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STUDY OF CRIMINAL AND LEGISLATIVE POLICY OF IRANIAN GOVERNMENT TOWARDS PUBLIC SECTOR REVENUES

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Abstract:-National budget includes two basic pillars of Revenue and Costs budget from viewpoint of law, is accordance and legal document for running countries annual matters, is in balance between executive and judiciary branch. Managing and organizing budget is the direct effect of political structure and relations between branches.

The essence of budget sources is not the same. A part of government's incomes, derived from transmitting national wealth. Having access to this part of incomes is because of government's authority on public wealth and incomes. The other part of budget is the result of increasing in the value of economical activities along with taxing the society. The origin of accessibility of government to these resources is the power of governance that government has upon the society. Other part of governments income is derived from, the governments control over public establishments. Finally, some sections of governments income, comes from borrowing and temporary receptions. The first one includes 1- estimating of revenue 2- recognizing, calculating, and determining of revenue 3-receiving of revenue, and 4-depositing of revenue. In the Iranian legal system, only the second and third stages have been subject to criminal protections. In addition the stages of 2 and 3 have not been subject to criminal protections completely.

Keywords: National budget, Revenues, criminal protections, criminalization, Iranian Legal system.

INTRODUCTION

Each budget document consists of two parts of incomes and expenses. Incomes are those transactions of public sector that increase the equity and these incomes are composed of the incomes from ministries, public institutions, taxes, dividends of public companies, revenue from monopolies and ownerships and other incomes that are entitled as public revenues in the national whole budget law. Despite the importance and superiority that the revenues section has over expenditures section, the first part i.e. the revenues component of budget has been given a lower support by legislators in Iranian legal and regulatory system. Penal policy of the revenues section in Iranian penal system is the subject of this article.

Study of Criminal and Legislative Policy of Iranian Government about the Levels of Incomes:

Criminal law is an instrument which ensures the proper execution of the other laws. By means of criminal law, the legislator extends his supports towards the issues that have a high importance. In Iranian legal system, despite the widespread penal support of the expenditures section of budget system, the income section has been subjected to the lowest penal and non-penal supports. In order to understand the scope of the penal support for this section of budget laws, it is necessary to mention that the incomes category is comprised multi-levels: 1- revenues anticipation 2- revenues recognition 3 - revenues collection 4 - Deposit of revenues.

Article (600) of the Islamic Penal Code which is the statutory element of criminal protection of incomes has stipulated that "If any of the governmental authorities and employees and assigned ones who are recognized as the agent in charge for recognition, determining, calculation or collection of a fund or a property in favor of the government violates the law or abuses the legal provisions in his/her collecting of that fund or property or orders to do so, shall be sentenced to imprisonment from two months to one year." The punishment mentioned in this article is also applicable to the municipal officials and authorities. However, the funds collected contrary to law and regulations will be refunded to the aggrieved parties." According to this legal act, in following lines we will investigate the scope of the penal support for each of the

aforementioned levels.

1: The Income Anticipation Level and Its Penal Protection

Income prediction is an art rather than a science and the same feature has made us to say that as a general rule, it is rarely accurate to estimate and anticipate the incomes. Article (1) of the Public Audit Act provides that "The national total budget is the financial plan of the government which is prepared for a financial year and contains the forecast of incomes and other sources of funding On the other hand, according to Article (52) of the Constitution, "the national total annual budget is provided by the government in the order required by law and will be submitted to Parliament for considerations ..."

Article (13) of the budget plan Act of 1972 provides that "All the executive agencies are required to provide and submit their annual plan and the budget of the following year along with their current and development credits as required by budget preparation instructions to (the plan and the budget) organization."

As can be seen from the context of the legal acts, the income prediction is one of those issues found in the scope and responsibilities of executive agencies and the organization in charge of the planning and budget and the government. By investigation of article (600) of the Islamic Penal Code, we find that the lack of prediction of incomes needed by executive agencies and/or wrong and unprofessional prediction has not been subjected to criminalization. Perhaps the explanation for this matter is that the realization of the revenues is a topic subject to a variety of factors and conditions. For instance, anticipation of incomes is highly dependent on environment and the economic conditions.

