



The Prohibition Of Claim Suit And Its Procedural Effect On Customs Duties And Fines In The Jordanian Customs Law

Mohamed Abdel Khaleq Al-Zoubi¹, Fahad Yousef Alkassaabeh²

¹PhD Amman Arab University law faculty of law

Jordan email id: m.alzoubi@aau.edu.jo

ORCID:0009000912636691

²PhD Amman Arab University law faculty of law Jordan

email id: fahed@aau.edu.jo

ORCID:0000000278282613

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Abstract:

Customs is a system that is recognized in all countries of the world. Governments establish a set of regulations and laws to regulate the collection of import duties from abroad. However, customs may demand customs duties and fines that are not due or have expired, which may lead the affected person to resort to the judiciary in order to file a prohibition of claim suit in accordance with specific legal conditions. Therefore, it was necessary to search for these conditions and specify the period of prescription for these duties and fines, especially as there are contradictory decisions by the Court of Cassation in this regard. The researcher reached a number of conclusions and recommendations, the most important of which was that the legislator allowed recourse to the judiciary to prevent customs claims, but he stipulated formal conditions, the most important of which is paying a bail before filing the lawsuit. He also specified a period of prescription for fines and duties of three years. The researcher reached a number of recommendations, the most important of which is that the Jordanian legislator should explicitly specify the prohibition of claim suit in a way that clarifies the legal periods for it to fill the legislative vacuum in this regard, in order to achieve justice.

1.Introduction:

Customs is a system recognized in all countries of the world, in which governments set a set of regulations and laws, which regulate the process of collecting import duties from abroad. It also helps to document the goods entering the country. The importance of the large customs as a government agency is to control violations and ensure that there are no illegal goods that harm security. It is the authority that determines

email id: m.alzoubi@aau.edu.jo

the type of exports and imports that are subject to customs tariffs. Customs tariffs have undergone continuous development through various major economic stations, under the swings that foreign trade has known between the theory of protection and free trade. In fact, tariffs appeared in Italian commercial cities. Then the Industrial Revolution in Europe led to a reduction in tariffs and the number of attempts to reduce tariffs increased in Europe with the progress of industrialization in the 19th and 20th centuries. Major industrial countries have tried to increase their trade and new governments have continued to focus on obtaining better terms for tariffs, especially from Western countries. The first customs administration in Jordan appeared in 1922, coinciding with the establishment of the Emirate of Transjordan, where it was called the Directorate of General Statistics and Customs. The customs system is one of the most important systems that are in line with the context of the global economic system and new developments. Customs policy is now governed by international laws emanating from the General Agreements of the World Trade Organization and from multilateral free trade agreements. In fact, global trade and its philosophy are an acceptable means of protection for the state through the collection of money to the state treasury through the collection of customs duties, which is obtained from international trade operations and legitimate competition. This is explained by the fact that there is a legal relationship between the taxpayer and the customs administration, whether this link is the result of a tax relationship - performing the due duties - or the obligation to comply with all the special commitments and procedures imposed by the customs law to protect customs rights, or economic rights of the state. The problem of the research lies in the study of the prohibition of the claim and its legal conditions when the claim is against the customs department, as the law stipulated special conditions for the acceptance of that claim, and the Court of Cassation dealt with contradictory decisions, especially regarding the prescription of those funds. There are questions and legal texts that are not understood and ambiguous and need more clarification and study. The study formulated several hypotheses that were addressed throughout the research, focusing on key questions. Among the most significant inquiries were those related to the concept of a claim for prohibition, the conditions governing a claim to prohibition concerning state funds, the nature of penalties and fees stipulated in the Jordanian Customs Law and their collection procedures, and the prescription period for penalties and fees under the Jordanian Customs Law. These hypotheses served as guiding points for the investigation, allowing for a comprehensive exploration of the pertinent legal aspects.

2. Methodology

The study employed a descriptive-analytical methodology to comprehensively explore the prohibition of claim suits and arbitration in disputes related to customs duties and fines within the framework of the Jordanian Customs Law. This approach contains an exhaustive review of the existing literature on the subject. The aim was to elucidate the intricacies and nuances surrounding the prohibition's procedural implications. Delving into the rich tapestry of legal writings and studies, the researchers sought to discern the key features and elements embedded within the Jordanian Customs Law. This phase of the methodology entailed a meticulous examination of the law, dissecting its clauses and provisions to identify specific points pertaining to the procedural effects of the prohibition. By adopting this approach, the study aimed to present a detailed and nuanced understanding of how the prohibition influences the procedural aspects of customs duties and fines within the legal landscape of Jordan.

