

LEGAL IMAGES OF THE CRIME OF SMUGGLING OIL AND ITS DERIVATIVES IN IRAQ

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Abstract

None of the fields of Mafraq have been recognized by means of non-identification as did the issue of oil, in terms of origin and conditions of formation. It is still a forum for debate among scholars. In terms of depletion of the planet, it is still an uncertain and illegible occult. This issue also enjoyed a great international and domestic protection, the aim of which was to address all forms of attacks that could affect this source.

In recent years, the problem of smuggling oil wealth has increased, both internally and externally, which affected the country's economy in the first place. As a result, and as a result of this, and because of the seriousness of these illegal practices on the oil wealth, the Iraqi theater was not satisfied with texts contained in other laws such as the customs law, since these texts included all smuggling operations. Where he went to issue a special law under the name of the Law on Combating Smuggling of Oil and Its Derivatives No. 41 of 2008, which came as a result of recording crimes of smuggling oil in large numbers in recent years.

Accordingly, in this research, we will try to view the pictures drawn by the Iraqi legislature with regard to the crime of oil smuggling.

Keywords: smuggling oil , Legal image , crime

1- Introduction

First : alteration of the fuel tanks in all vehicles:

Article (1/first came) from the fight against the smuggling of oil and its derivatives law , saying (prevents the alteration of the fuel tanks in all vehicles for the purposes of smuggling , which can accommodate more than design capacity) form of criminal behavior of the crime has shown , as this picture achieved by introducing amendments and changes On cabinets intended for storage in vehicles of all kinds , and by modification it is intended to change the shape, capacity and design of the thing for the purpose of use for a purpose other than the original purpose for which it was ma³.

According to the provisions of the article above, the modification is to magnify and expand the size of reservoirs and not shrink in order to accommodate larger than allocated legally , as is transgene by adding a second tank connects to the first reservoir via a tube secret connected between them fill the tank once filled with the reservoir president on the way , as reflected transgene are removed reservoir president and put the largest reservoir of the first to increase the absorption of the loader is derived for the purpose of smuggling⁴ , as the modification is required to result in a change in the tank capacity by expanding so that the criminalization is beyond the scope of the modification acts that lead to changing the shape and design of the fuel tank without resulting in a change in its capacity , in other words , without the modification that results in the tank absorbing quantities Greater than its design capacity .

And there are those who see⁵ , to be replaced transgene in this picture is the custom tank (fuel) , which is one of oil derivatives , and includes gasoline and Alkasulal , and therefore Valtjerim does not include modification in reservoirs and Alihuziat used tanks to carry and transport fuel , and this was followed by the Iraqi judiciary in His decisions .The Discriminatory Commission for Customs Cases approved the decision of the Central District Customs Court No. (8 / K / 2013 on January 20, 2013) containing the cancellation of the charge and the release of the accused (GF) to deny the accusation against him and buy the tanker separately from the car (Ras Trilla) and not knowing that the focus of addition was the tank free of any product when set as The decision of the body above that (the tank is not considered a fuel tank , but the tank to transport fuel therefore can not apply the text of Article (1 / I) of the anti - smuggling law of oil and its derivatives Which prevented the diversion of

fuel tanks in all vehicles for smuggling purposes⁶ However , we believe that the modification is carried out on one of the means of smuggling, and the Iraqi legislator has reconciled between primitive and modern methods of smuggling , that is, modification is not limited to vehicle tanks only, but rather any means of transport or carrying that was⁷ In addition , it is possible to refer and refer to the special laws regarding defining the intended vehicle , as Traffic Law No. (86 of 2004 (stipulated in Section / 1 thereof the definitions for the following:

1 -Vehicle: every vehicle with wheels that travels by a mechanical engine or by physical force or is pulled by any means other than those traveling on the railroad and includes the following:

- 1- The vehicle is a transport vehicle with a propulsion engine.
- 2- A private vehicle is intended for transporting people without pay.
- 3- A public vehicle is the equipment for transporting people for a fee.
- 4- A carrying car is the equipment for transporting materials of all kinds, including a pickup.
- 5- An agricultural vehicle is a motor vehicle used for agricultural purposes and driven by the power of its automatic engine, such as a puller, harvester, etc.
- 6- A construction vehicle is a vehicle used for construction purposes and driven by the power of its automatic engine, such as a rotor, crane, and others.
- 7- Motorcycle (motor scales) / a vehicle intended for transportation with two or three wheels equipped with an automatic engine for burst and its design is not in the form of a car, provided that the engine power is not less than 125 cc.
- 8- The bicycle (bicycle) / a vehicle with two or three wheels running at the effort of its rider and not equipped with an automatic motor and does not include the bicycle intended for children to ride, and any vehicle running with a motorized engine with an engine size less than 125 cc and the shape, size and design of the bike is considered a bicycle.
- 9- A vehicle / vehicle intended to transport people or materials traveling with the effort of a human or animal.
- 10- The trailer vehicle is a vehicle without an engine that is prepared for carrying or others, which is pulled by a mechanism and is usually separated from it and is called a semi-trailer if the tractor car carries a part of its weight .

