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# Jurisdiction of Competent Authorities in Adjudicating the Non-Fulfillment of Importers' Obligations Regarding the Receipt of Governmental Foreign Currency in Iranian Criminal Law

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## ABSTRACT

Due to the price differential between the governmental foreign currency rate and the free market exchange rate, foreign exchange obligations have emerged, and pursuant to Article 10 of the Law on Governmental Punishments (Ta'zirāt-e Hokūmatī), the failure to fulfill foreign exchange obligations constitutes an administrative offense, the adjudication of which falls within the jurisdiction of the Governmental Punishment Organization. However, with the enactment of the amended Law on Combating Smuggling of Goods and Currency dated January 30, 2022, under certain conditions, the non-fulfillment of foreign exchange obligations has been criminalized, and the jurisdiction for adjudicating such matters has been transferred to the Public Prosecutor's Office and the Revolutionary Court. All cases concerning the non-fulfillment of foreign exchange obligations that were adjudicated at the first instance prior to the enactment of the Law on Combating Smuggling of Goods and Currency of January 30, 2022, but which are subsequently subject to objection or appeal after the enforcement of the said law, must still be adjudicated by the primary or appellate branches of the Governmental Punishment Organization. In the event of a jurisdictional conflict between the judicial authorities and the Governmental Punishment Organization in relation to cases involving the non-fulfillment of foreign exchange obligations, the opinion of the judicial authority shall be binding upon the Governmental Punishment Organization, notwithstanding the fact that the Governmental Punishment Organization has established a special appellate branch for goods and currency smuggling, composed of a provincial appellate judge, which issues binding decisions. Decisions of the Governmental Punishment Organization concerning the non-fulfillment of foreign exchange obligations are not subject to appeal before the Administrative Justice Court; however, if the Governmental Punishment Organization issues a ruling beyond the scope of its legal jurisdiction, an objection based on lack of jurisdiction may be filed with the Administrative Justice Court (APA citation example: Article 10, Law on Governmental Punishments, 1994/2013 revision). In any event, if the ruling of the Governmental Punishment Organization in cases concerning the non-fulfillment of foreign exchange obligations is manifestly contrary to statutory law or Islamic law, such ruling is subject to objection before the Head of the Judiciary, and upon his approval, the case may be reopened and reconsidered. This study employs a descriptive-analytical documentary research method to examine the jurisdiction of competent authorities in adjudicating the non-fulfillment of importers' obligations arising from the receipt of governmental foreign currency.

**Keywords:** governmental foreign currency; importer; jurisdiction; Revolutionary Court; Governmental Punishment Organization



## Introduction

Since in the market the free exchange rate differs from the governmental exchange rate, individuals who benefit from access to governmental foreign currency are required to perform specific obligations in return. If they fail to fulfill these obligations, they become subject to legal proceedings through complaints or official reports concerning the non-fulfillment of foreign exchange obligations. Pursuant to the Law Establishing the Governmental Punishment Organization enacted in 1988, the non-fulfillment of foreign exchange obligations constitutes an administrative violation; however, the legislature, through Note 7 of Article 2 bis of the Law on Combating Smuggling of Goods and Currency enacted on January 30, 2022, has criminalized the non-fulfillment of foreign exchange obligations under certain conditions and classified it as currency smuggling. In general, the smuggling of goods and currency through authorized entry points, commonly referred to as “manifest smuggling,” may be categorized into three principal methods: (1) underweight declaration or undervaluation of imported goods; (2) misclassification or incorrect description of goods; and (3) collusion and the use of incorrect tariff classification to evade customs duties, which may also be prosecuted under the title of currency smuggling (1). Currency smuggling undermines economic stability and security; therefore, pursuant to Article 57 of the Law on Combating Smuggling of Goods and Currency enacted in 2013, currency smuggling is classified as an economic crime. The necessity of restoring violated public rights and protecting production and investment constitutes one of the primary justifications for the adoption of strict regulations against offenders of foreign exchange obligation violations, which inherently requires specialized adjudication.

If importers fail to comply with their obligations in return for receiving governmental foreign currency, specific legal authorities are vested with jurisdiction to adjudicate complaints concerning the non-fulfillment of foreign exchange obligations. In linguistic usage, jurisdiction denotes worthiness, competence, and legal capacity (2), yet in legal discourse it carries a specialized technical meaning. Some jurists define jurisdiction as the authority conferred by law upon a court to hear specific disputes (3), although the term “authority” is not entirely accurate because judicial bodies are legally obligated, rather than merely authorized, to adjudicate disputes. Accordingly, in legal terminology, jurisdiction refers to the legal competence of an authority to adjudicate a particular matter (4). The non-fulfillment of foreign exchange obligations, pursuant to Article 10 of the Law on Governmental Punishments enacted in 1988, constituted an administrative violation whose adjudication fell exclusively within the jurisdiction of the Governmental Punishment Organization. However, following the amendment of the Law on Combating Smuggling of Goods and Currency in 2022, the legislature reclassified the non-fulfillment of foreign exchange obligations as the crime of currency smuggling and prescribed criminal sanctions therefor. In lexicographic usage, smuggling has been defined as “sleight of hand” (5). The statutory definition of smuggling is set forth in Article 1 of the Law on Combating Smuggling of Goods and Currency enacted in 2013, defining smuggling as any act or omission that violates the legal formalities governing the entry or exit of goods and currency and which is deemed punishable under this law or other applicable laws. Accordingly, the concept of currency smuggling cannot be directly applied to importers merely by virtue of receiving governmental foreign currency. Currency, under paragraph (p) of Article 1 of the same law, is defined as the legal tender of foreign states, including banknotes, coins, foreign exchange drafts, and other written or electronic instruments used in financial transactions. In its broader legal meaning, currency also encompasses checks, drafts, promissory notes, and other instruments used in international payments (6). In Iran, the purchase and sale of foreign currency must be conducted through the Central Bank or

licensed exchange offices; otherwise, pursuant to paragraph (p) of Article 2 bis of the amended Law on Combating Smuggling of Goods and Currency of January 30, 2022, any unauthorized foreign exchange transaction constitutes a criminal offense. A person who receives governmental foreign currency assumes specific legally defined obligations, and the concept of obligation refers to the legal act of binding oneself and incurring liability (7). Obligations may arise from law or the will of the parties, and performance of the obligation by the obligor results in its extinguishment (8).

