

Repressive Approach Incustoms Crimes

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Abstract

Customs regulations determined in each country, regarding monitoring the import and export of goods and payment of customs duties are a critical source of government revenue. Naturally, people regarding economic gains as well as import and export of prohibited goods, the customs regulations are violated. So initially it is necessary to define the recognition and awareness of customs offenses. Then check the rules and regulations relating to customs matters and deal with violations of customs law can shed light on these crimes, criminal policy governing the use of the penal system and the principles and techniques of successful experiences of other judicial systems, to set a modern criminal policy, be consistent and purposeful action. Understanding the elements and items of the crime are also useful in the fight against this criminal phenomenon.

Keywords: crime, law, customs, trade

1. Introduction

Usually in a pattern of criminal policy and strategy and the overall social policy and its tools in addition to the repressive approach and punitive response to crime in criminal law and criminal procedure, and preventive and precautionary approach to the offense play major role plays in explaining criminal policy. On the one hand due to the turbulence and dispersion in Iran criminal policy, legislation, in principle, is not being a criminal policy coherent, modern and explain the purpose and direction, and it will be compared with the well-known scientific.

The Economic criminal law lacks transparency, vague and general terms in the context of the Economic Crimes Law (Penal Code spoilers economic system adopted in 1990). It includes significant disruption, massive and abundant to define the scope of the various interpretations and confusion judges, complainants, defendants. So, their lawyers ultimately do not succeed in seeking to regulate crime, while economic crime with a little tact can be single comprehensive law formulated.

The criminal law should be used as a last means. The establishment of a healthy economy by setting multiple domains is certainly more effective than talk. It includes the downsizing of government in the economic sphere and administrative deficiency monetary system, banking, customs and taxation, transparency in the field of low economic, eliminating rent-economic information and enhance surveillance and strengthen financial management, the economic criminal law is certainly more effective than talk.

1.1 *The Concept of Customs Crime*

A Turkish Customs word that now has become common in Iran and some other countries, defined the term of the Customs Cooperation Council in Brussels in 1971 and Iran is a party. Customs determines that "the government agency responsible for the administration of customs laws and obtaining customs duties Input (import) and outgoing (export) as well as responsible for the enforcement of other laws and regulations governing the import, transit, and export goods." Customs smuggling, which is not defined in the relevant legislation expressly refers broadly to rights owners they intend to take the titles considered secret or their goods without paying customs duties outside of their customs. That may occur at the time of importation of goods into the country (imports trafficking) or when removing the product the country happens (export trade).

1.2 *Legislative Criminal Policy after the Islamic Revolution in Customs Offenses*

On customs regulations and related crimes, is now also approved in Jun 1971 with subsequent amendments Customs Act and its implementing regulations adopted by 01.20.1972 with subsequent amendments, will be binding. Therefore, it is observed that the criminal legislative policy in this regard has been innovation and, of

course, since the passage of the Act and Regulations requirements with the current situation and meet the needs of the community is not much difference. However, in this section and to determine the criminal policy stance legislation on customs offenses, the provisions of the Customs Act 1971 and Regulations beyond.

Article 29 of the Customs Act, the Customs Act, 1971 in the eleventh paragraph on the subject is considered trafficking. The article provides that:

"Customs Smuggling is described below:

1) The import goods into the country or the unauthorized removal of goods from the country unless the item at the time of importation or exportation is prohibited or allowed or not allowed a contingent of customs duties and taxes of Commerce and is spared the effects.

The last part of this paragraph of 12.28.2003 approved the single article of the same law formalities of entry and exit of goods and services from the country is canceled. In this section, the term "illegal order" is mentioned. Unauthorized way, is a vast concept and includes in it. Including illegal importation of goods through the customs is not stationed there, or any contrary statement in the declaration of duty about the type, amount, value, and tariffs on goods. As well as to embed and hide the goods declared under item also viewed and in general any act contrary to legal formalities can be included.

2) Do not leave vehicles or as temporary entry or transit of foreign goods that entered the country by falsifying documents to withdraw vehicles and products. Especially in fact committed with false documents with the intention of fraud, the payment of customs duties and refuse vehicles or goods without payment of this law, it is illegal for keeping track goods into the country.

3) The removal of trade goods from customs without filing the tax return and payment of customs duties and commercial benefit and side effects, or an act of customs when leaving or after leaving to be discovered. When outside suppliers other than the owner or his legal representative, the same customs goods and in the absence of the product, its price will be committed that, upon receipt of customs duties and commercial benefit and side effects to the owner of the goods is refunded Regulation and commit criminal provisions will be followed.

This clause stipulates in its top import commodity, and to receive particular customs duty is levied. Referring to the outside of the customs that the owner or his representative does not appear to be related to crimes such as theft or breach of trust under this clause also stipulated that although he will not be prosecuted.

