

Examining the Duties of Governmental Punishments Organization to Investigate Customs Offences

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Abstract- Different strategies have been considered to combat against export-import of permitted goods without paying customs duties, investigate and punish it since 1927 when the first law was approved in this regard. The governmental punishments organization established in 1994 is considered as a special governmental and competent authority to investigate and issue the orders for economic offences in relation to produce and distribute the goods and services such as hoarding, not mentioning the price, selling dear, short-changing and supplying out of the network .

Keywords: *Governmental punishments organization, smuggled foreign exchange and conflict of investigations.*

I. INTRODUCTION

Ghachagh means smuggle in Persian which is a Turkish word originally means 'To cause to escape'. In his lexicon late savant Dehkhoda said that Ghachagh originated from Turkish means 'Brought' and 'stolen' and what is governmentally forbidden to be imported or transacted; on this basis he defines 'smuggled goods' as prohibited goods, prohibited transaction, importing goods without paying customs duties or taxes and importing goods through hidden ways in order to not pay related customs duties and taxes. Also it means buying and selling illegally goods and the Ghachaghchi (Smuggler) means someone who transact illegally. It may draw inference from the law and regulations concerning smuggle offences that smuggle means 'To transit goods which are related to government's income or importing, exporting or producing something forbidden'. Dr. Jafari Langaroodi has written about smuggle in law terminology and lexicon as follows:

A : Transporting goods from one part to another (Two parts may be in the country i.e. internal smuggle or one in the country and another in abroad i.e. external smuggle) illegally or when related limits (Royalty or exclusive concession) are ignored; for example, importing and exporting permitted goods without paying customs duties is 'Customs duties smuggle' (Article 34 of the law punishing smugglers approved in 1933) and state goods transportation without paying municipal taxes (Article 37 of the same law) and primary attempts to export mentioned goods, too (Article 45 of the law punishing smugglers approved in 1933).

B: Buying, selling or warehousing above mentioned good (Second Article of the law concerning selling prohibited goods approved in 1935).

C: Above mentioned goods which are smuggled are considered as smuggle case, too.

So it is possible to define smuggle as follows:

Using any property creating income for government without paying the ordered income importing or exporting prohibited goods or taking properties under exclusive concession through nongovernmental channel(s) and any performance which is smuggle according to law.

II. NATURE OF GOVERNMENTAL PUNISHMENTS ORGANIZATION

Different strategies have been considered to combat against export-import of permitted goods without paying customs duties, investigate and punish it since 1927 when the first law was approved in this regard. The governmental punishments organization established in 1994 is considered as a special governmental and competent authority to investigate and issue the orders for economic offences in relation to produce and distribute the goods and services such as hoarding , not mentioning the price , cheating , selling dear , short-changing and supplying out of the network . Before 1994 by virtue of governmental punishments law (1988) the governmental offences mentioned in the latter had to be done by the Punishments Central Commission under supervision of Ministry of Interior and the nongovernmental ones had to be investigated by revolutionary courts. When then government tried to increase the economic supervision the Regime Interest Distinction Assembly approved the single article of the governmental punishments law. However, by virtue of the decree in relation to establish governmental punishments organization it was established on Oct. 15, 1994 and by virtue of Article 2 of the decree the organization was under supervision of minister of justice and by virtue of the governmental punishments law it has primary and revision branches in Tehran , central of the provinces and cities.

Note 2 of Article 4 of the governmental punishments law indicates that if the case is not investigated , lasts too much or

related order is not issued on due time, upon the complainant's request and by virtue of the single article of the law amending the governmental punishments law approved by the Regime Interest Distinction Assembly on Oct. 12, 1994 the governmental punishments organization or another separated organization commissioned by the government may demand the file from related judicial authorities or complainant organization to proceed it and issue necessary legal order(s); also Articles 8 and 9 of the executive bylaw of the law stated as complementary that where there is no judicial department (Including public and revolutionary courts) to proceed the smuggle files the governmental punishments organization is obliged to execute necessary performances to establish governmental punishments courts and investigate legally related cases upon the complainant organization's request and the notice issued by the Center combating against smuggle and in relation to the files referred to judicial authorities by the complainant organizations the former are obliged to issue related legal order in one month and announce it to the complainant organizations. The governmental punishments organization is permitted to investigate above mentioned files by virtue of the regulations concerning the offences until the judicial organization formation. By virtue of the ambiguity in relation to the regions' meaning defined by the council of ministers a note was added to the Article 8 according to the order No. 439 dated Feb. 04, 2004 issued by general assembly of Court of Administrative Justice in harmonization with law and the cabinet's powers it was ordered as follows:

In the regions where there is no judicial court including the airports, ports and straits upon the complainant organizations' request the governmental punishments organization is obliged to establish a branch(Or branches) to investigate legally the files referred by the organization on due time.

