

# Smuggling of Commodities and Currencies in Iranian law

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## ARTICLE INFO

### Article history:

Received 14 Dec 2016

Received in revised form 17 Jan 2017

Accepted 02 Feb 2017

### Keywords:

Smuggling,

Contraband and currency,

Iranian law,

Code of criminal procedure

## ABSTRACT

**Objective:** Including judicial problems in most countries that have cultural, economic and even political dimensions is smuggling issue, which is now converted to one of the issues referred in our society. Unfortunately, it can be rarely found scientific content and source and research in this area that is written about the motives of smuggling and legal and social issues this is while dealing with a crime and phenomenon foremost requires the exact knowledge of the elements of that crime, how to form motives of committing crime etc. in general, it demands required information and awareness of the nature of subject.

**Methodology:** In relation to smuggling customs contraband, many laws and regulations and organizations activate. Laws such as customs law, the law on import and export regulations, law of punishment for perpetrators of smuggling, law against spoilers in the economic system of country, law of how to act government suspended, law of forming public and revolutionary courts, Union Law and relevant regulations are involved and organizations such as the police and other forces in the country. **Results:** The customs of Islamic Republic of Iran and the government suspended organization, General and Revolutionary Courts, collection organization and sale of the possessory properties and the Center for Combating contraband and currency smuggling activate in this connection. **Conclusion:** Procedure in cases of smuggling often carried out from dealing with the Code of Criminal Procedure and in general it can be said that the laws of the Islamic Republic of Iran in contraband smuggling not have enough deterrence.

## 1. Introduction

Contraband and currency smuggling is a phenomenon of economic nature that has long existed and governments always looked at it as crime and more than to solve its root by reforming their economic system, they have thought to fight against it as a crime, like other crimes and actually they have fought with the effect rather than the cause (Erami and Keshavarzian, 2015). Contraband and currency smuggling included any entry or exit of contraband and currency from formal and informal principles contrary to relevant laws and regulations, maintenance, sales and transportation of imported foreign goods without documents and legal supporting documentations and cases that clearly is in the rule of smuggling. Contraband smuggling with respect to certain conditions that have set rules and regulations for entry and exit of contrabands are divided to types such as contraband smuggling subject of government revenue, contraband smuggling prohibited to import, contraband smuggling prohibited to export and monopoly contraband smuggling and currency smuggling (Zadeh, 2015).

Contraband smuggling has harmful adverse effects on economic, social and cultural system of country. Therefore, to real support the economy and prevent adverse effects of the devastating economic phenomenon, identify the criminal nature of the smuggling phenomenon, contexts analysis and fields of expanding it and explaining control strategies, this criminal act is considered by internal and external stakeholders and intellectuals (Salahi, 2016). To combat the economic damage of it, general rules of any country under customs policy and in some cases with actions with criminal characteristics defines it or legislative social reactions in the form of punishment act to deal with these crimes. Investigating this issue from the legal point of view in terms of increasing it and damages that have for economic on the one hand and the number of points of decisions and actions in this regard from the other side, it should be done extensive research. In this article, it has been investigated to contraband and currency smuggling in Iranian law.

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DOI: <https://doi.org/10.24200/jsshr.vol5iss01pp29-33>

### **1.1 Definition of concepts**

#### **1.1.1 The literal definition**

Before we enter the nature of investigating the crime of smuggling, we should be familiar with its literal meaning and why such a term used about the crime. Dehkhoda has defined word smuggling in meaning of "slave" and "Kidnapped" and "what its entry to be prohibited from the government" and used smuggling in the meaning of customs evasion, take merchandise from other way to not pay the ransom and customs" (Dehkhoda, 2005).

Amid also is considered the definitions of "sleight", "what is done in secret and by sleight", "buying and selling goods that are in government monopoly or their transaction is prohibited" "Importing or exporting goods that import or export of it is prohibited" (Amid, 2006).

In addition to the literal definitions, the concept of smuggling from economic standpoint is as the "Import leased property subject to customs duties to a country so that neither from customs nor to government officials to visit and pay, customs duties to be provided" (Farhang, 2002).