The term “currency smuggling” was first criminalized alongside goods smuggling in the Law on the Application of Governmental Punishments Regarding the Smuggling of Goods and Currency enacted in 1995. This law remained in force until 2013, when it was repealed by the enactment of the Law on Combating Smuggling of Goods and Currency. The 2013 law, as amended in 2015 and 2022, remains applicable. Pursuant to Note 7 of Article 2 bis of the amended Law on Combating Smuggling of Goods and Currency of January 30, 2022, the non-fulfillment of foreign exchange obligations, which had previously fallen within the jurisdiction of the Governmental Punishment Organization under Article 10 of the Law on Governmental Punishments of 1988, was formally incorporated into the category of currency smuggling. According to Article 44 of the 2013 law, the adjudication of organized and professional smuggling offenses, smuggling of prohibited goods, and serious currency smuggling offenses that entail imprisonment or dismissal from public service falls within the jurisdiction of the Public Prosecutor's Office and the Revolutionary Court, whereas other smuggling cases fall within the jurisdiction of the Governmental Punishment Organization. The same statute also recognizes the role of the Supreme Court and the discovering authority in specific circumstances. The establishment and operationalization of the comprehensive trade systems and the integration of all relevant data within these systems, enabling real-time monitoring of the chain of entry, detection, adjudication, and disposition of smuggled goods, play a significant role in preventing and combating smuggling.

Following the amendment of the Law on Combating Smuggling of Goods and Currency in 2022, adjudicatory authorities have encountered serious challenges in handling currency smuggling cases, leading to procedural delays and confusion among litigants. Among the principal questions raised are whether Article 10 of the Law on Governmental Punishments has been implicitly repealed, the proper forum for challenging decisions of the Governmental Punishment Organization when it exceeds its jurisdiction in currency smuggling cases, and which authority is competent to resolve jurisdictional conflicts between judicial bodies (the Prosecutor's Office and the Revolutionary Court) and administrative authorities (the Governmental Punishment Organization, whose appellate panel includes a provincial appellate judge).

Given that the law assigns jurisdiction over cases of non-fulfillment of foreign exchange obligations to both the Governmental Punishment Organization and the judicial authorities, serious jurisdictional challenges arise. Accordingly, this study, using a descriptive-analytical documentary research method, examines the jurisdiction of competent authorities in adjudicating the non-fulfillment of importers' obligations arising from the receipt of governmental foreign currency, focusing on two central themes: the competent authorities for adjudicating such cases, and the resolution of jurisdictional conflicts between those authorities.

### **Competent Authorities for Adjudicating the Non-Fulfillment of Importers' Foreign Exchange Obligations in Return for Receiving Governmental Foreign Currency**

The Law on Combating Smuggling of Goods and Currency explicitly identifies the authorities competent to adjudicate currency smuggling. Pursuant to Note 7 of Article 2 bis of the amended Law on Combating Smuggling

of Goods and Currency of **January 30, 2022**, the non-fulfillment of foreign exchange obligations is classified as currency smuggling and, depending on the circumstances, falls within the jurisdiction of the Governmental Punishment Organization and the Revolutionary Court.

### *Jurisdiction of the Governmental Punishment Organization in Adjudicating the Non-Fulfillment of Importers' Obligations*

The Governmental Punishment Organization was established in 1994 under the supervision of the Ministry of Justice for the purpose of adjudicating violations subject to the Law on Governmental Punishments through a non-judicial and administrative process and issuing binding decisions. Its current jurisdiction, following the enactment of the Consumer Protection Act of 2009, includes adjudication of governmental and non-governmental economic violations, violations related to smuggling of goods and currency, and violations concerning health, pharmaceuticals, and medical treatment (9). With the enactment of the Law on Combating Smuggling of Goods and Currency on December 24, 2013, jurisdiction over violations and crimes of smuggling of goods and currency was allocated between judicial authorities and the Governmental Punishment Organization based on the type of goods involved (10). Pursuant to Article 10 of the Law on Governmental Punishments enacted in 1988, the Governmental Punishment Organization is one of the competent authorities for adjudicating the non-fulfillment of importers' obligations arising from the receipt of governmental foreign currency. Following the enactment of the Law on Combating Smuggling of Goods and Currency in 2013, the Governmental Punishment Organization was, under paragraph (b) of Article 11 of that law, required to establish special primary and appellate branches for handling smuggling cases in order to expedite proceedings and prevent further violations. Accordingly, the jurisdiction of these special branches of the Governmental Punishment Organization over cases of non-fulfillment of foreign exchange obligations must be examined.