The authorities investigating offences concerning goods and foreign exchange smuggle:

Before the governmental punishments execution law in relation to smuggled goods and foreign exchange approved in 1995 according to single article concerning the public prosecutor's offices' and revolutionary courts' powers approved on May, 01, 1983 all the offences concerning smuggle had to be investigated and proceeded by the revolutionary courts and other ones had not been competent to proceed in this regard; having been approved the law the governmental punishments concerning goods and foreign exchange smuggle by virtue of Note 2 of the Law, Article 8 of the executive bylaw approved on June, 18, 2000 and the directive investigating files concerning goods and foreign exchange smuggle the revolutionary courts are permitted to proceed the mentioned files and other judicial authorities (Public courts) and branches (governmental punishments branches) are appointed to proceed the files in some defined cases.

III. JUDICIAL AUTHORITIES: ISLAMIC REVOLUTION COURTS

By virtue of the paragraph 5 of the Article establishing public prosecutor's office approved in 2002 all the offences concerning goods and foreign exchange smuggle should be

preceded by the revolutionary courts. Of course, no priority is defined in relation to the public and revolutionary courts located in the same judicial area concerning proceeding goods and foreign exchange smuggle in the governmental punishment execution law which is the most important reference to investigate the smuggle offences and only the judicial courts are mentioned in the law.

IV. PUBLIC COURTS

When Note 2 of the governmental punishment execution law concerning goods and foreign exchange smuggle, bylaw of the law and the directive investigating files concerning goods and foreign exchange smuggle subject to Note 1 of the law concerns regions where there is no revolutionary court the public ones are to investigate the files; of course, the law has not defined when the public courts may replace the revolutionary ones, but Article 2 of the directive states 'The public courts are to investigate the files concerning goods and foreign exchange smuggle in the cities and districts where there is no revolutionary court'. In following discussion it is necessary to mention some points concerning the judicial authorities in economic affairs in line with their introduction. By virtue of the directive establishing Judicial Complex For Economic Affairs approved on Aug. 01, 2006, in line with executing the leader's eight article order to combat against corruptions (4) and according to the Judiciary chief's order the Complex was formed in order to protect sound investment, prevent corruptions, follow, research, proceed, issue and execute orders in relation to special economic offences.

The files to be investigated in the complex include: Macroeconomic offences in amount of RIs. 10,000,000,000 and more. The complex are limited to investigate only the macroeconomic offences when committed by the government employees directly or by their cooperation. So all the files received by the complex are investigated before registering in the reference office and the files concerning economic corruptions are referred to the public prosecutor's office in the complex in 24 hours and other files are sent to related authorities. By virtue of related directive the macroeconomic offences out of Tehran judicial district may be investigated in the complex when the judiciary chief agreed and by transfer.

The Governmental Punishments Organization: The governmental punishments organization is affiliated with the judiciary and was formed under supervision of minister of justice by virtue of the bylaw of the governmental punishments organization approved on Oct. 24, 1994 by the cabinet in order to control government in relation to economic affairs and execute the single article of the law amending governmental punishments law approved on Oct. 11, 1994 by the Regime Interest Distinction Assembly. By virtue of the law executing governmental punishments concerning goods and foreign exchange smuggle and Articles 9 and 10 of its executive bylaw the complainant organization' duties in relation to customs duties smuggle are as follows:

1-Sending the accused's file for criminal prosecution to related judicial authorities or governmental punishments courts

in five days from the date of the crime detection, if the accused refuses to pay the ordered fine.

2-Requesting for investigation from the governmental punishments organization and sending the file for the organization, if related judicial authorities do not issue related order on due time, in addition to above mentioned duties by virtue of the Note of Article 9 of the mentioned bylaw the complainant organization is obliged to complete the file in consideration of the smuggle realization before to be referred to related judicial authorities. The reaction to customs smuggle offences should be by virtue of Note 5 of Article 4 of the governmental punishments execution law in relation to goods and foreign exchange smuggle based on special proceedings bylaw in order to guarantee the best and most rapid investigation for the offences.