3. Result and Discussion

To explain the concept of customs duties, we will first define the concept of customs duties in general, and then explain the customs duties in Jordan.

3.1 Definition of Customs Duties and Collection Methods

Article (78) of the Customs Law states: "Duties and taxes must be collected in accordance with the contents of the declaration, but if the result of the inspection shows a difference between it and what is stated in the declaration, the duties and taxes shall be collected on the basis of this result, without prejudice to the right of the circle to pursue the collection of the fines due as appropriate in accordance with the provisions of this law."

To study the definition of customs duties and the methods of collecting them, this section will be divided into two branches: the first definition of customs duties, and then the methods of collecting them. (jstor.org, jstor.org, archived on May 30, 3019)

3.1.1 Customs Duties

Article (196) of the Jordanian Customs Law states:

(a) Where the text refers to the imposition of a customs penalty at a certain percentage thereof, it shall mean customs duties, fees and other taxes, including the general sales tax and the special tax. (b) For the purposes of applying the provisions of this Law, data for re-exportation shall be treated as data for transit.

Customs duties are taxes imposed on goods imported from other countries. Countries typically use tariffs to protect their industries from foreign competition by raising the prices of imported goods relative to domestic goods.

1. The term "tariff" refers to the definition of the item listed in the list, and its purpose is to inform those concerned with the duties and rights payable on the goods. The set of texts containing all the prevailing customs rights in the state at a certain time is called the customs tariff. (Al-Sadiq, Ahmed, (2020), p. 34)

The customs tax is a "sum of money imposed by the state by force of its sovereignty on goods entering its territory, and it is called the import tax, or on goods that leave its territory, and it is called the export tax. It is either quantitative, meaning a fixed amount of money is imposed on a fixed quantity of goods without regard to its value, such as the taxes imposed on tobacco and cigarettes, for example, or it is a value, meaning that it represents a percentage of the value of the goods. It is generally 5% of the value of the imported goods in Qatar, and the customs tax can be both quantitative and value at the same time, as if the state imposes a tax of 5% on a certain commodity with a minimum of five riyals per kilogram. (Al-Hiary, 1997, p. 29)

When the customs administration applies customs rights and duties, it relies on the customs tariff, which includes a table of goods and each commodity has a certain percentage of the rights and duties applied to it, and it is called the customs tariff code.

Customs duties are also known as the taxes that countries impose on goods imported from abroad or exported to it, and they are paid while these goods cross the borders and enter the customs territory subject to tax or exit from it. (<https://ar.wikipedia.org/wiki>)

It is important to note that customs duties are not subject to a general amnesty, in accordance with Article 194 of the Customs Law, which states: "Customs fines and confiscations provided for in this Law shall be considered as civil compensation for the Department and shall not be included in the provisions of general amnesty laws."

This is also supported by the decision of the Court of Cassation, which states: "In this regard, we find that Article 194 of the Customs Law No. 20 of 1998 considers customs fines and confiscations provided for in this Law as civil compensation for the Department and are not included in the provisions of general amnesty laws. Thus, the legislator has excluded these customs fines and confiscations from the scope of criminal penalties, giving them a special character, namely the character of civil compensation." (See Cassation Criminal No. 386/2001 dated (3/5/2001) (jstor.org))

The event that gives rise to customs duty is the entry of foreign goods into the territory of the state. The general rule is that all imported goods are subject to customs duty, except for those that are specifically exempted, whether this text is contained in the Customs Law, such as the texts contained in Chapter Eight, and includes the exemptions provided for in the texts of the Unified Customs Tariff, or diplomatic exemptions, military exemptions, exemptions for personal luggage and household appliances, or exemptions for the supplies of charitable associations or returned goods, as well as exemptions provided for in the Economic Agreement Unified for the States of the Gulf Cooperation Council. These exemptions can also be found in any other agreement within the Council, but it is always important to keep in mind that these exemptions are provided by way of exception, which means that it is not permissible to expand their interpretation or to measure them.

The customs territory subject to tax is the land area, including ports, floating surfaces, and installations located in the territorial waters of all the national territory, except for free zones, which are not subject to all or some of the national customs laws and are exempt from paying these duties.