It is noted that the above article came to define all types of vehicles , and although the term vehicle came in absolute in the law against smuggling of oil and its derivatives , it does not include all types of vehicles mentioned in the above traffic law, but rather includes vehicles that contain a fuel tank, so it falls outside the scope of criminalization of empty vehicles from the reservoir Caldrajh pneumatic vehicle and the vehicle trailer , but for the tanks are intended for transport of products of petroleum are cars load type , Valsraj may itself be subject to an act transgene for the purpose of increasing the amount of product to be transported or carried in it , so the court 's decision above is rightly though committed in terms text Literally for the term (tanks) , but it did not take into account the phrase (vehicles) that came to launch it .

This form of criminal behavior is carried out with a positive activity that requires the perpetrator to intervene in the commission of the act by modifying or adding another tank , so it is not imagined that it will be carried out with a negative activity as it is done in a hidden way that requires technology and experience in the field of modification. Therefore, we find that the Iraqi legislator was successful in criminalizing the Modification for the purposes of smuggling , as this image indicates the seriousness of the perpetrator, his propensity and inclination to criminality⁸ ,as it required the law's intervention as a preventive measure in order to confront the behavior at an early date before it persists in it and reaches the criminal outcome of smuggling⁹ .

Also, this is the most common picture among drivers of vehicles of all kinds, and for the purpose of limiting this, preventive measures must be taken, represented by determining the capacity of fuel tanks in accordance with the regulations in which the special design of vehicles is taken into account , and the role of the competent security authorities in controlling the violating vehicles and following up and imposing control on Places suspected of carrying out alterations for tanks, especially industrial places¹⁰ .

Second : the entry of tanks modified vehicles:

Article (1 / second) of the Law on Combating Oil Smuggling and its Derivatives stipulated that (it is prohibited to enter all non-Iraqi or imported vehicles to which the provisions of Clause 1 of this Article apply) as the Iraqi legislature prohibited the entry of vehicles to the Iraqi borders whenever they were modified outside Iraq. The possibility of using them when entering the smuggling of oil and its derivatives by filling them in quantities greater than their absorptive capacity¹¹, notes the receipt of a (vehicle non - Iraqi). The law included the prevention only vehicles non - Iraqi, which means that Iraqi vehicles modified abroad are not covered by the ban, it was better to include prevention of vehicles with the tank Iraqi and foreign axis so as to resemble the criminal behavior requires this image. From the criminal behavior of the crime of smuggling oil, positive activity, as the perpetrator seeks to introduce modified vehicles into the country, and a question may arise that is, can such behavior be committed with passive activity?

Through the features of this image, it is required to cross the borders and enter vehicles with a pivot tank in secret or with the contribution of the authorities working at the border outlets. If the smuggler is assisted by the employees, then he is considered an accomplice of the crime by allowing the entry of vehicles with a pivot tank, such as by neglecting to check the special permissions and licenses. With these vehicles, this is considered a negative activity that is represented by refraining or laxity in seizing vehicles or checking the papers of vehicles that enter illegally, but the law against smuggling of oil and its derivatives did not stipulate punishment of the employee or the person charged with a public service who was negligent in this case, and there are some J¹² the possibility of tough questions about a crime to refrain from informing about a crime called his work provided for in the Iraqi Penal Code in accordance with the provisions of Article (247) thereof¹³, or be done punishable for harming state money negligently of s provisions of Article (341) of the above law, as it tended to eliminate one of its decisions to the employee to punish (b. A. O) in accordance with the provisions of the above article for having to enter a car with a tank axis¹⁴ so you can not commit this image only positive activity reflected the introduction of the vehicle to the border of Iraq yeh provided that contain the axis of the tank.

Third : the transfer of oil and its derivatives without official permission:

We have previously explained to smuggling in its own meaning two types (external and internal), as Article (1 / III) of the Law on Combating Smuggling of Oil and Its Derivatives came by saying: (It is forbidden to carry oil and its derivatives by any means of carrying or transport on land, sea or river, except with an official permit from the Ministry of Oil or The authorized entity in the region according to the form prepared by the Ministry.)

