



CHARACTERISTICS AND LEGALIZATION PROCESS OF GOODS SMUGGLING IN IRAQ AND IRAN (COMPARATIVE STUDY IN THE CRIMINAL SYSTEM OF IRAQ AND IRAN)

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Abstract

The legal element of the crime of smuggling of goods in the text of the law has revealed that it criminalizes the act committed against customs laws and regulations, so that no act can be considered against that unless it exists. Considering the seriousness of this criminal phenomenon and harming the interests of the society, Iraqi and Iranian legislators have recognized the crime of goods smuggling with special legislation by enacting the laws that the legislator wanted to deal with, and examining the characteristics of the legal pillar of goods smuggling, which includes legislation of the crime and the determination of the punishment by the legislator, reducing the authorities of the judges and the usability law for the accused which is necessary and essential. The study disclosed that the criminalization of the smuggling of goods is considered in both countries, and the delegation of authority is also well-thought-out, and on the other hand, the authorities of the judges in the two countries are diverse in the field of goods smuggling. Also, the results exposed that there is no mention of non-retroactivity in the Iraqi Customs Law and the Law on Combating Goods and Currency Smuggling in Iran, and both legislators refer to the Penal Law.

Keywords: Goods Smuggling, Legal Element, Criminalization, Authorities of Judges, Usability Law

INTRODUCTION

The crime of goods smuggling is one of the most important crimes that developing countries face more often than developed countries where it is done covertly (Taher Mamouni and Naser Bolras, 2009: 193). From the time of the pharaohs in Egypt, centuries ago, they established customs control to prevent the smuggling of wine and textiles to Egypt, and there are also evidences of the existence of the crime of smuggling goods during the time of Greek and Roman civilizations (Yektaei, 2006: 23). In the law of Hammurabi, through Article (6) which talks about the theft of government property by a person, the crime of smuggling can be inferred, because it compares the general concept of theft with the smuggling of the government property (Ahmadi, 2015: 48). Iranian and Roman merchants can also start trading provided that their goods pass through the customs determined by the parties, and this demonstrates that the parties wanted to eliminate the crime of smuggling through the conclusion of this contract. (Ejtehad, 2005: p. 56). Also, during the era of Islamic rule, a tax (Ashur) was imposed on the goods that entered the lands of Islamic rule, because this tax was developed in the Umayyad and Abbasid eras (Abbas al-Azzawi, 1958: 77).

In crimes, especially economic crimes that have a wider scope, legal elements should be considered more carefully. The legal element in crimes is important because no act or omission can be

considered a crime, unless there is a legal text of punishment that can actually criminalize this act. The prerequisite of this practice is also the determination of regulations by special authorities, which actually carries the principle of separation of authorities. In fact, the legislative, the judiciary and the executive branches have different approaches in the field of crime. Legislature establishes the laws and the executive branch implements them, and the judiciary deals with the violations and considers the laws and facts in the field of laws and regulations. This importance can also be extended to the smuggling of goods and it can be said that the legal element of the crime of smuggling of goods is stated in the text of the law that criminalizes the act committed against customs laws and regulations.

The crime of smuggling goods is an economic crime that endangers the national economy of every country from all sides, and considering the seriousness of this criminal phenomenon and its impact on the interests of the society, we see that the Iraqi and Iranian legislators, by enacting the laws desired by the legislator, which deals with the phenomenon of smuggling, the crime of goods smuggling has been defined by special legislation.

Today, comparative work between different systems and addressing comparative issues is not only beneficial, but also, it is necessary, because the crime of smuggling goods has many destructive economic and social effects for the two countries of Iraq and Iran. As a result, with the comparative study of the law of these two countries regarding the legal pillar of goods smuggling, we find its similarities and differences, and their strictness and transparency are considered, and the shortcomings of each law are examined by the other law, so that the legislator can reduce the shortcomings and try to reinforce it.

This research is actually looking for the characteristics of the legal pillar of the crime of goods smuggling, which have been taken into consideration by the legislator, but three important characteristics, i.e., the scope of legislative authorities, limiting the authorities of the judge, and the non-retroactivity of the usability law, are important characteristics which can be examined concerning goods smuggling and can be considered as the main features of the law of smuggling of goods, which has been examined in this research.

The approach of this research is how the legislative process of the laws and their implementation is in Iran and Iraq, and more importantly, the judge as a general principle in the smuggling of goods who should only implement the laws and refrain from personal desires. The reason for considering the issue of judge in this research is that the judge, as the authority issuing the decision, if he fully respects the legal articles and puts it at the top of his work and avoids personal desires, the legal pillar finds a high position in the judgment and the judiciary. Therefore, in this research, after the definitions of the crime of smuggling goods in Iraq and Iran, legislative developments in the field of smuggling goods in Iraq and Iran have been discussed, and in the second topic, legislation of law and determining punishment, the reduction of the authorities of the judge and the usability law for the accused who are important features in the field of legal pillar have been taken into consideration in Iraq and Iran.