### Primary Adjudication by the Governmental Punishment Organization

The non-fulfillment of importers' obligations in return for receiving governmental foreign currency, as defined in Article 10 of the Law on Governmental Punishments enacted on March 13, 1989, was originally treated as an administrative violation concerning goods and services, and its adjudication — regardless of monetary value — fell within the jurisdiction of the ordinary branches of the Governmental Punishment Organization. However, pursuant to Note 7 of Article 2 bis of the amended Law on Combating Smuggling of Goods and Currency of January 30, 2022, non-fulfillment of foreign exchange obligations up to one hundred billion rials falls within the jurisdiction of the special smuggling branches of the Governmental Punishment Organization, whereas non-fulfillment exceeding that amount constitutes a criminal offense subject to the jurisdiction of the Public Prosecutor's Office and the Revolutionary Court. Under Article 50 of the Law on Combating Smuggling of Goods and Currency of 2013, decisions of the primary branches of the Governmental Punishment Organization are final only when the value of the smuggled goods or currency is less than twenty million rials; however, given the significant amounts of foreign currency involved in import operations, virtually all cases of non-fulfillment of foreign exchange obligations are subject to appeal.

The adoption of Note 7 of Article 2 bis of the amended law did not repeal Article 10 of the Law on Governmental Punishments of 1988, because the legal definition of the material element of the offense must still be derived from that provision. Article 78 of the Law on Combating Smuggling of Goods and Currency explicitly lists repealed

statutes, and Article 10 of the Law on Governmental Punishments is not among them. Consequently, not only was non-fulfillment of foreign exchange obligations incorporated into the category of currency smuggling, but the legislature also intensified its sanctions in the 2022 amendment. Moreover, pursuant to that amendment, the monetary value of the unfulfilled obligation directly affects both the severity of punishment and the competent adjudicatory authority, since Article 44 of the 2013 law assigns organized and professional smuggling and cases involving imprisonment or dismissal from public service to the jurisdiction of the Public Prosecutor's Office and the Revolutionary Court, while other cases remain within the jurisdiction of the Governmental Punishment Organization.

Following the 2022 amendment, serious jurisdictional disputes have arisen concerning cases of non-fulfillment of foreign exchange obligations that were initially adjudicated by the ordinary branches of the Governmental Punishment Organization but became subject to objection or appeal after the amendment's entry into force. Although it may be argued that jurisdiction over such appeals should now depend on the monetary threshold established by the amendment, it appears more consistent with fundamental principles of procedural justice that these cases remain within the jurisdiction of the Governmental Punishment Organization. At the time of commission, such conduct constituted an administrative violation, not a criminal offense, and therefore fell within the inherent jurisdiction of the Governmental Punishment Organization. Subsequent reclassification of the conduct as currency smuggling cannot retroactively alter that inherent jurisdiction.

Although procedural and jurisdictional laws generally apply retroactively, their retroactive application must be limited where it imposes additional burdens on the accused or undermines vested procedural rights. If a subsequent law restricts avenues of appeal or shortens applicable time limits, it violates vested rights and therefore cannot be applied retroactively (11). Accordingly, in order to prevent infringement of defendants' rights due to the stricter regime of the subsequent law, cases of non-fulfillment of foreign exchange obligations that occurred prior to the 2022 amendment and are now under objection or appeal must continue to be adjudicated as administrative violations by the primary and appellate branches of the Governmental Punishment Organization, pursuant to Article 10 of the Law on Governmental Punishments, and without application of the procedural rules governing criminal currency smuggling.

#### Appellate Review by the Governmental Punishment Organization Regarding the Non-Fulfillment of Importers' Obligations in Return for Receiving Governmental Foreign Currency

Pursuant to Article 50 of the Law on Combating Smuggling of Goods and Currency, where the value of the smuggled goods or currency is twenty million rials or more, the decision of the Governmental Punishment Organization may be appealed within twenty days from the date of notification before the special appellate branches for smuggling of goods and currency of this organization in the relevant province. Each such appellate branch consists of a presiding judge and two advisors. The two advisor members are appointed from within the Governmental Punishment Organization, while the presiding judge is selected from the judiciary. Pursuant to Article 49 of the Law on Combating Smuggling of Goods and Currency, for the purpose of exercising judicial supervision over smuggling cases within the Governmental Punishment Organization, the presiding judges of the special appellate branches for smuggling of goods and currency are appointed upon the proposal of the head of the organization and confirmation by the Minister of Justice, from among judges holding Grade Nine judicial rank, following the approval of the Head of the Judiciary and by his official decree.

In addition to appeals filed by the convicted person, the special appellate branches for smuggling of goods and currency within the Governmental Punishment Organization may also review decisions issued in cases of non-fulfillment of foreign exchange obligations in two additional situations. Pursuant to Note 3 of Article 50 of the Law on Combating Smuggling of Goods and Currency as amended on **October 13, 2015**, in all first-instance decisions that are final, or decisions that have become final due to the absence of an appeal, where there exists evidence that the decision is not in conformity with the law or that the monetary fine is disproportionate to the applicable law, the Head of the Governmental Punishment Organization may request appellate review. Such a request by the Head of the Governmental Punishment Organization shall be examined by the province's special appellate branch for smuggling of goods and currency.

It may be argued that, due to the use of the phrase "may" in the above note, the Head of the Governmental Punishment Organization has no mandatory duty to seek appellate review; however, it is more appropriate to regard this power as a legal duty in cases of non-conformity with the law or disproportionality of the fine, because treating it as a discretionary option may lead to infringement of the potential rights of the convicted person or the state and, more importantly, to the non-enforcement of the law.