Therefore, the goal of the customs tariff is to encourage local establishments to increase their production, as consumers will pay higher prices if they want to consume imported goods. Customs duties on exports are also used to increase state revenues; a country may also use customs duties to protest the economic or political policies of other countries. (Al Sadiq Abdullah, 2020, page 30)

The following question then arises: how do countries set the amount of the customs tariff?

A country sets the customs tariff in different ways. It may be governed by trade agreements with some countries that include a clause that stipulates a preferential treatment for that country, and thus imposes the lowest tariff rates for those countries. Preferential tariffs can also be imposed on some countries, and they are usually lower than the general preferential tariff. This may be done to encourage imports from less developed countries.

It is also possible for countries to form a customs union among themselves, eliminating customs duties from trade between them, as in the European Union. They may also have a common customs tariff that covers trade with countries that are not members of the customs union. Countries in a free trade area impose customs duties on trade between them, but each country can impose the customs tariff it wants on non-members.

3.1.2 Types of Customs Duties

Basic Customs Duties (Financial): This refers to the function of replenishing part of the general revenues of the state, and applies to export duties and import duties as well.

Additional Customs Duties (Revenue): These are imposed to increase government revenues; as the duties achieve important tax revenues that benefit the state and increase its revenues.

Protective Duties: These are imposed to limit imports, protect national industries from foreign competition, and protect domestic products by raising the prices of imported goods, which encourages local establishments to increase their production.

1. Compensatory Duties: They are charged in cases where goods are imported, during export or production, and which are used in which indirect or direct subsidies are specified, and in addition, this import must threaten to cause harm to local producers who produce such a product. (Al-Sadiq, Hamid, (2005), p. 45).

Countervailing Duties: If dumped imports have effects on the domestic industry, in the form of material damage or the mere threat of such damage, or material delay in establishing that industry, then all of these effects are considered sufficient justification for taking action to combat those dumped imports and impose customs duties on them.

There are also other classifications of customs duties that vary from country to country depending on the economic policy, and specifically the policies related to regulating foreign trade.

While revenue is the primary consideration, customs duties can also be imposed to protect the domestic industry from foreign competition.**

Here the following question arises: how are customs duties calculated?

Customs duties for imports are calculated based on the commercial value of the imported goods after adding the shipping and transportation costs until they enter the customs territory subject to tax, and the cost of insurance on these goods.

The commercial value of imported goods is most often determined based on the invoices provided by the importers as one of the documents attached to the customs declaration, unless the customs administration proves that fraud has occurred in these invoices with the intention of tax evasion through declaring prices below the real prices.

In this case, the customs administration has the right to resort to re-evaluating the goods based on the prices at which they are sold in the country of origin (where they were manufactured), or by referring to invoices previously submitted by other importers and concerning the same goods, provided that they are manufactured in the same country of origin.

Customs duties are either in the form of percentages of the value of imported goods or fixed amounts payable for each unit of measurement of the quantity imported (kilogram, liter, meter...)

Customs law allows for the deposit of goods in warehouses. Here the following question arises: what is the ruling on the increase or decrease in the goods after being deposited in the warehouses?

Customs duties and other fees and taxes are collected for the full quantities of goods that have already been deposited, and the investor body of the warehouse is responsible for these fees and taxes in the event of an increase, decrease, loss, or replacement of the goods, in addition to the fines imposed by the department in accordance with the provisions of the customs law.

Customs duties and other fees and taxes are not due if the decrease or loss of goods is the result of force majeure, an inevitable accident, or as a result of natural causes.

The customs duties, fees, and other taxes and fines for the excess, shortage, lost, or replaced quantities remain due to the investor body even if there is a cause for which it is responsible.

A fine of no less than 50 dinars and no more than 500 dinars is imposed for each violation of the violations of the shortage that has been verified in the goods in the warehouses after they have been received in good apparent condition.

Definition of Customs Penalties:

The customs penalty is a civil compensation for the Customs Department and is as follows:

- From three times to six times of the value for the specified prohibited goods.
- From twice to three times of the value plus the duties for prohibited or restricted goods.

Based on the text above, we find that the customs penalty is a civil compensation. However, some scholars have tried to interpret the nature of the customs penalty.

Some scholars believe that the customs penalty is a punishment. They base this on the following justifications:

- These penalties are imposed by the state to punish perpetrators of crimes in a specific field, which is the customs field.