1 DEFINITIONS OF GOODS SMUGGLING IN IRAQ AND IRAN

1.1 Lexical definitions in Iraq and Iran

In the first volume of *Lasan al-Arab*, Imam Ibn Manzoor defines "Tahrib": this word is derived from the verb "Harab" and this verb means to run away, and he used it in the form of "Harab, Yahrubu, Haraba" which means to run away which is used both for the escape of humans and for the escape of non-humans (Ibn al-Manzoor, 1955: 781), but the word smuggling (Ghachagh, قلاچاق) in Persian is a word taken from the Turkish language that means escape (Ahmadi, 2020: 81). By reviewing Persian dictionaries, we find words that have similar meanings to smuggling. This word is found in the *Dehkhoda Dictionary* as an adjective and a noun (captive or kidnapped servant or prisoner). The entry and exit of smuggled goods into Iran is prohibited and the government has banned the trade of these goods (Dehkhoda, 1951: Vol. 38/18). In fact, smuggling may have



different definitions in different cultures and countries, and also among researchers, different definitions may be considered for it, but the similarity of definitions between goods smuggling in Iran and Iraq can be considered in the clandestine entry of prohibited goods. In fact, what we are referring to is the definition that refers to the clandestine entry of prohibited goods from one country to another, and a person who professionally enters and exits prohibited items is called a smuggler.

1.2 Terminological Definitions of Goods Smuggling

In the amendment of Customs Law No. 23 approved in 1984, the Iraqi legislator defines smuggling and in its article 191, it defines smuggling as follows: "Smuggling means importing goods into Iraq or taking them out without full or partial payment of customs duties or other tariffs and contrary to the provisions of this act or contrary to the prohibitions and prevention of imports mentioned in this act or other applicable acts." In the Law on Combating Smuggling of Goods and Currency of Iran, approved in 2023, in Paragraph A of Article 1, smuggling of goods and currency is defined as follows: "Any act or omission that causes a violation of legal procedures related to the entry and exit of goods and currency and according to this act and other acts, it is considered to be smuggling and the punishment is determined for it, at the points of entry or any part of the country, even the place where it is sold in the domestic market of Iran." In the definitions of smuggling in Iran and Iraq, it seems that mostly the issues of action is taken into account and the issue of omission is less discussed, but in Iranian law, omission is included in the definition of smuggling in some cases in customs and on the other hand, in the definition of smuggling in Iraq, it is stated that without paying all the customs duties and other tariffs, the crime of smuggling is committed, while in the law of Iran, the violation of the legal formalities related to the entry and exit of goods and currency is stated, which does not only refer to the issue of non-payment, and it is even possible that some cases that have been fully paid be considered smuggling, and this issue will be carefully examined in future sections. Of course, the crime of smuggling has a wide range, and for this reason, these definitions are mostly theoretical, and many differences and similarities are revealed and analyzed in this study.

2 LEGISLATIVE DEVELOPMENTS OF GOODS SMUGGLING IN IRAQ AND IRAN

The legislative developments of the crime of goods smuggling can demonstrate a complete and comprehensive understanding of the crime of goods smuggling, and in fact, it makes you have a correct understanding of goods smuggling. Since the present work is comparative, the legislative developments of goods smuggling between the countries of Iraq and Iran will be briefly compared.

2.1 Developments in the Law of Smuggling Goods in Iraq

Since the beginning of the establishment of the country of Iraq, the Iraqi legislator has strongly considered the acts that are considered forms of the crime of goods smuggling as a crime. Based on this, the Iraqi government has enacted laws and determined the necessary punishments for committing this crime. So that the penal law of Iraq, which was canceled on November 21, 1918, is considered as one of the first laws that dealt with the crime of smuggling prohibited goods in chapter 29, section 4 of article 296. In this law, it is stated that: "Anyone who imports goods that are prohibited to be imported into the country or attempts to do so, or transports these goods to the streets for sale or hides them, shall be punished with imprisonment for a maximum



