

CRIMINAL LIABILITY OF THE CUSTOMS BROKER IN LIGHT OF THE JORDANIAN CUSTOMS LAW NO. 20 OF 1998 AND ITS AMENDMENTS

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ABSTRACT

The Jordanian legislator regulated the legal provisions related to the duties and functions of the customs broker in Customs Law No. 20 of 1998 and its amendments. The customs broker prepares the customs data for the purposes of clearing the goods for the account of others according to what is stipulated in the law. Therefore, when it organizes these data and enters or takes out the goods illegally and in violation of the law, the criminal responsibility arises for him for these actions. If his action does not result in any violation of the customs law or any other legislation, his criminal responsibility shall not arise even if a smuggling offense was committed.

This study sheds light on the concept of customs brokerage of the crime of customs evasion and the position of Jordanian law on the advancement of criminal responsibility for it and the solutions to its evasion.

Keywords: Customs Broker, Customs Data, Customs Violation, Customs Evasion, Importer of Goods

INTRODUCTION

Study Subject: This study deals with the subject of criminal liability provisions for the customs broker in light of the Jordanian Customs Law No. 20 of 1998 and its amendments. He is the person who performs customs clearance work on goods for the account of others, whether those goods are intended to be entered or taken out. Given the importance and seriousness of his work and to protect the country's economy and all its financial, health and security interests, the legislator has surrounded the work of the customs broker with penal legal texts assessing his responsibility for every illegal or illegal organization that falls from him during his preparation and conduct of the customs declaration. On the other hand, he was provided with protection that negates his criminal responsibility for organizing the customs declaration as long as it was organized according to the rules and the law and he had no role in the occurrence of the smuggling offense.

The importance of the study: Despite the importance and danger of the customs broker's work, despite the increase in the number of customs brokers and the large number of customs declarations that are organized from them daily, and the smuggling crimes and violations that arise from the work of customs brokers. This topic has not been addressed by Jordanian jurisprudence, and the Jordanian library still lacks books in this field, not to mention the importance of studying this topic for judges, lawyers, merchants and customs brokers.

Study Objectives

This study seeks to clarify the cases carried out by the criminal liability of the customs broker and the cases in which they do not exist, highlighting them, clarifying the purpose of the customs broker and its responsibility, the legal basis and the reason for its regulation, and clarifying the deficiencies and shortcomings that surround this subject and providing solutions and suggestions.

The Problem of the Study

When does the criminal liability for the customs broker and when does it deny?

Problem Questions: Who is the customs broker? What are the acts committed by him and is a crime of customs smuggling? Does every act committed by him while organizing the customs declaration assess his criminal responsibility? And when does this responsibility not fall on him?

The Study Method

This study depends on the analytical method, according to which the legal texts researching in this subject are presented and analyzed.

The Study Plan

This study is divided into two sections and a conclusion, the first section deals with the question of what is the criminal liability of the customs broker and is divided into two demands, the first requirement deals with the definition of criminal liability for the customs broker. The second requirement seeks to distinguish the responsibility of the customs broker from similar concepts. As for the second topic, it is entitled the emergence of criminal liability for the customs broker and its absence, and it includes two demands, the first for the establishment of criminal liability and the second for the absence of criminal liability. The conclusion includes the most important results and recommendations.

The First Topic

What is the criminal liability of the customs broker?

Knowing what the criminal liability of the customs broker is, requires knowing the concept of this responsibility, its legal basis and the reason for its regulation. It also requires knowing the differences between them and similar concepts such as criminal liability for the owner of the goods, the importer exporter, the carrier, the holder, the financier, the sponsor, the mediator, the client and the donor. And once these matters are covered and comprehensive, the issue of criminal liability for the customs broker becomes clear and clear frameworks devoid of ambiguity, ambiguity or ambiguity and invisibility. Accordingly, we divide this topic into two demands, in the first requirement we delve into the definition of criminal liability for the customs broker, and in the second requirement we present the differences between the criminal liability of the customs broker and other workers in the customs field related to customs clearance operations. This is as follows:

The First Requirement: the definition of criminal liability for the customs broker.

The Second Requirement: distinguishing criminal liability for the customs broker from other similar concepts.

The First Requirement

Definition of Criminal liability for the customs broker

The issue of defining criminal liability for the customs broker calls for defining the meaning of this responsibility, stating the legal basis for it, and the motive for its regulation.

First: What is meant by Criminal liability for the customs broker?