- Their application is only through criminal courts in accordance with the principle of criminal legality, just like other criminal penalties.
- Accordingly, the judge, when pronouncing it, does not pay attention to the actual damage that has befallen the public treasury, but is bound by what is stipulated in the law.

It is well known that the civil compensation arising from the crime is determined on the basis of the damage that has befallen the victim.

However, this opinion is criticized because customs penalties may exist with the criminal fine, meaning that each has a different nature, and it is not devoid of the idea of compensation.

The other opinion is that it is a kind of compensation. The proponents of this opinion find that it is the result of the will of the legislator, who wanted to give the customs regime the greatest possible effectiveness.

Customs penalties differ from ordinary civil compensation. The proponents of this trend explain the amounts of customs penalties by the fact that they are determined in the law and that what exceeds the amount of the tax is considered a compulsory compensation, equivalent to compensation for the state for what it has lost in profit due to non-payment of the tax.

However, this opinion is also criticized because it contradicts the idea of estimating the damage represented in what the state has lost in profit. It is also noted that customs penalties are generally characterized by their large amounts.

Due to the duality of the nature of the customs compensation, some scholars find that the customs compensation is a compensation that combines both civil and criminal compensation at the same time. However, this opinion has faced criticisms that it is not possible to combine the two compensations together. However, this is the prevailing opinion. (Al-Sadiq, Hamid, (2005), p. 45).

Customs Fines in Jordan

Customs fines are imposed in accordance with the law. Article 197 of the Customs Law states that a customs fine of no more than the amount of the applicable duties shall be imposed on the following:

- Goods imported or exported illegally, whose value does not exceed JD 100, and which are not among the specified prohibited goods.
- Baggage, personal effects, tools, and gifts belonging to travelers, whose value does not exceed JD 500, which are not declared at the customs office upon entry or exit, and which are not exempt from duties.

In both cases, the seized goods may be returned to their owners in whole or in part, provided that the restrictions stipulated by the applicable laws are observed.

Based on the above text, we find that the fine does not exceed the amount of the duties if the value of the goods does not exceed JD 100, or if the baggage, personal effects, tools, and gifts belonging to travelers do not exceed JD 500.

Articles 199 and 200 of the Customs Law deal with fines in cases other than those considered smuggling. A fine of no less than JD 100 and no more than JD 1,000 is imposed, pursuant to Article 199 of the Customs Law, and a fine of JD 50 to JD 500 is imposed, taking into account the severity of the violation, for violations in the cases specified in Article 200. Article 201 states the penalty for delaying the submission of transit goods, and Article 202 states the penalty for delaying the return of goods temporarily imported, at a rate of JD 10 to JD 20 per day.

The fines specified are imposed by a decision of the Director or his authorized representative, and the violator is notified in writing or by registered mail of the fine imposed on him personally or by his representative. The violator must pay the fines within thirty days of the date of notification of the fine, or refusal to sign the notification.

3.1.3 Claim Prohibition Suits in Customs

To explain the claim prohibition suits in customs, it will first be explained the concept of claim prohibition suits, then the claim prohibition suits in customs due to non-entitlement, and then the claim prohibition suits due to prescription.

Concept of Claim Prohibition Suits:

To study the concept of claim prohibition suits, it will first be defined as claim prohibition, then the conditions that must be met for it will be explained.

Definition of Claim Prohibition:

To study the concept of a lawsuit to prevent a claim, we will first define the prevention of a claim and then state the conditions that must be met for this.

Definition of prevention of a claim:

The lawsuit to prevent a claim is a lawsuit between a debtor and a creditor, through which it aims to prevent him from demanding either because of payment or for lack of entitlement. The Court of Cassation has defined the lawsuit to prevent a claim, where it stated:

"That the lawsuit to prevent a claim is a lawsuit between a debtor and a creditor that is filed by the debtor against the creditor to prevent him from claiming the debt either due to death or for lack of entitlement, so if..."

Decision of the Court of Cassation No. (15/2018, your decision).

Therefore, filing a lawsuit to prevent a customs claim is the lawsuit whose goal is to invalidate the entire amount claimed or part of it or to modify it.