period of six months or payment of a fine or both, unless the law has determined another punishment.” In 1926, we also see that the legislator in Anti-smuggling Ancient Goods Act has referred to smuggling phenomenon (Ahmed, 2008, p. 42). Then the canceled Iraqi Customs Law No. 56 was issued in 1931, in which the crime of goods smuggling was mentioned in Chapter 15, and we see it in the text of Article 147. This article states: "Customs officers who are actually employed to prevent smuggling may inspect any person on board a ship or any vehicle at a port or customs facility as if that person were in Iraq, or any person who got off the ship or vehicle can be inspected, provided that the employee has a reason to believe that that person is secretly transporting goods that are subject to duties and taxes or are prohibited." In addition, we observe that the Iraqi legislator has mentioned the crime of smuggling in Article (2) of Law No. (1) of 1935, which prohibits the export of palm branches, and then in 1952, Law No. 53 to combat smuggling from the occupied territories of Palestine is issued (Al-Najjar, 1968, p. 281). Due to the fact that the Customs Law No. 56 of 1931 has become incompatible with modern economic developments and does not have the necessary flexibility and dozens of amendments have been applied to it, for this reason and other reasons, the Iraqi Customs Law No. 23 of 1984 is approved and in the 15th section of the first chapter, the crimes of smuggling is mentioned (Mansour, 2002, p. 28), then the law against oil and petroleum products smuggling No. 41 of 2008 was issued and after that Law No. 18 of 2008 in order to seize smuggled goods and products that are prohibited to be distributed in local markets was issued. From this, it can be inferred that the Iraqi legislator has had a strong desire to fight against the phenomenon of goods smuggling by establishing the necessary rules, regulations and instructions to prevent this crime (Al-Khafaji, 2014: 41).

In its most basic laws, the Iraqi legislator has only dealt with the smuggling of prohibited goods. In the later laws, customs employees were introduced and actually considered as officers, which was ignored or less discussed in the initial laws. After this, in some cases, some goods were restricted, and in addition to the prohibited goods, other goods were also considered as smuggling in some cases. The Iraqi legislator in the field of goods smuggling has always tried to adapt himself to modern economic developments and show more flexibility, but he has always been strict in the field of goods smuggling and it can be said that the Iraqi legislator in the field of smuggling of goods has a strict procedure. Considering the existing laws as well as the explicit prohibition or lack of prohibition, it can be said that the Iraqi legislator has sufficient transparency in the field of goods smuggling, but the laws and regulations need to be updated.

2.2 Legal Developments of Goods Smuggling in Iran

Legislative developments in contemporary Iran are divided into two periods before the revolution and after the revolution.

A: Before the Revolution

The historical context of goods smuggling goes back to 1907, when in paragraph (9) of article (222) of the Law on the Formation of States and Provinces approved by the National Assembly, regulations were made regarding the prevention of goods smuggling. Then, in 1927, in the Law on Punishment of Commodity Smugglers, which had only one article regarding the smuggling of objects subject to the government's revenue, prohibited items, which set the punishment of imprisonment (Mortezaei, 2010, p. 73). After that, in 1928, the law on punishment for the perpetrators of goods smuggling was repealed by article (12) of this law, and in article (4), in addition to imprisonment, a fine was also determined. Also, the Law of Handing Over the Foreign Trade Monopoly of Iran to the government was established in one article in 1930, after



that the Law on Preventing the Smuggling of Prohibited Goods was established on March 20, 1933, and the Trade Monopoly Law approved on March 10, 1933 existed at that time (Khosrowshahi et al., 2020, p. 78). However, with the approval of the Law on Punishment of Commodity Smuggling Perpetrators approved on March 20, 1934 was a turning point in the historical course of the legislation of goods smuggling. This law, which is actually the most important and complete law in the field of crimes and punishments of all types of smuggling, was compiled and approved by the National Assembly in the evolution of smuggling legislation (Amini Harouni et al., 1401, p. 25).

By criminalizing the smuggling of goods and predicting social reactions in the form of imprisonment and confiscation of goods and fines for the perpetrators of smuggling in this law, which was relatively comprehensive at that time, what is inferred in the said law is the collection of customs duties and charges from informal trade and prevention of evade from payment of government revenue and recognition of uncollected taxes. Therefore, the smuggling of export goods did not have much meaning (Firouzjaei, 2005, p. 27).

And after that, the law to combat the smuggling of goods by sea boats was issued in 1957 and in 1960, the charter of the Cartilaginous Fishing Company was announced and the legislator specified in Article 1, Note 5 that cartilaginous fishing is exclusively under the control of the government, and the sale or export of these fish is considered smuggling (Rozman, 2016, p. 23). And after that, the Law on the Protection and Care of Forests and Pastures was issued in 1967, and in Article 48 of the said law, it was specified that transporting timber, firewood and coal without official approval is considered smuggling according to the above-mentioned articles. In 1971, Iran's customs affairs law was issued, and in the fourth chapter, from articles 26 to 44, the crime of smuggling and customs violations are mentioned. With the approval of the laws on the protection of forests and pastures, cattle smuggling and customs affairs, and its executive regulations, these acts were compiled about smuggling per case or have been or adequately addressed this issue in some materials (Sabzeei, 2004, p. 25).