It is also used the following meanings for smuggling:

"A) transport of contraband from one point to another point or two points in the interior" domestic smuggling" a point in the interior and a point in foreign that is called "foreign smuggling" unlike regulations relating to transport, as this practice violates prohibition or restriction that is prescribed by law.

B) The purchase and sale or storage of goods above-mentioned

C) Goods above-mentioned that is the title of smuggling" (Aghazadeh, 2006).

#### **1.1.2 The legal definition**

**The definition of smuggling in foreign trade monopoly law:** "All the goods that unlike the provisions of the law are entered the country are considered smuggling and sold and recorded in the interest of government and the perpetrators will be sentenced to imprisonment from six months to a year" (foreign trade monopoly law, article one, paragraph (a)) (Soudijn and Reuter, 2016).

**According to the law of punishment for perpetrators of smuggling:** Legislator in the articles (5-1) of law, without definition of smuggling crime or classification related to the crime in two main groups include: (1) statutory funds of government revenue (2) property prohibited for import and export and in Article 45 of the Law of Group II, "defined smuggling crime as: The purpose of weapon smuggling is import or export to country or buy or sell, or transport or hide or keep it inside the country" (the law of perpetrators of crime enacted 1933, Articles 1 to 5).

But the law of conservation and exploitation of forests and pastures in Clause 5 of Article 51 of the law states that the export of firewood and charcoal from the country is prohibited and in the case of violation, it will be recorded in favor of the Forest Service and a fine equivalent to one will be collected from committed" (law on the protection and utilization of forests and meadows, Article 51). (Bruns and Miggelbrink, 2011)

**Theory of interpretation of State Exigency Council:** "The unit article of the Law of actions of government suspended about the contraband and currency smuggling enacted 1993 passed of State Expediency Council, states that this unit article contains perpetrators of forest stumpage and timber and firewood and charcoal smuggling or perpetrators of these crimes will be dealt with according to the rules" (Ahmadi, 2004).

### **1.2 Substantive analysis of crime of contraband and currency smuggling**

After the termination of preliminary issues such as the definition of the crime of contraband and currency smuggling from the literal, terminology, (legal) perspective and the causes and effects of this crime in the economy and other issues and topics of country that was investigated and analyzed in previous chapter, now in this issue and in this chapter, we investigate the nature of this crime in different issues.

Naturally, and in terms of legal and constitutional and canonical, every crime must have conditions and elements including three elements of legal, material and spiritual to be able to consider it as anti-social phenomenon and punishable. Contraband and currency smuggling crime to be realized, three elements of ordinary and spiritual to be realized and gathered in it (Sabzei, 2004).

#### **1.3 Legal element**

To be able to punish someone, he should be committed an action that is designated punishment in law for that action otherwise and lack of determining punishment, the person is not punishable, Article 2 of the Penal Code states that "Any act or omission that is designated punishment in law for the act is a crime and the concept is that if punishment is not specified for an action, judge cannot independently prosecute and punish the perpetrator." The issue in legal terminology is called the legal principle of crimes and punishments (Batmanghelidj, 2012).

#### **1.4 Legal element of crime of contraband and currency smuggling**

Article I of the reform law, article one is law of perpetrators of smuggling enacted on 1994. Thus the "article one reform, article one of perpetrators of smuggling enacted 1994 and theory of the Legal Department of the Judiciary NO, 7/7987 date 1994, stated as, other than the cases of contrabands of income subject prohibited to import as smuggling contains contrabands prohibited to export. "

#### **1.5 Material element of smuggling crime**

To be able to punish someone as criminal, he should be committed an action as material element of crimes otherwise is not punishable.

Commit is composed of two types:

A) Positive action of material

B) omission: the issue of "paragraphs 6 and 7 and Article 29 of the Customs Act."

The issue of crime, crime is twofold:

A) financial.

B) Apart from the property as: First, individuals: unauthorized traffic, escape from prison or hospital, establish the radio station, the Institute of Medicine

Belonged property (contraband) is in two forms:

- A) Belonged to committed (smuggling)
- B) or belong to other (smuggling- theft)

Regulatory status of property:

Authorized, provided, monopoly or prohibited.