#### *Jurisdiction of the Public Prosecutor's Office and the Revolutionary Court in Adjudicating the Non-Fulfillment of Importers' Obligations in Return for Receiving Governmental Foreign Currency*

The Public and Revolutionary Prosecutor's Office consists of the prosecutor as the head of the office, a number of deputies, assistant prosecutors, investigating judges, and administrative staff. From a territorial perspective, a Public and Revolutionary Prosecutor's Office is established within the judicial district of each county, and there is neither a district (bakhsh) prosecutor's office nor a provincial prosecutor's office (4). The crimes over which the Revolutionary Court has jurisdiction are enumerated in Article 303 of the Criminal Procedure Code, and correspondingly, the competent authority at the stage of preliminary investigations is the Public and Revolutionary Prosecutor's Office. Under paragraph (t) of Article 303 of that code, certain crimes are, by virtue of special legislation, assigned to the jurisdiction of the Revolutionary Court and necessarily fall, in the first instance, within the jurisdiction of the Public and Revolutionary Prosecutor's Office.

Crimes relating to smuggling of goods and currency are among those offenses that, pursuant to special legislation—namely the Law on Combating Smuggling of Goods and Currency enacted in 2013—fall within the jurisdiction of the Revolutionary Court. The Judiciary, pursuant to paragraph (a) of Article 11 of the Law on Combating Smuggling of Goods and Currency, was obligated to designate special branches for adjudicating smuggling crimes. Pursuant to Article 44 of the same law, adjudication of organized and professional smuggling offenses, smuggling of prohibited goods, and smuggling of goods and currency that entail imprisonment or dismissal from public service falls within the jurisdiction of the Public Prosecutor's Office and the Revolutionary Court.

The competent forum for adjudicating non-fulfillment of foreign exchange obligations varies depending on the amount of the unfulfilled obligation. If the amount is less than one hundred billion rials, the matter falls within the jurisdiction of the Governmental Punishment Organization. However, where the amount of non-fulfillment is equal to or exceeds one hundred billion rials, since the prescribed sanction includes imprisonment, and smuggling offenses entailing imprisonment fall within the jurisdiction of the Public Prosecutor's Office and the Revolutionary Court under Article 44 of the Law on Combating Smuggling of Goods and Currency, jurisdiction lies with the Public Prosecutor's Office and the Revolutionary Court.



Moreover, pursuant to Article 50 bis (2) enacted on January 30, 2022, where, in connection with the commission of crimes and violations under the Law on Combating Smuggling of Goods and Currency, additional crimes such as bribery, corruption, forgery, use of forged documents, unlawful influence, or armed resistance have also been committed, the Revolutionary Prosecutor's Office and the Revolutionary Court shall adjudicate all smuggling-related crimes and violations together with those associated offenses. Therefore, under this provision, if an importer—regardless of the monetary amount of the unfulfilled foreign exchange obligation—commits the offense of bribery in connection with the non-fulfillment, the adjudication of both the non-fulfillment and the bribery will fall within the jurisdiction of the Public Prosecutor's Office and the Revolutionary Court, even if the value of the unfulfilled obligation is less than one hundred billion rials.

The Law on Combating Smuggling of Goods and Currency does not specify an appellate threshold for decisions issued by the Revolutionary Court; however, pursuant to Article 51 of that law, in all matters where procedural rules are not provided, the Criminal Procedure Code applies. Accordingly, the rules governing the appealability of Revolutionary Court judgments and the competent forum for such appeals must be determined by reference to criminal procedure law. Under Article 427 of the Criminal Procedure Code, decisions of the Revolutionary Court are final only with respect to Grade Eight ta'zir crimes, whereas in other cases they are subject to appeal. Depending on the category of punishment, certain Revolutionary Court decisions are subject to cassation review before the Supreme Court, while others are appealable before the Provincial Court of Appeal. Pursuant to Article 428 of the Criminal Procedure Code, judgments concerning crimes punishable by death, amputation, life imprisonment, or Grade Three ta'zir and above, as well as certain intentional offenses against bodily integrity meeting specific diyah thresholds, and judgments concerning political and press offenses, are subject to cassation review by the Supreme Court. Therefore, where the punishment applicable to the offense of non-fulfillment of foreign exchange obligations by importers in return for governmental foreign currency falls within those categories, the competent cassation authority is the Supreme Court; in other cases, the competent forum for reviewing objections to Revolutionary Court judgments is the Provincial Court of Appeal.

In addition to the convicted person, other persons may also challenge judgments in non-fulfillment of foreign exchange obligation cases. Pursuant to Article 50 bis (1) of the Law on Combating Smuggling of Goods and Currency enacted on January 30, 2022, decisions of non-prosecution, termination of prosecution, acquittal, and conviction issued by the Prosecutor's Office or the Revolutionary Court in smuggling cases—including cases concerning non-fulfillment of foreign exchange obligations—may, subject to the conditions specified in that provision, be appealed by the prosecutor, the Headquarters for Combating Smuggling of Goods and Currency, the discovering authority, law enforcement officers, and the authority responsible for collecting government revenues. It should be noted that, in cases of non-fulfillment of foreign exchange obligations, foreign currency is typically not “discovered” in a physical sense; therefore, the discovering authority is generally not applicable in such cases, and reports of such violations and crimes are commonly submitted to the competent authority by the bank.

### *Jurisdiction of the Supreme Court*

The Supreme Court, as the highest judicial authority in the country, performs multiple functions. Pursuant to Article 161 of the Constitution, “The Supreme Court shall be formed for the purpose of supervising the correct implementation of laws by courts, establishing uniformity of judicial practice, and performing the responsibilities assigned to it by law, in accordance with regulations determined by the Head of the Judiciary.” Review before the

Supreme Court is formal in nature, focusing on compliance of the judgment and the case file with procedural requirements. Retrial (*i'ādat-e dādrasī*) before the Supreme Court constitutes one of the extraordinary methods of challenging judgments and is limited to final judgments, enabling reconsideration of the case by the court that issued the contested judgment (12). Pursuant to Article 50 bis (3) of the Law on Combating Smuggling of Goods and Currency as added on January 30, 2022, where the Head of the Judiciary determines that a final decision issued by the special branches of the Governmental Punishment Organization in smuggling cases is manifestly contrary to Islamic law, he may authorize retrial and refer the case to the Supreme Court for adjudication by special designated branches, whose decision shall be final. Accordingly, decisions of the Governmental Punishment Organization concerning cases of non-fulfillment of foreign exchange obligations are not subject to challenge before other judicial authorities; however, under the special conditions set forth in the aforementioned provision, they may be subject to retrial before the Supreme Court.