The above article contained the two types of internal and external smuggling by transporting oil and its derivatives without an official permit issued by the specified authorities, which are the Ministry of Oil and the authorized entity in the region according to the form prepared in advance by the Ministry of Oil.¹⁵

This image is very common, as it requires that the transfer be without a license or permission for the internal transport process and it takes place from one governorate to another or in the same governorate, and the transfer is also carried out outside the country, so the type of external smuggling is achieved as the difference between them is crossing the state borders, i.e. from within the borders of the Republic of Iraq To abroad or vice versa, and by any means of transportation.

It is noticed in this picture of the criminal behavior of the crime that it is achieved with a positive activity represented by the transfer from one place to another on the condition that it takes place without an official permission for the transfer, and there is no point in the fact that the accused is the one who issued the unofficial permit or otherwise, as the crime is realized as soon as there is no official permission for the transfer, as the Special Discriminatory Authority directed In customs cases, convicting the accused by merely driving vehicles loaded with oil products without official approval from the competent authority, and it was issued in one of its decisions with the approval of the decisions of the Central Region Customs Court, including the arrest of the accused) A.B.M (on 2013/8/1 while driving the wheel numbered (...) Baghdad, which is loaded with white oil products in a quantity of thirty thousand liters without official approval from a competent authority, as the above commission approved the simple imprisonment penalty for eight months and a fine (3 / first) of the law against smuggling of oil and its derivatives, which is five times more The value of the smuggled item¹⁶.

Fourth: Manipulating import and export operations:

Article (1 / IV) of the fight against the smuggling of oil and its derivatives law (smuggling of oil derivatives: the use of illicit means or carry out the manipulation of the quantities imported or exported or import on paper).

This image is achieved by changing the amount of imported or exported quantities of oil and its derivatives by increase or decrease, or by submitting documents of the loaded product with a fictitious amount that has not arrived or exited from the country and there are those who call this image a fake import or export¹⁷, and are intended to work the data import and export does not exist in reality nor in the papers and documents of this process in terms of receiving oil derivatives and delivered as the case¹⁸, which support the receipt of imported quantities or delivery of quantities exported documents only, without there being received or reach yum real, and spread this image as a result of weak regulatory bodies, as witnessed a significant expansion in the security vacuum period caused the country a year after the events of In 2003, according to the reports of the Office of the Inspector General of the Ministry of Oil in 2006, this image was reported¹⁹.

The import and export operations require some kind of organization in order to limit manipulation, and these operations have become with the Iraqi Oil Marketing Company(S O M O) (The General Petroleum Marketing Company) which is considered one of the ranks of the major marketing companies, it is difficult to carry out manipulation unless there is a breach by the company or collusion on the part of an employee or assigned to a public service at the border outlets or the company's employees. If this collusion is achieved, then the company is asked in its moral capacity". This is what was stated in the provisions of Article (6 / Fourth)²⁰ of the fight against the smuggling of oil and its derivatives law.

Fifth : the sale of oil smuggled to the smuggling networks:

Lord said this picture in the provisions of Article (1 / item IV / c) of the fight against the smuggling of oil law and its derivatives by saying (the smuggling of oil derivatives: use of non - legislated methods or convert quantities of processed products to government departments and formations or civil, such as boats fishing, generators and brightest hope, farms and furnaces And fuel stations and selling them to smuggling networks for the purpose of exporting them abroad or putting them on the black market, (... as this image is achieved positively through the sale of quantities of oil that are distributed by the state (the Ministry of Oil) to the owners of factories, furnaces, farms, etc. The sold product is used for other than the purpose for which it was allocated, regardless of the goal to be achieved, whether by smuggling it abroad or selling it for profit, i.e. trading it, as the law is punishable by law for selling the oil product without there being a license issued by the competent authorities, as well as this. The act violates the provisions of Article (9) of the Iraqi Trade Organization Law No. (20) of the year 1970, as amended.²¹

And there are those who see²² That this image is one of the unlawful methods mentioned in the above article, but we see that the legislator did not specify these methods, on the one hand, and on the other hand, what was mentioned in the above text did not place them among the illegal methods, with the phrase (or (The choice between them (the use of illegal methods or transferring quantities of prepared products ... and selling them to smuggling networks ...), which benefits every single image for the purpose of exporting them abroad or putting them on the black market.