The result of criminal is in two forms:

- A) Harming property to the state treasury –smuggling
- B) Authorized and exemption of contraband - "customs offense" (Ahmadi, 2004).

## 2. Materials and methods

### 2.1 Required terms & conditions

A – Exist contraband:

Probably the crime of contraband charges is considered when the contraband and cargo is by the subject from the contrabands scope. As already mentioned, contraband is the goods that import or export the country without rules and regulations so requires proof of crime of carrying contraband, proving smuggling of goods subject to carry in legal authorities. So, carrying foreign goods, without having customs documents is not considered crime and as long as the smuggling of goods transported is not proven, there is no possibility of conviction of it carrying.

B- Carrying must be relevant:

what is achieved of the concept of carrying in Article 3 of the Act, how to act the government suspended about contraband and currency smuggling is its certain sense. Certainly, any kind of movement of contraband cannot be considered the carrying of subject of law. The best way to prevent any dispersion of votes and different interpretations of the meaning of carrying in the law is that according to requirement and specific situation of each file, we investigate the case in terms of the common. So, movement of contraband from one place to another can be considered carry the subject of law mentioned when common considered that part of the act from carrying. People who acted to unload the truck with vehicles to warehouse or loading them, or through means such as cranes act to move cargo from the ships on truck although in the movement of contraband were involved, but because the action by them cannot be regarded in common of carrying, action by them cannot be regarded punishable as carrying contraband.

C- Carrying shall be done by vehicles:

including other essential conditions for the realization of the material element of the offense of carrying contraband is that contraband must necessarily be carried by vehicles, but about vehicles, there are different perceptions and interpretations, the questions that arises whether beasts and animals are considered vehicle and a person that in this way attempts to carry contraband can be prosecuted or not? In this regard, some believe that what is achieved from the article 3 of how to act government suspended on contraband and currency smuggling is that carrying contraband should take place by vehicles. In this regard, some against the recent comment believe that legislator in Article 3 of the aforementioned considered carrying contraband as crime, and Article 18 of the Regulations of how to act government suspended on the smuggling not refers to the vehicle and as pointed out carrying, stated the subject in bracket and as allegory, according to that idea of this group, carrying in every possible way is considered crime and carrier regardless of manner and mode of carrying and its vehicle is sentenced to the punishment prescribed in law (fine up to twice the value of smuggled contrabands).

### 2.2 Spiritual element

Finally, the last element for the realization of crime is criminal malic or spiritual element which is explained below:

" Spiritual element can be interpreted fault of crime committed in committing crime and is that the criminal mainly committed an action resulting carelessness or recklessness that is prohibited according to law or refused of doing an action that the law obliged him. So, for the realization of the spiritual element of the crime, firstly criminal must be aware of the law that behaves contrary to it" (Ahmadi, 2004).

Secondly: both material and spiritual elements must be simultaneously fulfilled and often leads to injury or damage.

Thirdly: criminal act to be achieved with freedom of will and without imposing and often leads to injury or damages.

In general, till the criminal idea not to be in criminal act, criminal law cannot intervene, community of three elements (material, legal, spiritual) leads to favorable criminal outcome or not, often caused the realization of crime, absolute thought is not crime (Aghazadeh, 2006).

## 3. Discussion and results

### 3.1 Participation in the crime of contraband and currency smuggling

"The purpose of participation in the crime of smuggling, that two or more people participate in the crime together who called partners in crime, and participation is realized when the contraband is belonged to two or more partners " (Aghazadeh, 2006).

" Rights Department of the Judiciary in theory No. 1753/7 dated 1999 has stated the concept of involvement in smuggling crime and how to punish perpetrators as:" about smuggling files that two or more partners are owner of smuggling contraband is in accordance with Article 3 of the perpetrators of smuggling, as mentioned in the above article about the cost of the property (customs more than ten million ials), there is no differentiation, price of the property is not divisible to the number of owners for example, about partners of crime that the cost of property related to them is 15 million rials. The

price of the property is divided into the number of partners and partners of solidarity are condemned to three times the price of the property. "(Legal theory of the judiciary No. 1753/7 dated 1999).