Criminal liability, in general, is defined as: the obligation of a person to bear the legal consequences resulting from his commission of an act that the law considers a punishable crime, and the legal consequences in this field are the punishment or precautionary measure. They are conditions that give rise to the crime and a personal blame directed at the perpetrators, and it is about the person bearing the result of his illegal actions and holding them criminally accountable for them because they came from him out of a realization of their meaning and consequences and from the will, discrimination and freedom of choice (Hosni, 2002).

A customs broker defines it as: Every person who, in accordance with the provisions of the Customs Law, has the profession of preparing customs declarations, signing them and submitting them to the Customs Department, and completing all procedures for clearing goods for the account of others. It is noted in this definition that he did not limit the person of the sincere person to the natural or legal person only, so that it is permissible to practice this profession from the natural person and the legal person.

This broker is not entitled to practice the profession of customs clearance except after obtaining a license from the Minister of Finance upon the recommendation of the Director General of the General Customs Department. A customs broker may be a natural person, and then it is required that he be a Jordanian national and be at least twenty-three years old. He must have completed secondary school or worked as a customs official in the customs department for a period of no less than fifteen years, and he must have practiced clearance work or customs work with a licensed entity in Jordan or classified service in the customs department for a period of no less than five years. He must be of good conduct and behavior and not have been convicted of a felony or misdemeanor involving moral turpitude. A customs broker may also be a legal person, and then it is required that it be a registered Jordanian company and that the manager or the authorized partner fulfill the conditions that must be met by the customs broker when he is a natural person referred to above. It goes without saying that the license to practice the clearance profession is not granted until after passing the customs clearance exam, fulfilling all the previous conditions and paying the legal fees to the customs department (3). It is not surprising that the legislator's strictness in imposing and conditions referred to above is due to the importance and seriousness of the work of a customs broker.

And we know the Criminal liability of the customs broker as: (the obligation of the customs broker to bear the legal consequences resulting from his commission of an act that the customs law considers a crime of customs clearance, and the legal implications in this area are the penal penalty represented by the penal fine, civil obligations and precautionary measures such as suspension of work permanently or for a certain period or not being allowed to enter the customs yards).

Second: The legal basis for the criminal liability of the customs broker

The customs law is the legal basis regulating the criminal liability of the customs broker. The fact that this law is specific to all the criminal, civil and disciplinary customs provisions, and everything related to the provisions of entry and exit of goods and clearance thereof (Sorour, 1993). It is the reference and the basis for knowing if the committed act is a crime of customs smuggling or not, and it determines when the customs broker will rise or rise and what are the penalties to be imposed on him if he commits an illegal act (Hamdi, 2006).

For women, we see from the above that the criminal liability of the customs broker in the customs law, which is its basis and source, is a distinct responsibility and of a special character that differs from all other types of criminal liability to the rest of the ordinary non-customs crimes. It can be said that the criminal liability of the customs broker according to the customs law is completely different from his criminal responsibility according to the provisions of the penal code when he commits another non-customs crime that is not related to the work of customs clearance.

Third: The fault of regulating the criminal liability of the customs broker

The legislator's regulation of the provisions of the regulation of criminal liability for the customs broker is not considered absurd, vain, or unjustified or unwarranted. Rather, there are unbridled goals and justifications that prompted him to organize this type of criminal responsibility regulation. The reason for this legal regulation can be summarized and explained through the following:

- 1) The importance and danger of the customs broker's work (Harran, 2011):
The importance and danger of the customs broker is evident through the contents of the customs declarations that it regulates, which are mostly foodstuffs, medicines, nutritional supplements, medical and laboratory tools, cosmetics and other matters related to human health and safety. These goods are considered restricted goods, *i.e.*, goods that may not be entered and offered in the local market except after a decision is issued to permit their circulation and offering in the local market.
- 2) To protect public money (Hanafi, 2012):
Customs duties, standard fees, and other fees and taxes that are imposed on imported goods and intended to be brought into the Jordanian territory are considered public funds, *i.e.*, funds that ultimately belong to the treasury of the Hashemite Kingdom of Jordan. These fees and taxes are imposed and determined according to the type and quantity of goods to be cleared by customs.
- 3) To combat customs smuggling crimes, especially those committed by customs brokers (Badawi, 2012).
- 4) To protect the customs clearance profession from abuse and humiliation. So that the customs broker is fully aware that there are criminal legal provisions that criminalize and punish him when he violates the principles, customs, traditions, values and principles of the customs clearance profession.
- 5) To distinguish between the responsibility of a customs broker and the responsibility of others involved in customs work and the processes of entry and exit of goods, especially the importer, exporter, owner of the goods or his agent, carrier, possessor, financier, appraiser or inspector of the goods.
- 6) Increasing cases of import and export: As it is known, every goods entering the Jordanian territory must be regulated before entering a customs declaration, and this declaration is regulated by a customs broker according to Article 61 of the Customs Law. As a result of the increase in import and export operations, it was necessary to have special legal provisions in Customs Law regulates, processes, controls and controls the responsibility of the customs broker for the customs data it regulates.