4) External transit cargo replaces or removes it. External transit cargo goods pass through the territory of Iran within the framework of international agreements that customs revenues to the country. Exchange of goods in transit may be intended to deceive officials and transportation and smuggling of illicit goods made in the form of authorized goods in transit.

5) Declared a prohibited or illegal items as permitted or allowed goods provided by another name. This paragraph is the most technical part of the customs declaration submitted to the customs for clearance of the import.

6) The existence of undeclared goods, the goods declared permissible, except that the item type and source of customs duties and commercial benefit and its complications and side effects of products by customs duties and the commercial benefit are not declared." This attempt to evade payment of customs duty than the product owner of the imported goods to customs.

7) Not sending or exclusion of the import or export certain goods are prohibited or subject within the deadline of the country or to foreign countries as transit or temporary entry or temporary exit either rejected or sabotage is expressed except in cases where proved to be a lack of exit or entry of goods has not been in bad faith.

8) The release of the goods exempted under Article 37 as contrary to any provision of this Act or without payment of customs duties and commercial benefit and complications.

9) Declarable goods as permitted under another authorized commodity trade and its complications is lower customs duties and taxes by another name using false documents.

10) The removal of customs by using exemption performance by providing false documents contrary to the declaration.

11) (Additional 22/10/1979) opposite said about the quantity and quality of goods for export in a way that leads to illegal withdrawal of currency from the country.

After some evidence smuggled Customs in Article 29, Article 30 of the Customs Act to punish these acts, and as we talk about tax crimes and smuggling explained, the diversion took place, the decision and the penalties that

including financial sanctions and exclusion from certain jobs be given to administrative bodies. If during customs violations and crimes, other crimes such as theft, breach of trust and other offenses, it seems to be the minutes of the Customs officials and Preservation of Monuments and reason for the crime, the competent judicial authorities quickly in the course of the day. However, 30 of the Customs Act provides:

"Persons who commit trafficking if they have a business card if convicted, in addition to the punishment of a member of the Chamber of Commerce, Industries and Mines of Iran or its branches in the city and to temporarily or permanently deprived of their Business Cards will be revoked. If the issue has not been referred to the courts, proposed by US Customs and recognition committee composed of representatives of the Ministry of the economy and the Chamber of Commerce, may temporarily or permanently, a member of the Chamber of Commerce Industries and Mines excluded. In any case, this action prevents the authorities will not prosecute.

Note: exclusion from membership of the Chamber of Commerce and Industries and Mines of Iran prevented the commodity clearance for opening letters of credit under the provisions to ban or transported, will not.

In considering the penalty of deprivation of membership in the Chamber of Commerce, Industries, and Mines as well as temporary or permanent revocation of business cards, by the principles of crime prevention and to prevent customs offenses tend to seem very useful. Because the offense these offenses and violations are carried out solely by financial incentives and profit-seeking, however, such penalties such as stripping activity can be committed in the future, a high degree detergency.

In this, Act, Customs Act of 20.1.1972 and subsequent amendments yen executive also detail some properties of the entry and exit rules, and customs and prohibitions and offenses, and the penalties are expressed as financial penalties including fines and confiscated goods is prescribed. Unless the action is worth specific criminal penalties for offenses in addition to the customs of the plurality of crimes, sentenced to punishment as the acts. Only two articles of the regulation that the passengers and goods to the Customs Act, is new, brought in this section for information.

Article 54"travelers entering the country must immediately carry out the formalities relating to passports, customs introduced to them if the declaration of duty is for passenger traffic, Customs has drawn up and submitted it with the utmost precision and if things carry it with them as they enter the country, to provide customs officials. If the traveler does not declare goods to Customs and Customs Enforcement your mobile as a result of their inspection discovered, the Customs Act will be subject to the provisions of Chapter IV.

Note- Customs General Administration of Customs can be found in any of the houses were deemed necessary, certain methods that customs formalities by the requirements of the day have to impose incoming travelers.

A) If there is no commercial aspect, whether authorized or unauthorized (excluding commodity legally prohibited) after customs formalities and clearance to comply with other regulations.

B) If you have a commercial aspect:

1) In the case of authorized goods and the customs clearance is conditional upon presentation of a business card or agreements formalities relating to the goods imported for the Ministry of Economy and Commerce.

2) In the case of illegal goods, Customs Border is obliged to understand the rules relating to the entry of illegal and prohibited items that passengers are in the chamber that he will sign, indicating and he said that if wants to be your goods out of the country for four months. If the passenger does not return your goods within the grace period, the goods after the expiry of provisions are recorded. However, for small and its specifications when introducing products should be reflected in the parliament and signed by the passengers reach and a copy of the passengers and give provisions of this article reflected.