Therefore, through the analysis of the previous text, we find that the lawsuit to prevent a claim is the lawsuit that is filed by the debtor with the creditor in the claim of the debt. The lawsuit to prevent a claim is considered a legal barrier that prevents the creditor from filing a lawsuit against his debtor to claim that debt or to execute on the debtor's property. Therefore, the creditor in the lawsuit to prevent a claim can submit defenses that would reject the debtor's lawsuit and prove his right to the debt, because the judgment issued in the lawsuit to prevent a claim is a final judgment that cannot be appealed.

As for the lawsuit to prevent a customs claim, Article (245/a) of the same law states that "If it appears at any time that the duties and fines due under this law on any goods have not been paid or have been paid in full for any reason, the department shall collect the duties and fines or the deficiency that has occurred." Article (222/b) of the same law also stipulates that the jurisdiction of the Primary Customs Court shall be to consider the disputes arising from the application of the international trade agreements to which the Kingdom is a party and in any dispute of any kind relating to the application of the laws and regulations mentioned in paragraph (2) of this paragraph.

Whereas the legislator has given the powers to the Customs Department to correct any error that occurs if it is discovered after the clearance of the goods, and this authority shall be for the Customs Department if it is right in that, and the person harmed by this claim may resort to the Customs Court to decide on this claim

Based on the above, the researcher finds that a lawsuit to prevent a customs claim is a lawsuit filed by the injured party with the Customs Court when amounts are collected incorrectly or due to the prescription of the amounts required. The Court of Cassation ruled in this regard:

"Article (84/c) of the Customs Law states that if it appears after the clearance of the goods as a result of the subsequent examination and verification that the customs provisions stipulated in this law have been applied incorrectly or on the basis of incomplete or incorrect information, the customs authority may take all necessary measures to correct this error in light of the information available to it. Article (245/a) of the same law also states that "If it appears at any time that the duties and fines due under this law on any goods have not been paid or have been paid in full for any reason, the department shall collect the duties and fines or the deficiency that has occurred." Article (222/b) of the same law also stipulates that the jurisdiction of the Primary Customs Court shall be to consider the disputes arising from the application of the international trade agreements to which the Kingdom is a party and in any dispute of any kind relating to the application of the laws and regulations mentioned in paragraph (2) of this paragraph.

Where the legislator has given the powers to the Customs Department to correct any error that occurs if it is discovered after the clearance of the goods, and this authority shall be for the Customs Department if it is right in that, and the person harmed by this claim may resort to the Customs Court to decide on this claim.

As for the decision of the Council of Ministers, it takes effect directly and from the date of its publication in the Official Gazette. Since the claimant filed this lawsuit with the Customs Court and the customs data were cleared before the issuance of the Council of Ministers' decision that determined the difference in the relative sales tax at a rate of the calculated between the sales tax at a rate of 4% and 16%, the Council of

Ministers' decision does not apply to these data and what the Court of Appeal reached is in place, and it is necessary to reject these reasons."

3.2 Conditions for a lawsuit to prevent a claim in state funds

A lawsuit to prevent a claim in state funds is a lawsuit filed by a debtor against a creditor to prove that the debt is not due, either because it is not due or because the debtor has died. The acceptance of any lawsuit depends on the existence of a set of conditions, including general conditions and special conditions.

First, the general conditions:

- Capacity requirement: It is necessary to have the ability to perform, so the lawsuit is not filed through his representative.
- The condition of interest: And the condition of interest is considered the first condition that must be met in any lawsuit.
- The condition of qualification: It is the condition that links the two parties to the lawsuit, so it is the one that empowers the claimant to file the lawsuit.

Special conditions:

The most important condition and pillar of the lawsuit to prevent a claim in state funds is the obligation to pay the amount in cash or to provide a judicial or financial guarantee of the amount claimed before filing a lawsuit against the state, otherwise the lawsuit will be returned in form, based on the text of Article (9) of the Law on the Administration of State Cases and its amendments No. (28) of 2017: (It is required for the acceptance of a lawsuit to prevent a claim against state departments, the claimant to pay the amount claimed or to provide a judicial or bank guarantee that guarantees the payment of the said amount, and the execution and claim are stopped when providing that guarantee or depositing that amount until the judgment acquires the final degree)

The Court of Cassation ruled in this regard:

"The text of Article (9) of the aforementioned law is linked to the public order, as it is worded in the imperative form, so it is binding on the courts and they must rule on the acceptance of the lawsuit in form before examining its subject and verifying the availability of the formal conditions that the legislator has specified for lawsuits to prevent claims against government departments. The court may refer to it on its own initiative even if it was not raised by any of the parties and it is not permissible to waive it even if they agreed to do so, and it falls on it to arrange the legal effect of not adhering to this condition, namely to return the lawsuit in form." (Cassation for Rights No. 222/2020).