Finally, there is no doubt that there are other goals and justifications that prompted the Jordanian project through the customs law to regulate criminal liability for the customs broker, but we believe that these reasons, justifications, and goals are the most important in our view.

The Second Requirement

Distinguishing criminal liability for the customs broker from similar concepts

Distinguishing criminal liability for the customs broker differs from similar concepts. Among these concepts are the following:

Criminal Liability of the Owner of the Goods

The owner of the goods is the actual and real owner of the goods subject of the customs declaration organized by the customs broker. The owner of the goods may be the importer or the exporter, *i.e.*, the sender of the goods or the consignee of the goods subject to customs clearance. He is the one who provides the customs broker with all the documents necessary to prepare and organize the customs declaration with the customs duties payable for the clearance process. The documents handed over by the owner of the goods to the customs broker may be stating that the subject and contents of the goods are what the customs law permits to be brought into the country, such as computers or accessories, and the customs broker organizes the customs declaration on this basis. However, during the inspection of the container in which the goods are

located, it becomes clear that the goods are prohibited goods, such as weapons, fireworks or drugs. Here, Criminal liability is based on the crime of customs smuggling and the crime of evading the general sales tax for the owner of the goods without the customs broker, because the latter organized the customs declaration on the basis of the documents handed over to him indicating that the subject of the goods is not as proven and actually revealed, especially since the container containing the goods is closed From the country of origin of the goods and may not be opened except by the Jordanian customs authorities upon arrival (Gamal, 2013). Accordingly, it can be said that the criminal liability of the owner of the goods arises when he commits illegal acts that take the character of a customs smuggling recipe and relate to the goods themselves through the type, quantity, entry or exit thereof, or not to pay the fees accrued on them in full or in part or to dispose of them before the permit. While the criminal liability of the customs broker is established when an illegal act is committed intentionally related to the customs declaration itself in terms of numbers and organization, he has to complete the procedures related to it. For example, if he is not aware of the reality of the type and quantity of goods or their illegal entry or exit, then there is no criminal liability for him, as long as his role is limited to organizing the customs declaration based on the documents handed to him such as the certificate of origin, delivery permission, invoices and documents related to the type and amount of goods.

Criminal Liability of the Carrier of the Goods

After the customs broker clears the goods, the carrier delivers and transports these goods to the place specified for him by the owner of the goods. And the carrier is the owner of the means of transportation used to transport the goods, or his representative. He may be the driver or the renter of the vehicle used to transport the goods, or the contractor or the one who includes them.

The carrier has no relation or connection with the regulation of the customs declaration, and his role is limited to the process of transporting the goods subject to the customs declaration organized by the customs broker. If the carrier transports the smuggled goods knowing that they are smuggled goods, then his criminal responsibility is established in this field. But if he was in good faith and was not able to know that the goods he was transporting smuggled from customs duties and returns, he is not criminally liable, and the opposite is true, and then he will be questioned about the crime of customs smuggling and the crime of evading the general sales tax.

Accordingly, the responsibility of the carrier from the penal aspect arises from the process of transporting the goods. As for the customs broker, his responsibility arises from organizing the customs declaration (Al-Faouri, n.d).

Criminal Liability for the Investors of Shops and Public Places, their Employees, Owners of Public Transportation means, their Drivers and their Assistants

These persons are responsible for the crime of customs smuggling and the crime of evading the general sales tax for the goods within the customs declaration organized by the customs broker, unless they prove that they are not aware of the existence of the goods subject of the declaration being smuggled, or that they have no direct or indirect interest in this.

As for the customs broker, he is criminally responsible for the offense of smuggling if he is the perpetrator, partner, contributor, instigator or interfering in the commission of this offense, ie he has a role and contribution in the process of bringing the goods into the country illegally. His role is through organizing the customs declaration related to the smuggled goods so that he knows that the goods are smuggled and in violation of the customs law and may not be brought into the country. Nevertheless, he is presented with organizing the customs declarations for them to bring goods into the country illegally.