The basic laws of Iran in the field of goods smuggling have been very limited and only a few materials have dealt with this issue which has been an important issue and regarding the punishments it can be said that the laws have become stronger and more fruitful day by day and while at the beginning only imprisonment was supposed to be considered, but little by little fines have been added to it in subsequent laws. The laws before the Revolution had a proper procedure, but they were inconsistent with the developments of the time, and for this reason, a new law was presented every now and then in the field of goods smuggling. However, it can be said that the legislator has considered a strict procedure for smuggling goods, but has been more flexible than the Iraqi legislator. Of course, these developments were related to before the Revolution and have shortcomings in terms of time and so on.

B: After the Revolution

After the victory of the Islamic Revolution, several laws were issued to combat the phenomenon of smuggling, for example, articles 561 and 567 of the Islamic Penal Law of Iran approved in 1982 referred to legislation in the field of smuggling of historical and cultural property. Then, the export and import regulation law approved on September 26, 1993 regarding export and import goods included 24 provisions on control and supervision on this issue. It should be noted that the Law on Punishment of Disruptors in the Economic System approved on December 10, 1990 punishes individuals that cause disruption in the economic system through smuggling, puts a heavier punishment than other laws (Khosrowshahi et al., 2020, p. 79).

Also, in 1994, for the first time, the legislator criminalized the smuggling of goods by passing the law amending Article 1 of the Law on Punishment of the perpetrators of the smuggling of goods.



Then, in order to support domestic productions and prevent foreign exchange from leaving the country, as well as increasing the smuggling of goods, the Expediency Council of the Legal System approved the law on the method of applying government punishments regarding the smuggling of goods and currency in 1995, at that time, this law compared to the previous rules were tougher. So that it intensified the fight against the smuggling of goods and currency to the extent possible and created a greater relative deterrence (Zeinali, 2017: 22-23).

What is certain in the examination of these developments of criminalization is that none of these laws have been able to achieve much success in the field of prevention and fight against smuggling. It should be noted that the legislative criminal policy contained in the laws shows the type of strict policy. The existence of numerous legislative institutions and legal sources, tolerance in the formulation of laws and criminalization indicates gaps, silence and many shortcomings in Iran's legislative criminal policy in the field of goods smuggling (Kooshad, Dehghani, 2017, p. 80).

Despite these legislative damages, it is necessary to formulate a comprehensive, complete and transparent law in the field of goods smuggling by the legislature, for this reason, in 2002, the Headquarter to Fight against Goods Smuggling was established and a Comprehensive Bill to Fight against Goods and Foreign Exchange Smuggling was submitted to the parliament. This bill was proposed in 2011 after review and discussion and reforms (Harouni, Farhand, 2022, p. 26) and after two years of review, it was approved on January 8, 2014.

With the approval of the Law on Combating Smuggling of Goods and Currency in 2013, all previous laws were repealed, and this law was considered as the criterion for dealing with this phenomenon, in other words, all laws and regulations contrary to this law, as well as other laws related to the issue of goods and currency smuggling that conflict with this legal text were cancelled (Mahmoudi, 2020, 25).

It should be noted that this law is divided into two parts: crimes and violations. In addition, the bill of amending articles of the Law on Combating Goods and Currency Smuggling was approved by the Assembly in order to comply with the relevant regulations and fix some defects on October 13, 2015 (Rafieipour, Jafari, 2022, p. 45). Also, this amended law was approved by the MPs on January 30, 2022 to fix some existing problems.

Also, the customs affairs law approved in 2011 contains 165 articles, was approved in the Islamic Consultative Assembly meeting on November 13, 2011, and was approved by the Guardian Council on April 22, 2011 (Saki, 2011, p. 25).

As it was stated and shown, after the Revolution, many laws were approved in the field of goods smuggling, and recently, the Law to Combat Goods and Currency Smuggling approved in 2021 has been approved. This demonstrates multiplicity of laws and if the legislator is not silent in upcoming laws, the previous laws are annulled. Regarding the laws of Iran after the Revolution compared to ones before the Revolution, it can be pointed out that the crimes are more comprehensive and compatible with the times, but it must be acknowledged that the multiplicity of laws causes confusion. Regarding strictness, it can be said that the Iranian legislator has adopted a strict procedure, but as stated, due to the multitude of laws, it does not have proper transparency compared to the Iraqi legislator.

2.3 Similarities and Differences in Criminal Developments of Goods Smuggling in Iraq and Iran

The two laws of Iraq and Iran in the field of goods smuggling have similarities and differences in various fields. The two main punishments of imprisonment and execution are among the important punishments in the smuggling of goods in Iraq and Iran, and the criminal developments of Iraq and Iran in this field have similarities and differences. Among the legal similarities, we can mention imprisonment, which both legislators have mentioned in their



primary laws. The Law of Punishment of Smuggling Perpetrators approved in 1933 in Iran has used the punishment of imprisonment for all types of goods smuggling crimes to respond to this incident (Firouz Jani, 2005, p. 221). The penal law of Iraq, which was canceled on November 21, 1918, is considered as one of the first laws that dealt with the crime of smuggling prohibited goods in Chapter 29, Section 4 of Article 296.