V. ADMINISTRATIVE INVESTIGATION URGENCY

Having discovered the smuggled goods costing Rls. 10,000,000 or less the discoverer organizations are obliged to send the consignment with related minutes including the type and amount of the smuggled goods and time and manner of discovering them to the departments receiving governmental incomes in 24 hours and related departments are obliged to confiscate and deliver them urgently to the organization gathering and selling the confiscated properties by virtue of paragraph 'A' of Article 2 of the governmental punishments execution law about goods and foreign exchange smuggle and if the discoverer organization distinguishes that the smuggled goods cost more than Rls. 10,000,000, the departments receiving governmental incomes are obliged to send a copy of the file to the organization gathering and selling the confiscated properties by virtue of the Note of Article 4 of the mentioned law bylaw in five working days from the date of the discovery in order to sell the goods. In relation to take fine(s) in the cases subject to paragraph 'B' of Article 2 of the governmental punishments execution law relating to goods and foreign exchange smuggle (When the smuggled goods cost more than Rls. 10,000,000) if the accused pays the defined fine(s) during administrative steps, the fine(s) is (are) received and then if he(he) is under arrest, he(he) is released immediately, but if he(he) refuses to pay the fine(s), by virtue of Article 7 of the executive bylaw the complainant organization is obliged to file the case and refer it to related judicial authorities or governmental punishments courts in five working days from the smuggled goods discovery.

When there is no judicial court: By virtue of governmental punishments execution law relating to goods and foreign exchange smuggle where there is no revolutionary or public court to investigate the smuggle files governmental punishments organization is authorized to investigate the files until the judicial departments formation. By virtue of the executive bylaw of the governmental punishments execution law about goods and foreign exchange smuggle in line with executing mentioned Note 2 the punishments organization is obliged to establish a branch (or branches) there to investigate the executive files from the complainant organizations on due time upon the request of the complainant organization and the

notice issued by the Center combating against smuggle according to related law and regulations.

Lack of investigation or too long proceedings in judicial courts:

By virtue of Note 2 of Article 4 of the governmental punishments execution law relating to goods and foreign exchange smuggle and Article 10 of its executive bylaw amended on Sep. 08, 2002 if the file is not proceeded or the proceedings are too long and file is not investigated on due time defined by law, the complainant organization is obliged to request from punishments organization to investigate the case; then the latter requests the file from related branches or the complainant organization and they are obliged to deliver it.

Of course, it should be noted that in addition to the punishments organization the mentioned Note indicates other governmental organizations are authorized, if appointed by the government, to investigate the case; however, only punishments organization is mentioned in the executive bylaw of the law. The Note 5 of Article 4 of the governmental punishments execution law indicates definitely about goods and foreign exchange smuggle that any governmental punishment execution concerning the smuggle should be according to the directive and not by virtue of the proceedings formalities. Also by virtue of both Articles it may conclude that considering the harmful effects of the smuggle problem the legislator has defined special procedure for the offence investigation in a manner that the regulations dominating the smuggle files proceeding have special rules differing it from other crimes proceeding in some cases.

Having contemplated about the customs smuggle proceedings in the law concerning the smugglers it may conclude that the authority to investigate and define punishment in administrative steps and finally stop the accused's criminal prosecution was authorized limitedly in primary legislative policies relating to the offence and developed by legal amendments and evolutions.

Restraint or forgiveness in the law punishing the smugglers approved in 1928:

Legal prosecution restraint and forgiveness of the accused were predicted conditionally in Smuggle Doers Punishment Law for the first time in 1928. Article 5 of the law has authorized the departments receiving governmental incomes to receive related fine(s) and confiscate related goods in some conditions to stop the accused's or partners legal prosecution. Of course, the mentioned departments are permitted to do it as one of their choices and it is not obligatory. By virtue of the Article customs office free from observing two conditions mentioned in Article 5 to stop the accused's legal prosecution has more powers than other departments in this regard and only is obliged to have the agreement of the district or province governor.

Restraint or forgiveness in the law punishing the offenders amended in 1933: By virtue of the law amendments in 1933 the mentioned Article 5 changed to Article 6 and the phrase 'Convicted because of smuggle' was added, if the doer has not any penal record so the Article extended to more cases.

Restraint or forgiveness in the law punishing the offenders amended in 1974: Article 6 was revised essentially by virtue of the amendments in 1974 in a manner that the Article regulations were valid until 1995 when governmental punishments execution law was approved in relation to goods and foreign exchange smuggle. Contrary to the mentioned conditions by virtue of the Note added to the mentioned Article indicating the maximum cost for the smuggled goods as Rls. 100,000 and how many times the accused has done the offence the legal prosecution may be stopped when the fine is less than Rls. 100,000, the accused pays it and the smuggled goods are confiscated even if he (she) had been exempted for the same crime before.

Governmental punishments execution law in relation to goods and foreign exchange smuggle approved in 1995: By virtue of paragraph 'B' of Article 2 of the governmental punishments execution law about goods and foreign exchange smuggle if the smuggled goods cost more than Rls. 10,000,000 and if the accused agrees with paying related fine in the administrative steps, the fine is received and the goods are confiscated according to executive bylaw of the law executing governmental punishments for goods and foreign exchange smuggle and related legal prosecution stops. The offenders subject to paragraph 'B' may benefit from protest right to refer to judicial authorities, but if the accused refuses to pay related fine in the administrative steps, the file is referred to related judicial authorities and if the offence is proved, the accused is arrested, is obliged to pay related fine and his (her) smuggled goods are confiscated, too.