Furthermore, pursuant to Note 1 of Article 49 of the Law on Combating Smuggling of Goods and Currency as amended in 2022, where divergent judgments are issued by the special appellate branches of the Governmental Punishment Organization in similar cases, the matter shall, upon request of the Head of the Organization or the Minister of Justice, be referred to the General Assembly of the Supreme Court for the purpose of establishing judicial uniformity. The applicability of this provision is limited to conflicting judgments issued by the special appellate branches; therefore, where inconsistent decisions are issued by the special primary branches of the Governmental Punishment Organization, the matter is not subject to review by the Supreme Court.

Retrial of final decisions issued by the Public Prosecutor's Office and the Revolutionary Court may occur through two mechanisms: first, the application of Article 477 of the Criminal Procedure Code, whereby if the Head of the Judiciary determines that a final judicial decision is manifestly contrary to Islamic law, he may authorize retrial and refer the case to the Supreme Court for adjudication by special designated branches, which shall annul the prior final decision and conduct a full reconsideration, both procedurally and substantively; and second, under the conditions prescribed in Article 474 of the Criminal Procedure Code, whereby the convicted person, the Prosecutor General, or the executing prosecutor may request retrial before the Supreme Court in cases concerning non-fulfillment of foreign exchange obligations. Additionally, where divergent decisions are issued by the Public Prosecutor's Office and the Revolutionary Court in similar cases of smuggling of goods and currency, judicial uniformity shall be established pursuant to Article 471 of the Criminal Procedure Code, upon request of the President of the Supreme Court or the Prosecutor General, through the General Assembly of the Supreme Court.

Decisions of the Governmental Punishment Organization concerning non-fulfillment of foreign exchange obligations were, prior to the amendment of the Law on Combating Smuggling of Goods and Currency in 2022, subject to challenge before the Administrative Justice Court. Pursuant to Article 173 of the Constitution, complaints and grievances against administrative authorities and their officials fall within the inherent jurisdiction of that court (13). However, following the 2022 amendment, non-fulfillment of foreign exchange obligations was classified as currency smuggling, and pursuant to Note 2 of Article 50 of the Law on Combating Smuggling of Goods and Currency, decisions of the Governmental Punishment Organization in such cases are not subject to challenge before the Administrative Justice Court or any other judicial authority. This restriction is subject to serious legal critique, because under Article 10 of the Law on the Administrative Justice Court, all decisions and actions of administrative bodies are in principle subject to judicial review. Although decisions of the Governmental Punishment Organization are formally excluded from review by the Administrative Justice Court, it appears that where this



organization acts ultra vires and issues a decision beyond its legal jurisdiction, an objection based on lack of jurisdiction may still be brought before the Administrative Justice Court pursuant to Article 10 of the Law on the Administrative Justice Court.

### **Jurisdictional Conflicts Between Authorities in Adjudicating the Non-Fulfillment of Importers' Obligations in Return for Receiving Governmental Foreign Currency**

The Governmental Punishment Organization and the Public Prosecutor's Office and Revolutionary Court each possess inherent jurisdiction over cases of non-fulfillment of foreign exchange obligations, as only these authorities are legally competent to adjudicate such violations or crimes. Laws governing jurisdiction constitute mandatory public-order norms that bind all judicial authorities, including both prosecutorial and adjudicatory bodies, and deviation from such rules is impermissible (14). Furthermore, where a court determines that it lacks territorial jurisdiction, it must, even in the absence of any objection by the defendant, issue a ruling of lack of jurisdiction and transfer the case to the competent authority.

In this section, jurisdictional conflicts arising in the adjudication of non-fulfillment of foreign exchange obligations are examined under two categories: conflicts of inherent jurisdiction and conflicts of territorial jurisdiction.

#### *Conflict of Inherent Jurisdiction*

The determination of jurisdiction or lack of jurisdiction of any court over a case referred to it lies with that same court. Accordingly, the court, in adjudicating a case or the matter raised therein, does not require authorization from any other authority, and if it deems itself competent, it shall proceed with adjudication (12). Pursuant to Article 44 of the Law on Combating Smuggling of Goods and Currency, adjudication of cases of non-fulfillment of foreign exchange obligations is assigned to the Governmental Punishment Organization when the conduct constitutes a violation, and to the Public Prosecutor's Office and the Revolutionary Court when it constitutes a criminal offense. Under Article 51 of the same law, in all matters where procedural rules are not provided therein, the Criminal Procedure Code shall apply. Article 317 of the Criminal Procedure Code refers the resolution of jurisdictional disputes in criminal matters to the rules of civil procedure. Therefore, in cases of non-fulfillment of foreign exchange obligations that fall within the jurisdiction of the Public Prosecutor's Office and the Revolutionary Court, resolution of jurisdictional disputes shall follow the rules of Article 28 of the Civil Procedure Code. Under that provision, where a jurisdictional dispute arises between public courts, military courts, and the Revolutionary Court, or where such courts decline jurisdiction in favor of non-judicial authorities or declare themselves competent, the case shall be referred to the Supreme Court for resolution, and the Supreme Court's ruling on jurisdiction shall be binding.