The Court of Cassation also ruled:

"Therefore, and since the claimant did not deposit a cash deposit or a bank guarantee in accordance with the requirements of Article ((231/b)) of the Customs Law, then her lawsuit is required to be returned in form. And since the Customs Court of Appeal reached the same conclusion in its challenged decision, then it is in accordance with the provisions of the law, and these reasons do not respond to it, which requires it to be rejected. Therefore, we decide to reject the cassation appeal, uphold the challenged decision, and return the papers to their source." Cassation No. (2504/2009).

Since the determination of whether the claimant needs to submit an urgent request to suspend the execution and collection procedures or whether the suspension of execution and claim is by law, the Jordanian legislator has insisted on the obligation to pay the amount claimed or to provide a guarantee that guarantees the collection of the amount claimed by the defendant when its entitlement is proven as a condition for the acceptance of the lawsuit in form, as Article (5/d) of the Government Claims Law and its amendments No. (25) of 1958 - which was abolished by the Law on the Administration of State Cases and its amendments No. (28) of 2017 - states: (The courts shall not hear any lawsuit against the government, whether original or counter-claim, except if it is for:..)

(d) Preventing the claim, provided that the claimant pays the amount claimed or provides a guarantor).

As for a lawsuit to prevent a claim in customs cases, Article (231/b) of the Customs Law states: "Despite what is stated in any other law, no lawsuit against the Treasury shall be heard in the Customs Courts unless the claimant has deposited a cash deposit or a bank guarantee equal to 25% of the amounts claimed from him, including fees and fines, or the amount recognized by him, whichever is greater."

Therefore, we find that the special law restricts the general law, as it is mandatory for the claimant to deposit an amount equal to 25% of the amounts claimed from him, including fees and fines, or the amount recognized by him, whichever is greater."

Here, the following question arises: Must the defendant, when filing a lawsuit to prevent a claim, submit an urgent request to suspend execution?

In some cases of preventing a claim, the debtor - the claimant - may be required to submit an urgent request to the judge of urgent matters to request to suspend the executive lawsuit or the procedures taking place therein, or to issue a decision to stop the request. However, in cases of preventing a claim related to state funds, the suspension of execution is done without the need to submit a request, as Article (9) of the Law on the Administration of State Cases and its amendments No. (28) of 2017 for the purpose of achieving the purpose for which it was enacted. The requirement to pay the amount subject to the lawsuit to prevent the claim or to provide a guarantee that guarantees its payment for the purposes of accepting the lawsuit in form was clearly and explicitly stated in the imperative form, and it assigned an effect to the implementation of its content, which is to issue a decision to suspend the claim and execution until the judgment issued in the lawsuit acquires the final degree. Therefore, the claimant is not required to submit the urgent request to issue the decision to suspend execution.

The legislator intended by the phrase "...and the execution and claim are stopped when providing the guarantee or depositing that amount..." that the competence to issue the decision to suspend execution and claim belongs to the judge of the case hearing the lawsuit, and this is done immediately after accepting it in form and without the need to submit a request for this in a way that aims to protect both parties of the lawsuit and to balance their interests by protecting the rights of the Treasury (the defendant) and ensuring that it collects the value of the claim subject to the lawsuit by depositing it in the court fund or providing a judicial or bank guarantee that guarantees its payment, and at the same time protecting the right of the claimant to issue a decision to suspend execution directly by law and without the need to submit an urgent

request for this - considering that the latter has proven the seriousness of filing a lawsuit to prevent an unjust claim in his view - and has become the party most deserving of legal protection, and the court has no discretionary power in this matter. If the legislator had wanted otherwise, he would have stated it explicitly.

In conclusion, the claimant is not required to submit an urgent request to suspend execution in a lawsuit to prevent a claim against the government. The suspension of execution is automatic upon the acceptance of the lawsuit in form, provided that the claimant has paid the amount claimed or provided a guarantee.

In addition, there must be a claim or an allegation of a claim, based on indebtedness, and that the alleged claim is unjust, or has been fulfilled, or is not due after due to prescription or otherwise.