Note: passengers a year, they travel more than once, when the next trip unauthorized goods of the same type brought traveling or previous trips and have according to the provisions of this Article rejected, reenters the Customs express, not returning the item no longer must act immediately to record it. "

Article 56 Passengers who left the country are prohibited when Alsbury carry objects and express it to Customs. But if the object is not declared to Customs and customs inspections due to discovering it, the Customs Act will be subject to the provisions of Chapter IV.

2. Pillars of Customs Offenses in the Current Legislation

2.1 Legal Element

Customs Offenses legal element to the differences in Articles 29 to 34 and 36 and 40 of the Customs Act of 1350 with subsequent amendments and approved by Jun Regulations Act of 1351 it traced, because it is described in

the previous section they will refrain from repeating text.

2.2 Material Element

A Customs Offenses material element of the crime scene and thought, as concrete is, like many other offenses that to facilitate the study, as future beyond.

2.3 Criminal Behavior

Customs Offenses of criminal behavior regarding its precise nature of action and omission imaginable. As examples, Customs Offenses referred criminal behavior. In contrast, those omissions constitute criminal conduct customs offenses have also been mentioned in Article 39 of the Customs Act. These include the lack of vehicles or goods that as a country foreign temporary admission or transit the existence of undeclared goods, the goods declared and aren't leaving or enter particular non-commodity trading of which is banned or subject within the deadline of the country. Criminal behaviors can include the importing goods into the country or remove a product from the country to the unauthorized removal of goods, Customs declaration business without surrender, exchange of goods external transit or remove it, declarable prohibited or illegal items as permitted or allowed goods provided by another name.

3. Terms and Conditions for the Realization of Crime

The necessary conditions for the realization of customs offenses which mentioned in the most of the cases in paragraph eleven of Article 29 of the Customs Act, 1971 are commercial goods in violation of export goods, in cases where the provisions are merely observers to enter the commodity that they are a breakdown of the relevant articles of the Customs Act and the regulations implementing it.

An example would be of paragraph 1 or paragraph 3 of Article 29 of the Customs Act remember that both the commodity with the difference that in the former, import or export of goods, both subject to debate, but in the latter product is the only issue discussed. The terms and conditions for realization of customs offenses committed these acts and customs in border regions. In other words, the recognition of this crime requires the entry or exit of prohibited goods. In other words, the understanding of this offense needs entering or leaving of prohibited goods to the boundaries of land, air and sea country and by crime also play a role in it. The customs offenses can be achieved by any means. It does not matter which side committed the crime.

3.1 Psychological Element

Customs offenses, including crimes, committed intentional and unintentional that it is so committed to having knowingly and deliberately and in bad faith to carry out the operations of crime. Thus the spiritual element customs offenses can be expressed regarding the intended removal of customs or against or false documents.

3.2 Mass Start

According to the absoluteness of customs offenses and legislators to discuss the mass start in this crime is not offensive and is not according to the principle of legality of offenses and penalties and Article 2 of the Penal Code, the customs offenses punishable in the mass start. But if a person acts committed in a fit of Article 41 of the Penal Code, the crime of the same acts in law, is punishable. For example, the second part of Article 29 of the Customs Act has stated the following sentence. "When outside suppliers other than the owner or his legal representative, the same goods and in the absence of customs goods, the price will be committed after receiving customs duties and commercial benefit and the effects of regulation and committed refunded to the owner of the goods will be prosecuted under criminal law." So, in this case, may be at different stages in the process of starting operations and its customs offense committed for criminal breach of trust or theft, without being liable to be recognized as customs offenses and crimes punished.

4. Discussion

Customs offenses in the criminal division of the absolute and binding must be placed in the perfect crime. Therefore, the outcome of criminal offenses is not betting on it. In other words, for these crimes, not necessarily fulfill the requirement of exit or entry of goods into the country is not prohibited. And if the perpetrator is identified and commodity Prohibited acts insert or remove a product is detected contrast still realization of the crime, and it is the mass, Tom.

The literature review concerning economic crimes such as bribery, embezzlement, corruption, disruption of the economy and Customs Offenses. We concluded that given the confusion and fragmentation in the criminal legislative policy of Iran, cannot principally a police criminal coherent, modern and explain the purpose and direction, and it will be compared with known models and scientific.

References

- Aghazadeh, A. (2005). *Analytic and applied evaluation of Iran's criminal policy against goods smuggling* (1st ed.). Arian Publishing, Tehran.
- FiruzJaei, M. (2005). *Goods and foreign Exchange Smuggling* (1st ed.). Tehran Publishing, Tehran.
- Jafari Langroodi, M. J. (2003). *Terminology of Rights* (13th ed.). GanjDanesh Library, Tehran.

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