Accordingly, in cases of non-fulfillment of foreign exchange obligations, if a conflict of inherent jurisdiction arises between the Revolutionary Court and a public or military court, the case shall be referred to the Supreme Court for resolution. However, the second part of Article 28 of the Civil Procedure Code, insofar as it concerns the Revolutionary Court, has been specifically superseded by the Note to Article 44 of the Law on Combating Smuggling of Goods and Currency, which provides that where, after referral of a case to the Governmental Punishment Organization and completion of investigations, it becomes evident that the offense falls within the jurisdiction of judicial authorities, the branch concerned must immediately issue a ruling of lack of jurisdiction and transfer the case directly to the competent judicial authority; and where the judicial authority determines that the case falls within the jurisdiction of the Governmental Punishment Organization, the latter shall be obligated to adjudicate. The said

note expressly excludes the application of Article 28 of the Civil Procedure Code in this context. Consequently, in jurisdictional disputes between the Revolutionary Court and the non-judicial authority (the Governmental Punishment Organization) concerning cases of non-fulfillment of foreign exchange obligations, the opinion of the judicial authority is binding upon the Governmental Punishment Organization.

Pursuant to Article 36 of the Constitution, the imposition and execution of punishment must be carried out solely by a competent court. This principle reflects the legality of punishment and the legality of criminal procedure. Accordingly, no punishment or security or corrective measure may be applied unless provided for by law. The establishment of parallel institutions to the Judiciary, such as the Governmental Punishment Organization, which exceptionally engage in judicial functions despite their administrative nature and executive affiliation, conflicts with the principle of separation of powers and has been the subject of significant criticism (15). In this regard, conferring upon such an administrative body the authority to impose and execute punishments — a core function of the Judiciary — is constitutionally questionable and contrary to fundamental legal principles. Judges, even where the legislature deviates from these principles, remain bound by them. This position accords with classical legal theory, which holds that the administration of justice must remain exclusively within the judicial domain (16).

Under the Law on Combating Smuggling of Goods and Currency, the issuance of bail orders is, under certain conditions, mandatory for the adjudicating authority. Pursuant to Note 2 of Article 41 of that law, in cases involving crimes other than those specified in Article 21, where there is a risk of evidence concealment, flight of the accused, or collusion, and in cases involving smuggled goods valued at more than one hundred million rials, issuance of a bail order proportionate to the prescribed punishment is mandatory. The said provision refers explicitly to “crimes,” which indicates that mandatory issuance of bail applies solely to criminal cases of smuggling — not administrative violations — that fall within the jurisdiction of the Public Prosecutor’s Office and the Revolutionary Court. Although Article 46 of the same law grants the Governmental Punishment Organization judicial powers in cases within its jurisdiction, such delegation cannot extend to all judicial powers, particularly where deprivation of liberty may result. The issuance of detention orders constitutes the most severe criminal security measure and is subject to strict judicial conditions. An administrative authority may not lawfully restrict individual liberty in this manner, as such action would contravene Article 36 of the Constitution. The principle of constitutional supremacy requires that all ordinary legislation conform to the Constitution and not contradict its fundamental guarantees (17). Accordingly, granting the Governmental Punishment Organization authority to issue bail orders that may lead to detention is constitutionally problematic and should be reconsidered in future legislative amendments.

Pursuant to Article 44 of the Law on Combating Smuggling of Goods and Currency and its note, where a case of non-fulfillment of foreign exchange obligations is sent directly by a bank to the Governmental Punishment Organization and that organization deems itself incompetent, it must issue a ruling of lack of jurisdiction in favor of the judicial authorities. However, if the judicial authority returns the case to the Governmental Punishment Organization or initially refers a case involving non-fulfillment of obligations exceeding one hundred billion rials to that organization, the Governmental Punishment Organization is legally bound to comply and proceed with adjudication, but only within the limits of its lawful powers. It may impose monetary fines and non-custodial sanctions, but it may not impose imprisonment. The binding nature of the judicial authority’s determination of jurisdiction follows directly from the final part of the note to Article 44 of the law.

Where an accused commits multiple instances of non-fulfillment of foreign exchange obligations, some below and some equal to or exceeding one hundred billion rials, jurisdiction must be determined by reference to the

aggregate value of the obligations. Under the final clause of Note 7 of Article 2 bis of the Law on Combating Smuggling of Goods and Currency, in cases of multiple violations, the relevant threshold is determined by summing the monetary amounts. If the aggregate amount is below one hundred billion rials, the violations are adjudicated by the competent branch of the Governmental Punishment Organization in the locality where the most significant violation occurred. If the aggregate amount reaches or exceeds one hundred billion rials, jurisdiction lies with the Public Prosecutor's Office and the Revolutionary Court in the locality where the most substantial non-fulfillment of obligations occurred.

### *Conflict of Territorial Jurisdiction*

Article 310 of the Criminal Procedure Code, as a general rule, provides that the accused shall be tried by the court within whose territorial jurisdiction the crime occurred; if a person commits multiple crimes in different judicial districts, adjudication shall take place before the court in whose district the most serious crime occurred; if the crimes are equal in terms of punishment, the court in whose district the accused is arrested shall adjudicate all of them; and if the accused has not been arrested, the court in whose district the prosecution was first initiated shall have jurisdiction over all crimes. Territorial jurisdiction refers to the competence to adjudicate a dispute based on geographic criteria such as the domicile or residence of a party, the location of immovable property, the place where the crime occurred, and similar connecting factors (18). The extent of harm to public order in the place where the crime occurred can be evaluated and assessed. Territorial jurisdiction has also been described as the geographic domain within which a court may exercise its inherent jurisdiction (19).