Also, if we pay more attention to the criminal developments between the laws of Iraq and Iran regarding the phenomenon of smuggling, we will find that the Law on Punishment of Smuggling Perpetrators approved in 1933 for all types of goods smuggling crimes has used the punishment of imprisonment to respond to this phenomenon (Firouz, M., 2005: 221). While the Iraqi Penal Code, which was abolished on November 21, 1918, as one of the first laws that deals with the crime of smuggling prohibited goods in Chapter 29, Section IV of Article 296, which is punishable by imprisonment or a fine or both for the crime of smuggling of prohibited goods has been determined.

So, the similarity can be considered in the issue that both legislators have considered imprisonment, but the two legislators are different in this field, and this issue can be explained in the way that Iranian law has considered imprisonment for all types of smuggling. While the punishment of imprisonment in the Iraqi law for the prohibited smuggling is only stipulated in 1918 Iraqi Penal Law for the perpetrators of the prohibited smuggling, and this shows that Iraq's criminal policy in this regard is not strict compared to Iran.

Another similarity between Iraqi and Iranian legislators in the field of goods smuggling is the death penalty, which was added to Iran's laws after the Islamic Revolution, and the Iraqi customs legislator clarified this in 1931. The Law on Punishment of Disruptors in Iran's Economic System, approved on December 10, 1990, considers some of the perpetrators of goods smuggling as deserving of the punishment of war against God and corruption. Article 2 of the Law in question states: Each of the acts mentioned in paragraph 1 of article, if with the intention of attacking the system of the Islamic Republic of Iran, or with the intention of confronting it, or with the knowledge that the action will be effective in confronting the said system, if it within the scope If the corruption on earth is, the perpetrator will be sentenced to death, otherwise he will be sentenced to imprisonment from 5 to 20 years (Aghazadeh, 2011, p. 98). The Iraqi customs legislator mentioned the death penalty in Article 144 of the canceled Customs Law No. 56 of 1931 (Abd al-Amir al-Akili, 1948, p. 38).

In addition, the Oil and Petroleum Products Smuggling Law No. 41 approved in 2008 considers severe punishment for those who destroy oil facilities, including pipelines, tanks, etc. through drilling operations or any other action for the purpose of smuggling and he is punished according to the provisions of the Anti-Terrorism Law. This issue is mentioned in Article 6 of the Law on Combating Oil and Oil Products Smuggling.

The difference between the main punishment of death in Iraq and Iran is that the Iranian legislator still considers this issue as a punishment in some cases such as war against God and corruption in the earth, and it has not been abolished, but the Iraqi legislature has abolished that and it has actually been canceled.

3 IMPORTANT FEATURES OF THE LEGAL PILLAR OF GOODS SMUGGLING IN IRAQ AND IRAN

From what has been said, it can be understood that the legal element of the crime of goods smuggling is the illegality of the act, which requires the existence of a text in the customs law or other current laws that explains the behavior constituting the crime and defines the punishment that should be applied to the perpetrator and it is interpreted as the legal principle of crimes and punishment, but the customs legislator has distinguished the legal element in the customs laws with several features that these features can be enclosed in these points that the



legislator will give a different opinion on determining the crime and the punishment prescribed for it by the legislator and limiting the authority of the judges and due to the non-precedence of the criminal law which we will discuss further.

3.1 Legislation of Crime and Determination of Punishment by the Legislator

Perhaps one of the most important results of the principle of legality of crimes and punishments is that the source of criminalizing an act is only in the written law issued by the legislative authority as the only source of law. When we look at the text of Iraq's customs law and Iran's law on combating goods and currency smuggling, we find that the laws of these two countries are similar to other laws in the world in terms of the existence of this condition for the crime of goods smuggling. Therefore, a person cannot be punished for doing something that is not considered a crime by the law because according to the text of Article 191 of the Iraqi Customs Law and Article 1 of the Iranian Law on Combating the Smuggling of Goods, there must be a legal text that considers this as a crime.

In terms of determining the scope of the punishment, the Iraqi legislator has determined a set of punishments for the preparator for the crime of smuggling, which he specifies in Chapter 1, Chapter 15, in Article 194. Iran's legislator has also behaved in the same way when he considered punishments for committing the crime of smuggling in articles 18 to 32 in chapters three and four of the anti-smuggling law. Therefore, the legislators of both countries have distinguished between the texts that specify the parameters of the crime and the texts that determine the punishment.