Criminal Liability for Investors of Shops in Private Places in which the Goods Subject of the Customs Declaration are Deposited

One of the peculiarities of the customs law is that the shop investors considered the private places in which the goods subject of the customs declaration and which are considered smuggled are deposited, that they are criminally responsible for the crime of smuggling. In other words, the legislator considered these persons criminally responsible for the crime of smuggling the goods simply for depositing the smuggled goods in the shops and private places for them, and did not treat them as the investors of the shops and public places, since none of these people was considered criminally responsible for the smuggled goods deposited with him unless he did not prove his knowledge of them or proves that there is no A direct or indirect interest in the smuggled goods. There is no equality in this matter, as the investors of shops and private places may have no knowledge and no direct or indirect interest in the smuggled goods, and it would be fair, right, equal and fair to consider them not criminally responsible for the smuggled goods. This is consistent with the general rules. As for considering their responsibility presumed in advance, even without their knowledge or interest, it is a matter that disregards justice and a sound legal premise. Therefore, it would be desirable if the legislator corrected this matter.

Accordingly, the investors of the shops and private places where the smuggled goods are deposited, their criminal responsibility differs from the customs broker who organized the customs declaration for these goods. Considering that their responsibility exists and is assumed as soon as the goods are deposited for smuggling with them, even if they had no knowledge or interest. As for the customs broker, in order for his criminal responsibility to be established, he must prove that he has knowledge or that he has a direct or indirect interest.

The Second Topic

The Existence and Absence of Criminal Liability for the Customs Broker

The issue of Criminal liability for the customs broker involves a great deal of complexity, and this complexity emerges when delving into the reasons for its advancement or researching cases of its non-existence. There is no doubt that there is a legal obligation to do so. It is not surprising that there is also something that prevents it from advancing the right of the customs broker.

Accordingly, we divide this study into two sections. In the first requirement, we discuss the criminal customs clearance. In the second requirement, we address the absence of the penalty for the customs broker, as follows

The First Requirement

Responsibility for the criminal liability of the customs broker

Criminal liability of the customs broker occurs when his organization of the customs declaration leads to the occurrence of a crime of customs smuggling. The Jordanian Customs Law defines smuggling as: “The entry of goods into or out of the country in violation of the legislation in force without paying customs duties, fees and other taxes in whole or in part or in contravention of the provisions of prohibition and restriction contained in this law or in other laws and regulations, the provisions of this article are the goods referred to in article (197) of this law”. This definition was adopted by the Jordanian Court of Cassation in many of its decisions in its criminal capacity.

Customs smuggling occurs from a customs broker if the customs declaration organized by it results in the entry or exit of materials or goods through the customs territory of the state or an attempt to do so in violation of the legislation in force (Hamdi, n.d.) and without paying the

customs duties, fees and other taxes in whole or in part or in violation of the provisions of prevention and restriction. The customs smuggling that occurs from a customs broker may be real customs smuggling or it may be judgmental customs smuggling. Real customs smuggling is the common form of customs smuggling, in which it takes place in violation of the state's financial interest by bringing goods for which customs duties, fees and other taxes are due into the country or taking them out of it illegally and without paying these fees and taxes (Al-Marsafawi, 2001). As for legal smuggling, it is a type of customs smuggling in its familiar sense. This smuggling is an image that does not, by its nature, fall within the general framework of smuggling, but the legislator inevitably attaches it to smuggling, even if it differs from it in approach and form as long as it agrees with it in content and substance. This smuggling leads to the same result that real smuggling leads to, which is getting rid of and evading the payment of customs duties and other fees and taxes that must be paid (Al-Faryani, 2007).

It should be noted that when a customs broker commits the offense of customs smuggling, the infringed right in this area may be tax smuggling and is achieved by illegally entering or removing goods, that is, harming the financial interest of the state and depriving it of the full and correct payment of fees and taxes. The infringed right may be a non-tax evasion. That is, the infringed right in this field is not the state's financial interest, but rather its health, environmental, security or economic interest, when goods are entered that are not legally permitted to be entered as they are a threat to public and environmental health, or dangerous goods such as drugs, weapons, and fireworks, or goods whose entry results in stagnation Local goods, or goods whose output would harm the economy, and the scarcity and scarcity of such goods in the country, and their high prices for the citizen. Or goods whose entry would result in harm and prejudice to morals, such as introducing immoral films or films that encourage immorality and immorality or call for deviation, decadence and moral decadence, or goods whose entry or removal would result in the spread of diseases and epidemics, in other words, any commodity whose entry or removal results in an attack on any of the state's interests, except for the financial interest. It is worth noting that the elements of the crime of customs smuggling committed by a customs broker are as follows:

First: The material element: The crime of customs smuggling committed by a customs broker is the same as the rest of the other customs crimes committed by all smugglers, whether it is an importer, exporter, carrier, possessor or financier. This crime is not based without the material element and by dropping and subtracting the material element of the crime of customs smuggling on the smuggling act committed by the customs broker, which constitutes a real or judgmental crime of customs smuggling. in its entity and have a tangible physical nature. Its importance is highlighted in the fact that it is the tangible external appearance that brings crime to society, and without it, no harm or disturbance to society is caused, and the rights under protection from any aggression are not violated (Hosni, 1982).

It is worth noting that this element is necessary to be carried out by the customs broker, in order to be able to attribute the crime of customs smuggling to him. It is not enough to organize a customs declaration that subsequently leads to the illegal entry or exit of the goods. And his behavior must be achieved to get rid of customs duties, fees and other taxes; otherwise this crime will not be committed against him. It is the same if the customs broker gets rid of the full or partial payment of these fees.

Second: Criminal Intent

The second pillar of the crime of customs smuggling of the customs broker is the criminal intent. Controversy and disagreement arose around this pillar among the group of jurists, whether it was in relation to the crime of smuggling committed by the owner of the goods, the carrier, the possessor, the financier, the mediator, or the customs broker.

There are those who believe that there must be a general intent with the racism of science and management, meaning that the offender should inform the perpetrator of the smuggling

crime of every fact of legal importance in the formation of the crime of smuggling, and the most important fact in this crime and the importance of an incident in this crime is his criminal behavior and the criminal consequences of this behavior. It is a violation of the right protected by law. And that this result would not have been achieved had it not been for his criminal behavior and that after this knowledge he had the will to commit the crime of smuggling (Hafez, 1992)

Accordingly, the proponents of this view believe that the crime of customs smuggling is sufficient for its general intent, as it is a premeditated crime and does not require a special intent. On the other hand, a second aspect of jurisprudence (Sorour, 1995) sees that the crime of customs smuggling needs a special intent. The offender cannot know the perpetrator of the crime of customs smuggling that he is committing an act of smuggling. Rather, he must, in addition, have a special intent that his goal and motive is to get rid of and evade payment. Customs fees, duties and other taxes. We believe that the most correct opinion is the second opinion, as the goal of the customs smuggler should be to get rid of customs duties and other fees and taxes, and accordingly, and where the legislature did not stipulate this matter, it is preferred if it stipulated it because of the justice and equity in that.

Finally, since the legislator did not specify the cases in which it is envisaged that the customs broker will have criminal liability, we urge him for the purposes of remedying this deficiency by stipulating these cases.

And when the elements and elements of the smuggling crime are established against a customs broker, or his act remains in the initiation stage without reaching a complete crime, the legislator punishes him with a fine of not less than fifty dinars and not more than a thousand dinars, and upon recurrence, imprisonment from one month to three years in addition to the aforementioned fine or one of the These two penalties. This penalty is a penal penalty, and in return the legislator imposed on him civil obligations in favor of the Customs Department, which is a civil compensation for it so that it is three times the value to six times the value if the smuggled goods are specifically prohibited. It shall be from two to three times the value in addition to the fees if the smuggled goods are prohibited or prohibited, and from two to four times the fees for the goods subject to duty if the smuggled goods are not prohibited or restricted provided that it is not less than half of its value, and from twenty-five dinars to One hundred dinars if the smuggled goods are not subject to any fees or taxes and were not prohibited or restricted. In addition to the confiscation of the smuggled goods or a ruling for an equivalent value, including fees, when they were not seized or escaped seizure, with the confiscation of the means of transport used in smuggling, or a fine not exceeding 50% of the value of the smuggled goods when they were not seized or escaped seizure.