2: Recognition, Determination and Calculation of Incomes

While predicting a type of income, sometimes the legislators assign the evaluation and calculation of its exact amount to the executors. Among these instances, one can mention to the tax revenues. In articles (219), (229) and (237) of Direct Tax Code, the responsibility to identify and recognition of taxable incomes has been assigned to the tax agency and its agents. Article (270) of Direct Tax Law has specified administrative enforcement for tax agents that act deliberately or by negligence in finding the incomes more or less than the real amounts. At the end of clause (2) of the above legal article, it has been provided that "... in case of bad intentions of the accused, he/she will be prosecuted by tax enforcement prosecutor..." The legal factors of the criminal act, improper allocation coupled with bad intention are provided in Article (600) of the Islamic Penal Code. Under this provision "any of the governmental authorities and employees and assigned ones who are recognized as the agent in charge for recognition, determining, calculation or collection of a fund or a property in favor of the government violates the law or abuses the legal provisions in his/her collecting of that fund or property or orders to do so, shall be sentenced to imprisonment from two months to one year...". One of the most common issues in miscalculation of incomes is related to the determination and calculation of income earned from the crimes and fines which is regarded as one of the constituent sources of public incomes. In some cases, it is seen that the executive agencies authorities demand some amounts as delay penalty or compensation in contracts concluded with individuals or entities, but at the time of its calculation, they apply a discount on the amount, or they may generally ignore its collection.

It should be noted that according to Article (126) of the Public Audit Act "The rights provided in favor of the government because of the terms contained in contracts are not forgivable wholly or partially, except for decisive judgments of justice which shall be binding". Although the style of writing of the article 600 of the Islamic Penal Code, particularly the part pertaining to the result of the verdict where it uses the words "take" or "ordering to take", it deems that the legislator intended to support those who provide the income, rather than merely the individuals and including the government. However, perhaps the term "unconstitutional" makes us conclude that improper calculation of income which is less than the due amount, has been subject to penal support. Because if the legislator simply intended to protect persons from whom the incomes are collected, there was no need for the provisions "unconstitutional" and "against the rules". By accepting this remarkable argument, we can say that the discount or relief in legal and contractual penalties and compensations are instances of miscalculation which have been criminalized in Article (600) of the Islamic Penal Code. The important and critical point concerning this level of incomes categories is that the legislative's tone in Article (600) of the Islamic Penal Code is an affirmative tone and based on positive action. In other words, from the combination of sentences of the first part of the article that has spoken of the words "take" and "ordering to take" and terminal part of the article that speaks about refunding the amount to the rightful one, it can be inferred that the lack of realization or absence of calculation or earning an income less than the statutory due limit is not subject to this clause.

3: the Stage of Receiving Incomes

The most important action about the issue of income domain is the category of receiving incomes. According to the Article (37) of the Public Audit Code "anticipation and other sources of funding in the national budget shall not be deemed as a permit to collect money from individuals and in each case, it requires legal authorization. The responsibility to ensure accurate and timely collection of incomes is the responsibility of the heads of the concerned executive agencies." According to this legal act, the receipt of income is subject to two conditions:

First, the legislator has issued the permission to collect an income in the budget law or other permanent regulations.

So, merely anticipating an income is not a legal permission for receipt.

Secondly, the existence of legal permission to collect income without anticipation of the income figure in the budget law is no ground for collecting it. Third, the revenue should be collected properly. So receiving any funds, less or more than the amount of the of legislator's decision are prohibited by law. Finally, the income shall be received in the due time. Failure to meet any of the above statutory arrangements, the Islamic Penal Code (600), is considered as a crime and is subject to criminal prosecution.