The principle is that considering an act as a crime is only done by a law that the legislative authority has enacted, and according to the principle of separation of authorities, it is not allowed for the executive authority to do this because the executive authority is obliged to implement and apply the enacted texts (Bosqiyeh, 2005: 16-17). In the Constitution of Iraq, according to the third paragraph of Article 88, the executive authority is given the right to issue decisions that have the force of law. Also, the legislative authority can delegate the issuing of decisions and regulations to the executive authority, and there is no objection to this delegation as long as it does not interfere with personal freedom.

The legislator of Iran has also acted in this way in Article 138 of the Constitution of Iran and left the issuing of regulations and instructions to the executive branch in order to implement the laws, provided that these decisions are part of the duties of the executive branch and do not in any way contradict the Islamic laws and regulations issued by the legislative branch (Rozman, 2016: 25) and in case of objection, the judges of the court are obliged not to implement the government approvals and bills are contrary to Islamic laws and regulations, and every person has the right to ask the Court of Administrative Justice to invalidate these decisions and regulations (Article 170 of the Iranian Constitution).

But if we reflect on this matter, we find that the delegation of legislative authority has been expanded in the customs law because the role of the legislator in establishing principles and laws is limited and the determination of the elements of a crime is left to the executive branch (Al-Zakrouti, 2021, p. 42) and if this delegation of authority is justified on the one hand, that legislation in this field requires technical knowledge that may only be available to the delegating authority, and also there is a need to create flexibility in the legislative tool so that it can better cope with emergency situations (Mustafa, 1979: 73), but on the other hand, it is a violation of the rule that the determination of crime is only within the authority of the legislator.

By referring to the laws enacted on the crimes of smuggling goods in Iraq and Iran, we find that the legislator has assigned legal authorities in many aspects related to the elements of this



crime to the specialized minister or other bodies. We also find that the Director General of Customs can issue administrative instructions and decisions in some aspects related to customs work, taking into account the provisions of existing laws and regulations.

For example, in the amended Iraqi Customs Law No. 23 of 1984, the determination of the land customs area is subject to the administrative orders issued by the Minister of Finance and publishing in the official gazette, and awarded the authority to determine certain prohibited goods to exercise customs control with the decision of the Director General of Customs is issued and published in the official gazette and to the General Director of Customs.

According to Article 2, Clause B of Chapter 2 of Iran's Customs Law, the General Director of Iran's Customs is allowed to be exempted from paying customs duties and other tariffs. Also, in Article 164 of Iran's Customs Law, it is specified and stipulated that the Ministry of Finance of Iran is obliged to issue instructions related to Iran's Customs Law within 6 months from the approval of the Customs Law.

As it can be seen, the legal principle of crime in Iraq and Iran, which is actually being a criminal, has been taken into consideration, and based on the laws of the two countries, in some cases, legislation and even the determination of punishments are delegated to other bodies, which, of course, face issues and problems but two legislators have accepted this issue and even sometimes one court chooses another competent court and leaves the authority in the field of punishment to him, which of course is less seen in Iraq but is clearly visible in Iran and in the case of legislative delegation, it can be acknowledged that this practice, i.e., the delegation of customs laws, may involve people in the legislation who do not have much expertise in the field of goods smuggling, which will result in the multiplicity of laws and, ultimately, many escape routes for criminals.

3.2 Reducing the Authorities of Judges

The principle of legality is consistent with the definition of crimes and the determination of the punishments applied to their perpetrators, and all three authorities headed by the judiciary must comply with this principle. Therefore, the judge is not allowed to say anything other than the punishments stipulated in the law and within the limits set by the law (Rashed, 1974: 148), and this issue does not conflict with the principle of judicialization of the execution of criminal sentences. In fact, this principle, i.e., the principle of judicialization of the execution of criminal sentences, is considered one of the most important principles in the execution of punishments. According to this principle, only the competent authority, which includes the judge and the court that issued the verdict, are able to direct the punishments that have been issued, and adjust them, based on the behavior and personality development of the convicts (Najafi Abrandabadi, 2007: 1) Of course, this does not mean that judges are able to impose punishments that exceed the law, but these people cannot determine a punishment other than what is specified in the law as a punishment for a crime, and they cannot vote for a punishment that exceeds the prescribed scope. for a crime in excess of the law. Also, they are not allowed to determine additional punishments that are not stipulated in the law to punish the criminal, and they are not allowed to change it to imprisonment when a punishment is determined in the form of a fine in the law.

The reduction of the authority of the judge has been considered by the Iraqi legislator, and the Iraqi legislator clarified it in Article 19, Note 2 and said: "There is no crime and no punishment without a legal text, and there is no punishment except for an act that the law at the time of its commission, has considered a crime and it is not allowed to impose a punishment more severe than the punishment allowed at the time of committing the crime." It is also stated in the fifth paragraph of Article 19 that "until the accused's crime is proven in legal proceedings, he is free



and innocent". Also, the legislator has mentioned the same in the text of Article 1 of the Iraqi Penal Code No. 111 of 1969.