### 3.2 Punishment of participation in contraband smuggling crime

As stated in previous discussions, assistance in smuggling crime is function to general criminal rules and as assistance in other crimes that is assistance to facilitate the crime or preparing means of committing crime for the perpetrator, is to be prosecuted and punished."

It is worth noting that in the Penal Code for perpetrators of smuggling, carrying contraband is considered from total instances of assistance in smuggling and subject to the carrier sentence insert in Article Three of Laws of punishment for perpetrators of smuggling enacted in 1933 and its subsequent amendments. But by approval and entry into force of the law of how to act government suspended on contraband and currency smuggling enacted in 1995, act to carry contraband of smuggling are inherently subject to general sentence of assistance and considered as an independent criminal act and instances of participation so separate penalty is determined for the perpetrators of these crimes " (Aghazadeh, 2006).

### 3.3 Punishment of attempt to crime in contraband smuggling

On the definition of attempt to crime of smuggling and its participation, it was mentioned in detail in previous issues and were stated that in fact the definition of attempt to crime is subject to the universal laws of criminal and will follow it. But on this crime of article 2 of the Panel Code of perpetrators of smuggling enacted 1933 with subsequent amendments have been noted" in attempt to crime of smuggling in addition to record the property and determine the fine will be sentenced to two months to one-year imprisonment" (Aghazadeh, 2006).

## 4. Conclusion

In Iran's criminal policy, for contraband smuggling, often great confusion and dispersion can be seen, although the legislator in recent years consecutively has proved texts in the form of punishment law for perpetrators of smuggling that their logic and direction definitively is not clear and thus the number and distribution of various provisions and laws and regulations in its turn has intensified inflation and increasing regulations and thus has confused law enforcement and people so that it cannot be drawn exactly a constant politic or policy-oriented in criminal policy of Iran and made clear its logic but at the same time, by investigating statutory texts in this relation and topics mentioned can be achieved the following results about criminal policy of Iran:

1. The legislative authority of the criminal policy in 1995, by approval of law of how to act government suspended on contraband and currency smuggling with the unilateralist perspective instead of rooting to remove causes, merely has fought against effect and rather than investigating preventive aspects of the problem of smuggling, it has tried to remove the phenomenon of smuggling through dealing with instances of it through severity of penalties for perpetrators of smuggling.
2. In the dimension of "criminal sanctions" with the enactment of innovation law, how to act government suspended about contraband and currency smuggling, we are seeing a large flow of criminal policy to eliminate and reduce penalties (de punishment), thus the legislative authority of criminal policy, with the use of modern tools of criminal policy ("de punishment of law" and "diversion" about offenses of smuggling) inspired of economic and financial considerations, over all, has considered restorative and compensatory reactions (financial penalties) so that in some direct cases, by act to legal de punishment (cancellation of the fines and afflictive punishments from contraband smuggling with price less than ten million Rials) has withdrawn of afflictive punishments (flogging and detention) and obtaining fine and record goods is considered an appropriate and effective response to combat the contraband smuggling.
3. Another thing worth mentioning is that the rules and regulations on contraband smuggling, especially how to act government suspended and its executive regulations have many unclear complex points that this has followed confusion and diversified interpretations and judicial interpretations by the authorities of criminal policy, both administrative and judicial authorities and finally the confusion of people that is worthy to ambiguity cases in future amendments to be considered by the legislator.
4. The fact is that the uncontrollable growth of contraband smuggling crimes in the country has threatened the economic system of the Islamic society of Iran and despite 22 reforms and review in the laws related to contraband smuggling, this legislation has failed to deal effectively with this phenomenon and contraband smugglers. No doubt the penal system and the intensification of violent and repressive tools is not the only factor in controlling crime in a community; but ultra -criminal systems such as families, religious institutions, cultural, environmental and other social institutions are responsible for controlling crime and its prevention. So, stop or inhibition and control economic criminal activities in the framework of smuggling, but with the cooperation and assistance of all relevant factors, including the government, people, scholars, lawyers, researchers and all who have information in relation to this subject will not be possible.

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#### How to Cite this Article:

Marandi MR., Delir B., Smuggling of Commodities and Currencies in Iranian law, UCT Journal of Social Sciences and Humanities Research 5(1) (2017) 29–33.