In cases of non-fulfillment of foreign exchange obligations, foreign currency is generally not "discovered" such that the place of discovery of smuggled currency could be treated as the competent forum. Therefore, the competent authority for adjudicating non-fulfillment of foreign exchange obligations should, as the case may be, be the branches of the Governmental Punishment Organization or the Public Prosecutor's Office and the Revolutionary Court in the locality where the agent bank is situated. This is because the accused appears at the bank and, in order to receive governmental foreign currency, signs obligation-creating documents at that bank. Accordingly, the bank must, as appropriate, submit the report of non-fulfillment of foreign exchange obligations to the Public Prosecutor's Office and the Revolutionary Court or to the branches of the Governmental Punishment Organization in the county where the bank branch is located, and it may not submit such a report to the authorities of a neighboring county or to the authorities located at the supervisory headquarters of the agent bank, unless the Governmental Punishment Organization or the Public Prosecutor's Office and the Revolutionary Court have not been established in that locality. In that event, the report of the violation shall be submitted to the nearest Governmental Punishment office, and the report of the crime shall, pursuant to Judicial Uniformity Decision No. 676 dated May 31, 2005, of the General Assembly of the Supreme Court, be referred for adjudication to the public court of the place where the crime occurred.

The Law on Combating Smuggling of Goods and Currency is silent regarding conflicts of territorial jurisdiction. Pursuant to Article 317 of the Criminal Procedure Code, resolution of jurisdictional disputes in criminal matters shall be conducted in accordance with the Civil Procedure Code. Therefore, in cases of non-fulfillment of foreign exchange obligations that fall within the jurisdiction of the Public Prosecutor's Office and the Revolutionary Court, territorial jurisdiction disputes shall be resolved pursuant to Article 27 of the Civil Procedure Code, under which a court that finds itself territorially incompetent issues a ruling of lack of jurisdiction and transfers the file to the

competent court; the receiving court must rule promptly on jurisdiction and, if it rejects the lack-of-jurisdiction claim, must refer the file to the Provincial Court of Appeal for resolution, whose decision is binding. Where the dispute concerns courts located in two different provinces, the competent dispute-resolution authority, under the same framework, is the Supreme Court.

The Law on Combating Smuggling of Goods and Currency does not specifically address territorial jurisdiction disputes between branches of the Governmental Punishment Organization. However, by analogy to Article 27 of the Civil Procedure Code, where a Governmental Punishment branch deems itself territorially incompetent, it issues a ruling of lack of jurisdiction and transfers the file to the competent branch; if the receiving branch rejects the claim, it refers the file to the provincial appellate branch, and the decision of the special appellate branch for smuggling of goods and currency is binding on territorial jurisdiction. In cases where a territorial jurisdiction dispute arises between appellate branches of two different provinces, the Law on Combating Smuggling of Goods and Currency provides no explicit rule; nevertheless, in practice, the case is referred by order of the Head of the Governmental Punishment Organization to one of the special national-jurisdiction appellate branches for smuggling of goods and currency located in the central office (Tehran).

One exception to the principle of territorial jurisdiction arises in cases of multiplicity of crimes. An accused may commit non-fulfillment of foreign exchange obligations at several bank branches; in such circumstances, pursuant to Article 51 of the Law on Combating Smuggling of Goods and Currency, Article 310 of the Criminal Procedure Code applies, and adjudication takes place before the authority in whose district the most serious crime occurred. Accordingly, where the accused has committed multiple instances of non-fulfillment of foreign exchange obligations, adjudication occurs in the forum where the rial value of the unfulfilled foreign exchange obligation vis-à-vis the agent bank is higher. In effect, the court of the place of the more serious offense enjoys additional jurisdiction. Additional jurisdiction requires explicit statutory authorization, and where there is doubt, the presumption is against additional jurisdiction. However, in some jurisdictions, legal doctrine and judicial practice, through expansive interpretation, recognize the possibility of extending additional jurisdiction beyond cases explicitly mentioned in statute (20).

It should be noted that, in many instances, banks in their reports to the competent authority record the amount of the unfulfilled foreign exchange obligation merely as the amount of currency received, and refrain from specifying the rial value of the violation, on the view that imposing liability based on rial valuation—given exchange-rate volatility—may cause the bank loss. However, omission of the rial value creates ambiguity as to jurisdiction. Therefore, banks must, in addition to specifying the amount of the unfulfilled foreign exchange obligation, also indicate its rial value in their reports, so that if the receiving authority—whether the Revolutionary Prosecutor's Office or the Governmental Punishment Organization—deems itself incompetent, it may issue a ruling of lack of jurisdiction and transfer the case to the competent authority.

Departure from territorial jurisdiction may also occur based on the official status of the perpetrator. In certain cases, due to the importance of more rigorous adjudication in central courts, or due to the offender's official position, the legislature departs from the general rule of the court of the place of the crime and assigns jurisdiction exclusively to the provincial capital courts or to courts in Tehran. Adjudication of non-fulfillment of foreign exchange obligations is not excluded from this framework. Accordingly, adjudication of non-fulfillment of foreign exchange obligations in the amount of ten billion rials or more by individuals covered under Article 307 of the Criminal Procedure Code falls within the jurisdiction of the Public Prosecutor's Office and the public and revolutionary courts of Tehran, whereas adjudication of non-fulfillment of foreign exchange obligations in the amount of ten billion rials or more by individuals

covered under Article 308 of that code falls within the jurisdiction of the Public Prosecutor's Office and the public and revolutionary courts of the provincial capital where the crime occurred. The Law on Combating Smuggling of Goods and Currency is silent regarding non-fulfillment of foreign exchange obligations up to ten billion rials committed by the officials listed in Articles 307 and 308 of the Criminal Procedure Code; however, since Article 51 of that law provides that where procedural rules are not specified, the Criminal Procedure Code applies, non-fulfillment of foreign exchange obligations up to ten billion rials committed by officials under Article 307 falls within the jurisdiction of the Governmental Punishment Organization in Tehran, and non-fulfillment up to ten billion rials committed by officials under Article 308 falls within the jurisdiction of the Governmental Punishment Organization in the provincial capital where the crime occurred.