Oil and its derivatives are obtained from the quantities allocated by the departments or their facilities, whether civilian or military, and they are disposed of either by smuggling them by selling them to smuggling networks or by selling them on the black market for the purpose of their consumption. A common term in the social milieu for these smugglers is called (the sailors)²³, the Cassation Commission for Customs Cases has approved the decision of the Central District Customs Court, which includes the conviction of the accused (AWG) and sentencing him to simple imprisonment for a period of three months and a fine of (1,910,000) one million nine hundred and ten thousand dinars, which is five times the value of the article Smuggling according to the provisions of Article 3 / First of the Law on Combating Smuggling of Oil and its Derivatives, by the above accused selling white oil on the black market after buying it from citizens and selling it to furnace owners²⁴

While we find the judicial trend regarding the sale of the oil product for the purpose of trading in the form of selling it at a price higher than the price determined by the pricing authorities, in violation of the Iraqi Trade Regulation Law No. (20) of 1970 amended²⁵, the Cassation Commission for Customs Cases revoked the decision of the Customs Court for the Central Region No. (170 / K / 2010) issued on January ,2011 ,9 which included the cancellation of the charge against the accused (A.H. I) in accordance with the provisions of Article 3 / I) of the anti - smuggling law of oil and its derivatives for the pledge of allegiance material kerosene at a price higher than the price set by the Ministry of oil , if it came the decision of the body above (the audit and deliberation found that the decision of the customs court for the Central district on 2011/1/9 was built on an error in the application of the law is true as hard from the facts of the case and the evidence and what was recognized by the accused above investigation and trial that he buys material kerosene and sell them at a price higher than the price set by the ministry has set the possession of the amount of kerosene packed inside drums and Glicanat thus accused actually committed applies to the provisions of Article 9 of the organization of the trade Act No. 20 of 1970 amended Noting that the court had conducted his trial and decided to cancel the charge and his release may Janept right so decided to veto the resolution distinctive and re - file shall Mahkmtha in order to conduct his trial again in accordance with the foregoing²⁶ .

The judiciary's tendency in this picture, although it is not agreed to determine the legal description of the incident as it is smuggling or in violation of the law regulating trade , but it is united in criminalizing this incident and not leaving its perpetrators without responsibility and punishment for being a danger to the oil wealth. .

The sale may be made through mobile stations located on public roads at a commercial price and without official sales licenses .This image has spread after the occurrence of some crises in the availability of oil derivatives, which citizens urgently need, especially in the winter season , and the competent authorities have sought to reduce them by issuing circulars²⁷ to all the provinces to raise t you stations and guidance not to deal with them has indicated that its work contrary to the provisions of the law because it is a harm to the national economy , has issued a customs court central decision of the area includes the conviction of the accused (r c) pursuant to the provisions of Article (3 / I) of the law against the smuggling of oil and its derivatives so as to his possession of a mobile station that was confiscated under resolution a gaze²⁸

Sixth : sabotage of oil installations for the purpose of smuggling:

Article (6 / First) of the Law on Combating Smuggling of Oil and Its Derivatives stipulates that (under the Anti-Terrorism Law, whoever sabotages oil installations that include pipelines or tanks and others through drilling or any other act for the purpose of smuggling is punished , (as the Iraqi legislator is considered in the Anti-Terrorism Law. Smuggling of oil and its derivatives: Whoever commits this form of crime is a terrorist crime and is punishable under the Anti-Terrorism Law No. 13 of 2005.

It is evident from the above pictures of criminal behavior that all of them are only achieved by positive activity that has an appearance in the external space issued by the perpetrator, as it is not conceivable that the crime occurred with a negative activity represented by leaving or abstaining. Therefore, the crime of smuggling oil and its derivatives is considered positive crimes , and these images are mentioned in the Anti Smuggling of oil and its derivatives may arise a question that is the ruling if oil and its derivatives were imported or exported contrary to the provisions of the customs law, that is, in contravention of the provisions of the prohibition and restriction stipulated in the customs law, or the unloading of oil and its derivatives from ships or loading it on them in violation of the provisions of the law and in places other than designated ports for unloading oil And its derivatives ?It is considered a crime and punish the accused according to the law of customs or apply the law against the smuggling of oil and its derivatives to do it like discharge without places designated as ports for the discharge of oil did not provide?

The description Alkmarki for the crime of smuggling oil and its derivatives lends them to be subject to the provisions of the Customs Act in the event of absence of a provision in the law's treatment of this crime , a fight against the smuggling of oil and its derivatives law that the customs law is the common law , as well as the Penal Code and the Code of Procedure criminal , as there Whoever thinks that the images of oil smuggling

and its derivatives take the customs smuggling pictures, which are real and judgmental in line with the division that the Iraqi customs law brought ²⁹, so in the case of violation of customs law by the offender if the subject of the crime of oil or one of its derivatives, it is considered smuggling, as a result, the images of smuggling Alkmarki contained in the Customs Act are pictures of criminal behavior for the crime of smuggling oil and its derivatives are real and estoppel two images, as The Iraqi legislator came in Article (192) of the customs law the phrase (considered as smuggling ...) and Article) (191) meaning smuggling. (... These expressions suggest that the legislator has envisioned two types of smuggling, the first type falling under the true concept of smuggling. They are those criminal acts under the customs law or the laws attached to it. As for the others, they are the acts to which the legislator added the description of smuggling by provision as follows:

1- Real smuggling .