Before the victory of the Islamic Revolution, Iran's legislator had accepted the principle of "legality of crimes and punishments" and this principle was enforceable and respected in Iranian laws, including the text of Article 2 of the Iranian Penal Law dated 1925, which states that criminal acts should be determined by the legislative authority and also the penal law of Iran stated it in Article 2 of 1973 and also specified this principle in Articles 12, 74 and 78 of the Constitution of Iran in 1946 (Bahri, 2015: 135).

After the victory of the Islamic Revolution, the government system became Islamic Republic and the new Iranian constitution approved the principle of legality of crimes and punishments in Article 36. This article indicates that "punishments are issued and implemented only by a competent court and in accordance with the law". Also, Article 2 of the Islamic Penal Law approved in 2013 refers to this matter. However, with the regulation of Article 167 of the Constitution of Iran, Iranian legislators added a new interpretation of the principle of legality of crimes and punishments to it (Eftakharjahromi, 1999: 94), and according to the aforementioned article, the judge, in the case of any judicial petition that he sees in front of him, according to the written laws, he should find a ruling for it, and if he does not find a ruling, he can refer to Islamic sources or valid fatwas, and also according to Article 220 of the Iranian Penal Code, the courts are obliged to act according to Article 167 of the Constitution of Iran.

Since the punishments for the smuggling of goods in Iran are the responsibility of the competent court, which shall be determined by the criminal procedure code, it is certain that the legality has been properly examined in the courts, and this issue regarding the smuggling of goods in the competent courts is examined and the necessary punishment for the preparators shall be considered.

The researcher believes that what is mentioned in Article 167 of the Constitution of Iran and Article 220 of the Penal Code of Iran is a clear violation of the principle of legality of crimes and punishments, and the Iranian legislator should take action in order to amend these materials in accordance with the above-mentioned principle. Regarding Article 167 of the Constitution and Article 220 of the Iranian Penal Code, it can be said that these two laws are in conflict with the principle of legality.

The customs law or anti-smuggling laws, like the economic law, have flexibility and rapid expansion. For this reason, it requires the use of general definitions that can deal with all the future developments that violate the customs policy, and this phenomenon is not limited to the decisions of the delegated authority in the legislation, but it is even touched in the law texts themselves. Among other things, in Article 192/15 of the Iraqi Customs Law, it is specified that "committing any act with the intention of smuggling...". An example of this can be seen in the Law on Combating Smuggling of Goods and Currency in Iran, in Article 1/A which specifies "according to this law or other laws...". Based on this, we find out from the previous legal texts that the legislator has left the elements of the crime of goods smuggling in a flexible form and without a precise definition, which provides a wide scope for the judicial authorities or customs departments to employ deduction for goods smuggling crimes.

In this context, the Iraqi and Iranian legislators do not have proper transparency of goods smuggling and its definitions, which will be a special defect in legislation and determining punishments, because, as mentioned, the multitude of laws and regulations causes people to get confused and nobody is not able to identify customs violations and non-violations, while the legislator could have given the necessary clarity to the issue with more precise and comprehensive definitions to avoid many ambiguities.

The opinions of jurists differ in the interpretation of the criminal text in the Customs Law. A jurisprudential opinion is that there is no difference in the interpretation of this text in the

penal law, because the purpose of this work should be to express (discover) the intention of the legislator in the text (Sorour, 1990: 71). Another opinion is that the forms of smuggling are mentioned in some provisions of the customs law as examples and are not limited to these mentioned cases, and the legislator, when using general terms, made space open to later modify or add the cases that can be foreseen or has not been considered because the judicial authority or other authorities and institutions can determine punishments for it through analogy (Shaaban, 2000: 74).

From what has been said, it is clear that in the crimes of smuggling of goods, the legislator has mentioned some texts in general in order to cover all types of smuggling. Therefore, there is a wide space for applying interpretation by analogy.

3.3 Usability Law for the Accused

The common rule in the penal law is not to preempt the provisions of the penal law, and this rule is only a logical result of the principle of the legality of crimes and punishments. However, an exception is made to this rule due to the need of the defendant. This usability is realized when the new law annuls the crime or punishment, or determines a reason for exemption from responsibility, or determines a reason for permission. In this case, the law or legal text that was in favor of the accused must decide on its reversibility and effect in the past (Ahmed, 2012: 120). This situation, which is called "usability law for the accused" was approved by the Iraqi legislator and was included in Article 2 of the Iraqi Penal Code No. 111 in 1969. Also, the Iranian legislator has approved it in Article 10/A and B of the Iranian Penal Law approved in 2013.