Before continuing to talk about the issue of criminal liability for the customs broker, we believe that it is necessary to refer to a very important issue. This issue is represented in the fact that the Jordanian legislator in the customs law did not follow the path of the Arab customs legislation, including: the UAE, Saudi, Omani, Qatari, Bahraini, Egyptian and others (26), which distinguished between the customs crime and the customs violation committed by the customs broker, as these legislations did not consider every act in violation. According to the customs law, the crime of customs smuggling falls from the customs broker. There are actions that have been described as a smuggling crime, and other actions that give them the description of a customs violation when they are committed by a customs broker. And not as the approach of the Jordanian legislator, as his approach is different from those legislation when he considered every act committed by the customs broker with regard to his regulation of the customs declaration and was in violation of the customs law a crime of smuggling. Rather, it is not logical and logical that every act that violates the customs law committed by a customs broker, regardless of its gravity or appearance, is considered a smuggling crime. Maintaining this situation makes the customs courts special courts to try customs brokers instead of the real smugglers of goods. From this point of view, our Jordanian legislator would prefer the approach of Arab customs legislation and distinguish between a customs violation that occurs from a customs broker and a smuggling crime that occurs from it. And to make the criterion of discrimination due to the

gravity of the act and the seriousness arising from it, and to make imprisonment and civil obligations prescribed penalties for the crime of smuggling committed by the customs broker, and financial fines and precautionary measures as penalties for the violation, and to specify for us the types of customs crimes for this broker and the violations that are perceived to be committed by him.

The Second Requirement

Absence of Criminal liability for the Customs Broker

Criminal liability of the customs broker absolves the crime of customs smuggling arising from the customs declaration organized by him, which results in the illegal entry of goods into or out of the country, or without paying customs duties, fees and other taxes in whole or in part, or contrary to the provisions of prohibition and restriction contained in Customs law or any other law or system if the criminal intent does not arise against him.

The cases that make the criminal intent absent, non-existent or unavailable to the customs broker can be summarized as follows:

Organizing the Customs Declaration Based on the Documents Handed Over to it

We know that the customs broker organizes the customs declaration based on the documents, documents, invoices and certificates received from the owner of the goods, *i.e.*, from the owner of the goods or his representative. For example, the customs broker, while preparing the customs declaration, declares and discloses the facts of the documents, documents, invoices and certificates handed over to it. If those documents indicate that the type of the goods to be brought into the country and the organization of a customs declaration with them is sugar, then the customs broker declares in the declaration that the type of goods is sugar, and the statement states the amount, quantity and type of these goods, the country of origin, the real price and all its details. All of this is based on the reality of the documents handed over to him and if the customs broker prepares the customs declaration on the basis of the documents delivered to him, but when the container containing the goods subject to the customs declaration is opened for the purposes of inspection and assessment by the customs authorities, it turns out that the front of the container contains only the declared sugar It is included in the customs declaration and the rest of the container parts contain unauthorized goods in the customs declaration, such as weapons, fireworks, mobile devices, or other things. The customs declaration of the material contained in the documents delivered to him.

The Customs Declaration Documents shall be Free from Forgery

If the documents handed over by the owner of the goods to the customs broker are sound, correct and free from any forgery and bear valid and official seals, signatures and attestations, and there is no doubt or distortion or any appearance indicating that they are forged or incorrect, and the customs broker is convinced of them and based on this Organizing the customs declaration of the goods to be brought into the country. This declaration was actually and truly organized, but it was proven during the inspection and opening the container that the quantities, type, type or origin of the goods subject of the customs declaration do not fully or partially match the reality of the declaration documents, as if the certificate of origin attached to the declaration is issued by Japan and in return the goods are of China origin, or the invoices indicate that the quantity of the goods is one thousand parcels, but the actual inventory of the goods shows that the correct quantity is five thousand parcels, or if it is mentioned in the statement that the price of the goods is one million dollars, but it was found by inspecting the goods inside the container that the price of the goods is ten million dollars. Here, criminal

liability is not established for the customs broker, because the documents handed over to him are the ones in the light of which he prepared and organized the statement, which were correct and free from any forgery, manipulation or doubt.

Arrival of the Goods Multiplied by Lead

When a person imports goods from Malaysia, Indonesia or any other country and wishes to bring them into the Hashemite Kingdom of Jordan, the container carrying them is hit with bullets before they leave their country. And lead is a seal that closes the container in order to ensure that no other material or goods are placed in the container other than the goods included in the export declaration in the country of origin. This lead may only be opened by the customs authorities upon the arrival of the container to the Jordanian customs center. In this case, if the container arrived unleaded, *i.e.*, carrying lead, and this lead was not opened except by the Jordanian customs authorities, and before opening it was intact and free from any tampering, tampering, defect or alteration, and it was found after opening and during inspection that the goods inside the container are not the ones that are authorized by customs broker and contrast the reality of the documents attached to the statement. Here, the customs broker's criminal responsibility does not arise, because the goods arrived from the country of origin to the Kingdom, bearing the lead seal, and the lead was not removed or opened except by the Jordanian customs authorities. That is, the customs broker did not see these goods before opening the container and during the organization of the statement, *ie*, he organized the statement on the basis of the documents handed over to him and not on the reality of his physical observation, which was not made in the first place.