And it is achieved by illegally entering or removing oil and its derivatives from the country ³⁰. Or checks of violating the ban on the export and import of oil and its derivatives, and both images preceding this kind of smuggling has a very negative financial implications because it harms the budget of the state, especially for countries whose economy depends on oil imports as Iraq, and this kind in both depicted the e - like images smuggling stipulated in the fight against the smuggling of oil derivatives and the law contained in points (III and IV).

The saying in this form of smuggling requires that the perpetrator perform a positive act by bringing oil and its derivatives into the country or taking it out of it in contravention of the provisions contained in the customs law so that he gets rid of the payment of customs duties or taxes, and real smuggling is also achieved through the perpetrator's behavior in violation of the provisions of prohibition and restriction Imposed on the import and export of oil and its derivatives ³¹. Doing the process of transfer of oil and its derivatives contrary to the provisions of the Customs Code constitutes a crime smuggling regardless of the means in which oil is transferred across borders has traverse land Whether the border operation, air or marine. The use of marine boats (ling) intended for fishing purposes, as such equipment is provided to facilitate the task of smuggling due to the use of these boats in fishing operations, but the opposite may be proved by using these boats to smuggle oil and its derivatives, and this act is subject to the criminalization contained in the customs law and under the description of real smuggling. The customs court for the southern region incriminated the defendants (PBUH, M, U, Q) based on the provisions of Article (194 / First / B. C) of the Iraqi Customs Law after it was proven to the court that the defendants were arrested by the Coast Border Guard detachments in The area of Al-Faw and near the oil berth, while they were driving the seized boat, as they intended to smuggle the oil inside it out of the country, as the quantity seized in the boat is very large and it is inconceivable to use it as fuel for the motor boat according to the allegations of the perpetrators and it has been proven to the court that the fishing equipment on board the boat is used for the purpose of camouflage. Therefore, they were charged according to Article (194) of the Customs Law for smuggling oil and its derivatives ³².

Notes through the resolution above that crime, the place is oil and they start the defendants from their actions to smuggling in the Thar question that why addressed the court charge in accordance with the provisions of Article 194 of the Customs Act has not dealt with in accordance with the fight against the smuggling of oil law and its derivatives, which the private Bamaal law considers facial crime smuggling Oil and its derivatives? The reason for this is that the court brought the accusation prior to the issuance of the law against smuggling of oil and its derivatives, which was published in the Official Gazette on.2008/11/3 By the number (4095), that is, before its expiry date.

Was the smugglers of oil tankers using the tanks as they are remote roads wire from the road to the specified office Alkmarki whether agricultural or desert way I believe abandoned military roads ³³. Smuggling operations are not limited to neighboring countries, but may be smuggling Waldo's far as smugglers exhibits specified routes for the conduct of commercial carriers, and may be smuggling operations by commercial carriers themselves for the purpose of smuggled oil delivery to the intended place. ³⁴

2- Governmental smuggling.

It is intended to commit an act to which the description of real smuggling does not apply, but it is decided by judgment that it is smuggling, so not to go with oil and its derivatives upon entry to the nearest customs office

and not to follow the methods specified by law in entering or taking out oil and its derivatives .And unloading oil and its derivatives from ships or loading it on them in violation of the provisions of the law and in places other than designated ports for unloading oil and its derivatives , and not declaring in the office of entry and exit of oil and its derivatives imported or exported without indicating its cargo the manifest ³⁵ and the discovery of oil and its derivatives are not authorized by the Office Almarki topic in specially equipped caches to hide them in the gaps or voids are not intended to contain oil and its derivatives .It includes passing the oil and its derivatives offices , customs without declaring it in the cases of input and output , and includes discovers after leaving oil and its derivatives Almarki input from the Office of the increase or decrease or shown me for.

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Whoever engages in selling or buying or mediating in any capacity between the seller and the buyer in contravention of the provisions of this law or the data issued pursuant to it or abuse Selling or buying materials that are prohibited to deal with in the socialist sector, or that are prohibited to trade in for non-licensed registered persons.(

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