However, regarding the crimes of goods smuggling, the customs law or the law to combat goods smuggling does not contain a text that regulates the usability law for the defendant's interest, and this has caused a legal dispute about this issue, and it seems that this dispute is due to the lack of agreement on the nature of the punishments for the crime of goods smuggling (Abdul Latif, 2015, p. 62), because some people conclude from the combined nature of the customs fine that there is no place to apply the usability law to the accused because this leads to the loss of the government's right to compensation (Rizvan, 1970: 126). While another group believes that there is no legal basis for denying the right of the accused to benefit from the usability law of the accused (Awad, 1999: 209). Although this group admits that in the crime of smuggling, the punishment is a combination of penalty and compensation, but they are surprised to ignore the opinion against this right, and they believe that in order to apply this principle, it should be enough to fulfill the punishment.

The other group believes that the most appropriate solution is that the usability law of the accused should not be applied to customs crimes, including the crime of goods smuggling because these crimes are the achievement of the legislator and he determines according to the requirements of the government's economic or customs policy at a certain time, and this requires the implementation of the laws related to the combating against the smuggling of goods existing at the time of the crime to achieve the goal in which these laws have been established for it (Shaaban, 2000: 79).

In the Law on Combating Smuggling of Goods and Currency of Iran, which was approved in 2013 and amended in 2021, the principle is that laws should not be retroactive, although this issue is not explicitly mentioned in the Law of Smuggling of Goods and Currency of Iran, and the Islamic Penal Code and the Civil Code have emphasized it.

Iran's legislator has stated these exceptions in Article 4 of the Civil Code as well as Article 11 of the Islamic Penal Code, and the anti-smuggling laws also follow these regulations in this regard. Therefore, we can consider the similarity in this issue that both legislators did not explicitly mention retroactivity.

According to the said contents, we find that the nature of compensation for civil damages that is



the case in some of the punishments related to crime of goods smuggling, makes the issuance of the usability law of the defendant not enforceable, because these goods become a compensation for the government.

4 CONCLUSION

After completing our research by identifying the characteristics and the legal way of smuggling goods, a comparative study between the laws of Iraq and the laws of Iran, we reached the results and recommendations that we try to summarize as follows:

The crime of goods smuggling is one of the economic crimes known in ancient societies and related laws have been established for that, as the Iraqi society knew the laws and regulations that regulated social, economic and political relations thousands of years ago. It can be said that both the Sassanid government and the Roman Empire were the first to use international cooperation between the two countries to fight smuggling and regulate trade. During the time of Islam, the financial system of the Islamic State was reformed and the Ashur tax was applied, which is equivalent to the customs tax in our current time, because this tax is only collected from commercial goods and does not include personal items, and from here it is clear to us that Muslims are the first to determine the rules for exempting personal furniture from customs tax. Legislators of Iraq and Iran have not provided a specific definition of the crime of smuggling of goods, but they have listed the cases that are examples of the concept of smuggling of goods, the reason of which can be attributed to the criminals. Adoption of new methods in the smuggling process. The crime of smuggling goods, like other crimes, consists of three pillars. The legal pillar of this crime in the illegality of the act requires the existence of a text in the customs law or other laws that explains the behavior that constitutes the crime and determines the punishment that should be applied to the perpetrator and clarifies its features for us that it has a legal foundation in customs laws and is limited to crime legalization, reducing the authorities of judges and the usability law for the accused.

5 SUGGESTIONS

- 1- We ask the Iraqi and Iranian legislators not to expand the scope of criminalization of goods smuggling crimes.
- 2- We request the Iranian legislator to reconsider the interpretation of Article 167 of the Constitution and also to regulate Article 220 of the Iranian Penal Code, because in the currently the text of the two articles is not compatible with the principle of legality of crimes and punishments.
- 3- Article 1-A of Iran's Law on Smuggling of Goods and Currency as well as Article 192 of the Iraqi Customs Law showed images of goods smuggling as examples but not limited to it. This approach opens the way for the judicial authority and customs departments to expand the measurement, which may lead to the creation of punishments and crimes not foreseen in the law. Based on this, we suggest that the Iraqi and Iranian legislators define these cases exclusively and in order to avoid personal jurisprudence and comply with the principle of legality of crimes and punishments, general text should not be included.
- 4- We request the legislators of Iraq and Iran to transfer the jurisdiction of dealing with smuggling crimes from the customs to the judiciary in order to protect the rights of individuals against accusations by the customs authorities and support the principle of legitimacy.
- 5- We suggest that the Iraqi and Iranian legislators unify the legal texts related to the handling of smuggling cases and put them in the integrated legal framework of smuggling crimes so that it is possible to refer to its provisions easily and also to avoid conflicts which may occur between

several legal texts.

6- We request the legislators of Iraq and Iran to cancel the death penalty for the crimes of smuggling goods, because this punishment is accompanied by a lot of cruelty and violates the right to human life.

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