If the Customs Declaration Organizer is not Authorized by the Customs Broker

In practical application and due to the increase in customs data regulation, many of these data are organized by the assistants, employees and users of the customs broker. That is, the statement is organized in the name of a specific customs broker, but whoever follows the procedures of preparing it, proceeding with it, and following it up, is not the customs broker whose name is in it and whose name is regulated, but by a user, worker, employee or assistant to that customs broker, as long as he holds an authorization and license to do so from the customs broker and duly authenticated by the customs broker authorities. Here, if a customs declaration is organized by an assistant, assistant, employee or employee of the customs broker or any other person, and he does not have an authorization to do so from the regulated customs broker in his name, and the organization of this declaration results in a customs offence, then the Criminal liability for that customs broker does not It is established as long as the person who organized it and followed the procedures of its traffic and clearance of the goods is not legally authorized by that customs broker.

Not Participating in the Smuggling Process

It is worth mentioning that the Jordanian Court of Cassation ruled in this regard: "If the company does not participate in the smuggling of the goods in question, and that its role is limited to organizing the customs declaration, then it must rule that it is not responsible for the ascribed offense",

Failure of the Goods to reach their Destination for a Reason not Related to the Customs Broker

When the goods that are the subject of the customs declaration leave the customs yards and are sent to the warehouses of the owner of the goods in the free zone in order to organize a

fundamental declaration of deposit therein. The failure of the goods to reach their destination for any reason does not constitute the criminal responsibility of the customs broker as long as it is not proven that he had any role in that.

RESULTS

- 1) A customs broker defines that every natural or legal person who, in accordance with the customs law, has the profession of preparing customs declarations, signing them and submitting them to the customs department, and completing all procedures for clearing goods for the account of others.
- 2) Criminal liability of the customs broker is defined as: the obligation of the customs broker to bear the legal consequences resulting from his perpetration of an act that the customs law considers a crime of customs smuggling, and the legal implications in this area are the penal punishment represented by imprisonment for repetition, a penal fine and civil obligations, which is a civil compensation to the customs department.
- 3) The only reference and basis in the criminal liability of the customs broker in terms of its establishment or non-existence is the customs law.
- 4) Due to the importance and seriousness of the customs broker's work, to combat smuggling crimes, to protect the interests of the country and the profession of customs clearance, and the increase in import and export cases resulting in the increase in the number of customs declarations that are organized daily around the clock, the legislator has organized the issue of criminal liability for the customs broker.
- 5) Criminal liability of the customs clearance is different from many concepts similar to it, especially the criminal liability of the owner of the goods, the carrier, the financier, the holder and the investor of the stores in which the goods are deposited is the subject of the clearance statement.
- 6) Criminal liability is established for the customs broker if his organization of the customs declaration leads to the occurrence of a smuggling crime or any act issued by him and it is in violation of the customs law.
- 7) The legislator did not distinguish between the crime of smuggling or the smuggling violation committed by a customs broker if he considers the violation to be a smuggling crime.
- 8) The act of smuggling is realized by the customs broker if the subject of the customs declaration was entered into or exited the country in violation of the law and without paying the customs duties in whole or in part or in violation of the provisions of prevention and restriction.
- 9) The legislator did not differentiate between the completed crime and the attempted crime of customs smuggling committed by the customs broker.
- 10) The penalty for the customs broker is not deterrent.
- 11) Criminal liability of the customs broker is denied if the elements of the smuggling crime were not established against him or if it was an act.
- 12) Provide for the types and sections of violations committed by a customs broker and make their penalties financial fines.