Another instance of departure from territorial jurisdiction is transfer of venue (*ehāleh*). Transfer of venue refers to assigning adjudication of a charge from the territorially competent court to another court in whose district the crime did not occur. Transfer of venue applies only to territorial jurisdiction and is impermissible with respect to inherent jurisdiction (21). The grounds for transfer of venue are addressed in Articles 418 and 419 of the Criminal Procedure Code. It should be noted that transfer of venue is an exceptional mechanism that must be applied only in specific circumstances. First, the principle remains the jurisdiction of the court of the place of the crime; second, after a case has been assigned to a branch, it cannot be withdrawn from that branch and reassigned to another (22).

The Law on Combating Smuggling of Goods and Currency contains no explicit provision concerning transfer of venue in cases where adjudication of non-fulfillment of foreign exchange obligations falls within the jurisdiction of the Governmental Punishment Organization. However, since Article 51 provides that where procedural rules are not specified the Criminal Procedure Code applies, and given the permissibility of expansive interpretation of procedural rules, Governmental Punishment branches may exercise the power of transfer of venue under the legally prescribed conditions, particularly because Article 46 of that law recognizes that where the Governmental Punishment Organization is competent, its branches possess the same powers as judicial authorities in adjudicating such cases. Accordingly, transfer of venue of a file from the Governmental Punishment branch of one county to another county within the same province may be effected upon request of the head of the county Governmental Punishment office and approval of the first appellate branch of that province, and transfer from one province to another may be effected upon request of the provincial director-general of the Governmental Punishment Organization and approval of the head of the Governmental Punishment Organization.

## Conclusion

The non-fulfillment of foreign exchange obligations constitutes a violation of the regulations and rules established by the government concerning importation, which results in non-performance of obligations, quantitative or qualitative reduction of goods, and the outflow of foreign currency from the country. Jurisdiction over the adjudication of non-fulfillment of importers' obligations arising from the receipt of governmental foreign currency, as originally regulated under Article 10 of the Law on Governmental Punishments enacted in 1988 and subsequently classified as currency smuggling under Article 2 bis of the Law on Combating Smuggling of Goods and Currency as amended in 2022, is assigned, depending on the circumstances, to the Public Prosecutor's Office and the Revolutionary Court or to the Governmental Punishment Organization. Nevertheless, pursuant to Article 50 bis (3) of the amended Law on Combating Smuggling of Goods and Currency of 2022 and Article 477 of the Criminal Procedure Code, where

the Head of the Judiciary determines that a final decision issued by the Governmental Punishment Organization or by the Public Prosecutor's Office and the Revolutionary Court is manifestly contrary to Islamic law, he may authorize retrial.

Decisions of the Governmental Punishment Organization concerning non-fulfillment of foreign exchange obligations were, prior to the amendment of the Law on Combating Smuggling of Goods and Currency on January 30, 2022, subject to challenge before the Administrative Justice Court, since the underlying conduct was not classified as currency smuggling at that time. However, under Note 2 of Article 50 of the Law on Combating Smuggling of Goods and Currency enacted in 2013, decisions issued by the branches of the Governmental Punishment Organization in smuggling cases, including cases of non-fulfillment of foreign exchange obligations, are no longer subject to challenge before the Administrative Justice Court or any other judicial authority. Nonetheless, cases of non-fulfillment of foreign exchange obligations that occurred prior to the 2022 amendment and that are subject to objection or appeal under the current legal regime must continue to be adjudicated by the primary or appellate branches of the Governmental Punishment Organization pursuant to Article 10 of the Law on Governmental Punishments, because at the time of their occurrence they constituted administrative violations rather than criminal acts of currency smuggling.

The enactment of Note 7 of Article 2 bis of the Law on Combating Smuggling of Goods and Currency in 2022 did not repeal Article 10 of the Law on Governmental Punishments of 1988, since establishment of the material element of the offense — a necessary condition for criminal liability — still requires reference to that provision, while the applicable punishment is determined by the Law on Combating Smuggling of Goods and Currency. Moreover, the statutes repealed by the amendment are expressly enumerated in Article 78 of the Law on Combating Smuggling of Goods and Currency, and Article 10 of the Law on Governmental Punishments is not among them.

Pursuant to the Note to Article 44 of the Law on Combating Smuggling of Goods and Currency as amended in 2015, in the event of a jurisdictional conflict between judicial authorities (the Public Prosecutor's Office and the Revolutionary Court) and administrative authorities (the Governmental Punishment Organization) in cases concerning non-fulfillment of foreign exchange obligations, the opinion of the judicial authority is binding on the administrative authority, and the Governmental Punishment Organization — even through its special appellate branches that include a judicial judge — may not dispute the determination of the judicial authority in this regard. Decisions issued by the branches of the Governmental Punishment Organization in cases of smuggling of goods and currency are not subject to challenge before the Administrative Justice Court or other judicial authorities; however, where such decisions are manifestly contrary to Islamic law, they may be reopened and reconsidered upon authorization by the Head of the Judiciary.

Given that the legislature has prescribed heavy monetary penalties for non-fulfillment of foreign exchange obligations, it would have been more consistent with the protection of individual rights if decisions of the Governmental Punishment Organization, like other governmental acts and decisions, were subject to judicial or administrative judicial review in order to prevent potential infringement of the rights of accused persons.

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All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

## Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

## Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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