The stage of collection of incomes is one of the stages that requires the greatest penal support because of its coverage scope. Because this category includes both general revenues such as tax collection, receipt of revenues due to the sale of goods and services and alike and also includes the revenues of the capital transfer like the proceeds of the sale of oil and gas and the revenues of the sale of properties and alike and it also includes specific incomes. The important point about the current debate is that Article (600) of the Islamic Penal Code has simply given a penal protection to the category of "receipt of income" and that is only in a specific and limited manner (i.e., if the income collected from individuals and legal entities has been collected contrary to law or more than the amount provided by law) and the opposite issue i.e. the failure to collect the income has not been criminalized. In penal legal system of Iran, the lack of collection of anticipated revenues and even receiving the amounts less than the due legal limits is not considered as a crime. In clause (2) of the budget law of 2009, the failure to timely and accurate collection of revenues and other public resources has been criminalized for the first time.

According to this article, "The lack of timely and accurate receipt of revenues and other public resources subject of this Act by the administrative agencies without giving any legal justification ... is considered as illegal appropriation of public funds." The decision of this article was not repeated in the budgetary rules of subsequent years. In clause (3) of Article (62) of the Fifth Development Plan approved in 2010, getting amounts more than what has been stipulated in legal rules and regulations, still considered subject to penal sanctions of Article (600) of the Islamic Penal Code.

4: Income Deposit Stage

The final product of all income processes is their deposit into a centralized account of revenues. Based on an important budgetary principle, i.e. "the budget covering principle", in all the budgetary systems of the world, a Centralized Incomes Fund has been established. For example, in Great Britain and other countries following this country, the deposit of all revenues into a centralized fund and allocation of the expenditures from that fund, is essentially required by the Constitution. In USA, except for the budgets of social security funds and mail boxes, the principle of budgetary covering is adhering to in other cases.

In accordance with the Act (53) of the Constitution, "All the earnings of the government are collected in the central treasury accounts and all the payments are performed in accordance with the funds approved by law." Article (39) of the Public Audit Act has also provided that "The funds collected from income sources and other finance sources stipulated in national budget as well as public corporate revenues except for banks and credit institutions and insurance companies should be delivered to the treasury account opened at the central bank."

The question is whether the lack of income depositing to the treasury account has been criminalized by the legislation in Iranian legal system or not?

In order to answer this question, it should be noted that the author believes that according to article (600) of the Islamic Penal Code, non-depositing of revenues to the treasury account cannot be regarded as a criminal act. What has been criminalized in this article, are positive actions of "realization", "determination", "calculation", and "collection" of funds or properties against the law or more than the limits provided by law and "no depositing" has not been criminalized as an abuse of the law. However by a broad interpretation of this legal article, it can be said that the lack of depositing is one of the instances of non-collection, but as we know, any broad interpretation is prohibited in the penal law.

CONCLUSIONS AND SUGGESTIONS:

In the legal system of Islamic Republic of Iran, the criminal sanctions of budgetary system revenues section have been provided in an incomplete and inefficient manner in Article 600 of the Islamic Penal Code. Although, the income category includes four different levels of revenues anticipation, earnings recognition, revenue collection and income depositing (to treasury account), the Article 600 of the Islamic Penal Code does not include penal support of many of the above issues, because:

Firstly, in the mentioned legal reference, the stages and levels of income prediction and depositing it into the treasury account have not absolutely been subjected to criminal protection. About the inclusion of above criminal sanction in the realization and collection stages, it seems that by relying solely on the defined term of "unlawful", the realization and collection of revenues less than the legal provisions in which public funds suffer from losses can be subject to this rule.

Secondly, the tone and style and the content used by the mentioned Article 600 of the law is affirmative and the same issue may result in some deviations and abuses of the scope of the mentioned article of law.

Thirdly, the writing style used in the mentioned law article and also the phrases compounds used at the top lines of this article and civil sanctions foreseen at the end of it show that the mentioned criminal sanctions are aligned to support ordinary people from whom the mentioned incomes are collected not to reinforce the state treasury.

Therefore, it is suggested that Article 600 of the Islamic Penal Code should be amended, so that the criminalization of false anticipation of incomes and non-deposit of them to the Treasury account, non-collecting of incomes and any kind of abuse related to incomes can be criminally supported. In addition, it is necessary to review the mentioned article in such a way that it can simultaneously provide the people and the government with benefits.

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