FOOTNOTES

- 1) Mahmoud Najib Hosni, *The General Theory of Criminal Intent*, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 13, and Sultan Al-Shawi, *General Principles in the Penal Code*, Al-Risala Press, Kuwait, 2002, p. 151.
- 2) Article 2 of the Jordanian Customs Law and its amendments No. 20 of 1998 published on page 3935 of Official Gazette No. 4305 dated 10/1/1998.
- 3) Article 166 of the Customs Law.
- 4) Ahmed Fathi Sorour, *Tax and Monetary Crimes*, Dar Al-Nahda Al-Arabiya, Cairo, 1960, p. 18. And Hassan Sadiq Al-Marsafawi, *Criminalization in Tax Legislation*, Mansha'at Al-Maaref, Alexandria, 1963, p. 13. and Muhammad Al-Sayed, *The Crime of Customs Smuggling*, Al-Radia Press, Alexandria, 1993, p. 37.
- 5) Muhammad Hamdi, *Customs smuggling and the presumption of smuggling*, University Press, Cairo, 1989, p. 45, Ahmed El-Sayyad, *Customs smuggling*, Arab Renaissance House, Cairo, 2006, p. 47.
- 6) Ayoub Harran, *Encyclopedia of Customs Clearance*, Dar Mahmoud, Cairo, 2011, p. 516.
- 7) Abdel Rahman Hanafi, *Customs Clearance*, Dar Al-Safa, Cairo, 2012, p. 87.
- 8) Amer Badawi, *The Crimes of the Customs Broker*, Mansha'at Al-Maaref, Alexandria, 2012, p. 52.
- 9) Ahmed Gamal, *Customs Crimes*, Arab Renaissance House, Cairo, 2013, p. 422 and beyond.
- 10) On the definition of the carrier, see Article 2 of the Jordanian Customs Law.

- 11) Ayman Mamdouh Al-Faouri, previous reference, pg. 416.
- 12) Article 216 of the Customs Law.
- 13) Article 216 of the Customs Law.
- 14) The second article of the Customs Law defines the customs declaration as: “The declaration that is submitted to the department, which includes specifying the distinguishing elements of the declared goods and their quantities in detail in accordance with the provisions of this law, and the legally required documents attached to it are considered an integral part of this declaration.”
- 15) Article 203 of the Customs Law.
- 16) Among these provisions are (Resolution No. 99/2009) dated 10/2/2009, (Resolution No. 1751/2008) dated 20/2/2009, and (Resolution No. 363/2005) dated 6/5/2005 publications justice.
- 17) Muhammad Kamal Hamdi, *The Crime of Customs Smuggling and the Presumption of Smuggling*, University Press, Alexandria, p. 1.
- 18) Article (2) of the Customs Law, and prohibition means the entry of legally prohibited goods, such as drugs and weapons, or any substance for which the Customs Law, its regulations, instructions, or any other law prohibits its entry into the country, and restriction means preventing the entry or exit of any good or merchandise into the country Only after obtaining a permit for this from the competent authorities, for example, sometimes it is not permissible to import iron, cement, or types of fruits and vegetables unless after obtaining a permit and a license to do so from the Ministry of Industry, Trade and Supply. On the provisions of prohibition and restriction, see: Ayman Mamdouh Al-Faouri, *The crime of customs smuggling, a study and comparison, without a publishing house*, 2015, p. 137 and beyond.
- 19) Hassan Sadiq Al-Marsafawi, *Criminalization in Tax Legislation*, Dar Al-Arabiya, Beirut, 2001, p. 210.
- 20) Jamal Al-Faryani, *Customs Legislation*, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 225.
- 21) 21. See all of:
 - Awad Muhammad, *Drug Crimes and Customs and Cash Smuggling*, Modern Egyptian Office for Printing and Publishing, Alexandria, 1966, p. 139,
 - Ahmed Fathi Sorour, *Tax Crimes*, Dar Al-Nahda Al-Arabiya, Cairo, 1990, p. 278,
 - Nabil Luqababawi, *Customs Crimes, A Comparative Study*, Dar Al-Nahda Al-Arabiya, Cairo, 1994, p. 5.
- 22) Mahmoud Najib Hosni, *Explanation of the Penal Code, General Section*, Dar Al-Nahda Al-Arabiya, Cairo, 1982, pg. 462.
- 23) Magdy Moheb Hafez, *The Crime of Customs Smuggling*, Dar Al Fikr Al Arabi, Cairo, 1992, p. 113; Muhammad Kamal Hamdi, *The Crime of Customs Smuggling*, University Press, Cairo, 1989, p. 57; Muhammad Naguib El-Sayed, *The Crime of Customs Smuggling in the Light of Jurisprudence and the Judiciary*, Al-Radia Press, Alexandria, 1992, p. 174.
- 24) Ahmed Fathi Sorour, *Tax Crimes*, Dar al-Nahda al-Arabiya, Cairo, 1990, p. 288, Qadri Shukair, *Customs smuggling*, Dar al-Nahda al-Arabiya, Cairo, 1995, p. 221.
- 25) Article 206 of the Customs Law.
- 26) See the articles on customs disputes in this legislation.
- 27) Article 203 of the Customs Law.
- 28) Discrimination, penalty of 1713/2012, dated 28/11/2012, Adalah Publications for Information Systems.

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