VI. CONCLUSION

It seems the combat against economic corruptions is weak yet after the governmental punishments execution law approval thereby the great leader of revolution issued his eight article order on Apr. 30, 2001; at the same time, when he sent his order for the heads of three powers he focused on the destructive role of smuggle in economical health in his order to then president. In their letter to the leader dated Oct. 09, 2002 the ministers member of the Center combating against goods and foreign exchange smuggle requested for more cooperation and protection for the governmental punishments organization from head of the judiciary and the leader replied as follows: All your requests are accepted and such performances should be executed immediately in order to combat against smuggle which is a dangerous case.

1 –The leader's order should be announced officially to the respected judges to cooperate more with related departments and authorities.

2 –Special branches should be established as soon as possible in order to investigate the files.

3 -The governmental punishments organization should be protected by respected head of the judiciary in order to cooperate as much as possible.

4 –The judiciary should supervise permanently and regularly the results of the files proceedings to demand the

maximum punishment for the goods smuggler from the courts to show their preventive influence.

According to constitutional law of Islamic Republic of Iran the 3 (Judiciary, legislative and executive) powers are separated definitely, but it differs from the traditional and classic powers separation system because by virtue of the traditional one the three powers control and modify each other and they are the highest powers, but it is not the same in Islamic Republic of Iran because by virtue of Article 57 of the constitutional law the three powers are under direction of the leader (Imam) and by virtue of Article 113 the leader is the highest position in the regime. Considering the philosophy of the leader's position in republic regime of Iran all affairs should be under consideration of a completely qualified jurisprudent to prevent any deviation in different organizations and keep them in right path to execute their Islamic duties and guarantee the three powers execute their duties honestly. By virtue of Article 112 the Regime Interest Distinction Assembly is formed in line with distinguishing the interest when Regime Protection Council finds some law approved by Islamic Consultative Assembly against the religion or constitutional law and having considered the regime interest the Islamic Consultative Assembly does not fulfil the Council's view so the Regime Interest Distinction Assembly consults about the cases mentioned by the leader and decides according to the regulations. The fixed and changeable members of the Regime Interest Distinction Assembly are appointed by the leader. The regulation concerning the Assembly are defined by the members and then approved by the leader.

After Islamic revolution victory the constitutional law of Islamic Republic of Iran was approved, but there was no indication in it about the Regime Interest Distinction Assembly. According to related regulations the Islamic Consultative Assembly may pass the necessary laws and sends them to the Regime Protection Council to adapt them with religion and the constitutional law; if the Regime Protection Council refused them because they were against religion and the constitutional law, the Islamic Consultative Assembly was obliged to obey the view of the Regime Protection Council so some circumstances the Islamic Consultative Assembly decided for the interest of the regime, but really it considered it against religion and law and it led to some tensions in Iran political regime so in reply to the governmental authorities' questions in relation to some problems Imam Khomeini (Peace Be Upon Him) ordered to form an assembly consist of respected jurisprudents of the Regime Protection Council, the heads of three (Judiciary, legislative and executive) powers, prime minister and related minister to distinguish the Islamic regime interest and if necessary, it is possible to invite other specialists and having consulted the decision is taken by a majority of votes. The regime interest is one of the most important affairs and if it is ignored, dear Islam is defeated. Thus, in line with solve the differences the Regime Interest Distinction Assembly was formed by the order of Imam Khomeini (Peace Be upon Him) and became Article 112 of the constitutional law in 1989 when it was amended.

Legally the Regime Interest Distinction Assembly' approvals are higher than the Islamic Consultative Assembly's

and if their approvals are contradictory, the Regime Interest Distinction Assembly's ones are enforceable.

Considering it has been formed and works according to the constitutional law it is unlikely that its approvals would be against it; even if they are against it, considering the approvals are based on the constitutional law in consultation with the leader they are enforceable. If there is any contradiction between the Regime Interest Distinction Assembly and the constitutional law, the problem is solved by the leader whose order is enforceable.

It is clear that in relation to investigate specially the smuggle offences and the approved process for governmental punishments execution law and the leader's emphasize on government combat against the problem in line with complete cooperation with the government if there is any contradiction between judicial proceedings and order issued by a governmental department, there is no objection in viewpoint of Iran constitutional law; although the process has not succeeded during the years of its execution, however, it seems it had better for the regime interest obey the way.

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