month from the date of referring the case.

The only exception to this article is when completion of investigation needs more time because of the nature of the crime and violation and other reasons. In this case the investigating authority shall be bound to report the cause of delay in writing form to the superior authority. Failure to send this report leads to disciplinary conviction to grade 3 (Seyednejad, 2009).

As regards determining the value of discovered goods or foreign currency and studying the documents presented to prove that smuggling has occurred, article 47 stipulates that the investigating division should send a copy of the related documents to the customhouse or other concerned organizations entrusted with collecting government revenues to make enquiries and notify the investigation date to the concerned organizations and the accused person.

The authority to collect governmental revenues shall be bound to reply to enquiries within 10 days of the date of receiving enquiry (Mohammadi, 2005) and introduce its legal representative to attend the investigation session. Holding the investigation session is not subject to the presence of such representative.

Article 48 stipulates that as regards the cases of prohibited, organized and professional goods smuggling, and the cases where the value of discovered smuggled goods exceeds one hundred million Rials, the investigating authority shall order for identification and seizure of the accused party's assets within the probable pecuniary punishment via appropriate means such as enquiry through real estates and documents registration departments, telecommunications department, banks, and stock exchange organization. These authorities shall be bound to notify the required information to the investigation authority within 5 days (Najafi Tavana, 2005).

As regards judicial supervision on smuggling cases in Ta'azirat organization, article 49 of this law stipulates that the head of revision branches of investigation of goods and foreign currency smuggling cases are appointed from 9th grade judges upon the recommendation of the head of organization following the approval of the minister of justice and the head of the judiciary and his notification.

In cases where different judgments are issued on similar cases by Ta'azirat special divisions of revision, the cases will be referred to Supreme Court of justice general board for uniform judicial precedent upon the request of the head of organization or minister of justice.

On the value of primary conclusiveness cases, article 50 of this law stipulates that the judgments issued on smuggled goods and foreign currencies with values less than 20,000,000 Rials by Ta'azirat primary divisions are regarded as final judgments.

Conclusion

was established to monitor economic activity and trade; but the arrival of great volume of contraband into the country and the inadequacy of the justice system's ability to effectively address; under the act of May 1995, adopted by the government suspended; this is contrary to the principle of the separation of powers mandated to investigate crimes of smuggling and sentenced in this field has been. Despite the plethora of laws related to trafficking in government suspended employees and lack of familiarity with legal principles, as the judge, are responsible for investigating cases, There are many practical problems in the field of investigation and adjudication, In addition, there is specifically addressed by the organization, the firm's growing smuggling.

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