Here, the following question arises: Who is responsible for the burden of proof in lawsuits to prevent claims, and who submits a list of evidence and who submits the details of the evidence?

The evidence is on the one who claims, and the oath is on the one who denies, as this is an essential rule in the science of proof, and the burden of proof is always on the claimant, and he submits a list of evidence and details of the evidence immediately upon submitting the evidence when filing the lawsuit, and the defendant submits the defensive evidence within the period stipulated by law.

However, in a lawsuit to prevent a claim, and as an exception to the norm, the burden of proof is on the defendant, contrary to the general rule, as a lawsuit to prevent a claim is characterized by a feature that distinguishes it from most lawsuits.

This is what the Court of Cassation ruled: "Since the burden of proof in a lawsuit to prevent a claim is transferred to the defendant, and the defendant presented the five bills of exchange subject to the lawsuit, with a total value of (90,000) ninety thousand dinars, and the two claimants did not deny their drafting and signing them attributed to them, and thus they are evidence against them and the cash amounts for their total according to the provisions of Article (11) of the Evidence Law, and it is also not permissible to prove the opposite of what is stated in them by personal evidence." Cassation for Rights (3426/2021).

The Court of Cassation also ruled that "If the lawsuit is a lawsuit to prevent a claim, then the judicial practice has settled that the defendant is the one who is required to provide her data initially to prove the validity of her claim." - Cassation for Rights No. (444/2007).

Therefore, the claimant must provide a guarantee under penalty of formlessness. Here, the following question arises: What if the claimant wins his case, will the guarantee be returned?

The Court of Cassation answered this by stating that in the event of losing the lawsuit, the amount claimed will be recovered in favor of the Customs Department. However, in the event of winning the lawsuit, it is necessary to rule in favor of returning the guarantee. The Court ruled in this regard: "And since it is a requirement for the validity of filing a lawsuit to prevent a claim in accordance with the provisions of Article 231/b of the Customs Law that the claimant deposit cash security or a bank guarantee equal to 25%

of the amounts claimed from him, including fees and fines or the amount recognized by him, whichever is greater, and since the claimant submitted the required guarantee in implementation of the provisions of this article, and since it was found that she was right in her claim, then the court must rule in favor of returning the guarantee because it is part of the elements of the lawsuit and does not require an independent claim to return it." Court of Cassation No. (104/2018, dated 25/1/2018).

Finally, the researcher finds that it is legally permissible to file a lawsuit to prevent a claim in state funds, including customs, subject to certain conditions, the most important of which is providing a guarantee under penalty of formal nullity.

3.3 Customs Claim Prevention Suit for Non-Entitlement or Prescription

In this section, we will discuss the customs claim prevention suit either for the reason of non-entitlement or due to prescription. We will divide this section into two branches, the first of which we will address the prevention of claim due to non-entitlement, and then the study of the prevention of customs claim due to prescription.

3.3.1 Customs Claim Prevention Suit for Non-Entitlement

A customs claim prevention suit may be filed for non-entitlement or payment. What is meant by entitlement?

The definition of entitlement in Arabic means: to request a right. The definition of entitlement in technical terms is: "the transfer of ownership of something by proving prior ownership." As for the ruling that follows entitlement, it is the annulment of the contract. The ruling of the annulment of the contract is divided into two parts: the first is that it is completely invalid, and its ruling is that it requires the annulment of the contract based on a court ruling. As for the second part, it is a transfer of ownership from one person to another, and this is the most common case. Its ruling does not annul the contract between the contracting parties; because it does not require the invalidation of the buyer's ownership, but rather depends on the approval of the entitled or its annulment.

Here, the following question arises: how is a claim for non-entitlement filed, and who is the specialized judicial authority to hear this claim?

A lawsuit to prevent customs claims is filed with the Customs Court within 15 days of being notified of the decision. This is what the Court of Cassation ruled: "1- The objection of the Attorney General for Customs, which includes that the lawsuit filed by the distinguished against her to appeal the fine decision issued by the Minister of Finance, is presented after the expiration of the legal period because it was not presented within the fifteen-day period as long as it is not proven that the distinguished against her was notified of the minister's decision, and the lawsuit submitted within the period specified in Article (274/A) of the Customs Law is submitted within the legal period." Judgment No. 768 of 1998

It is worth mentioning that lawsuits to prevent claims are not accepted by the Customs Courts with regard to customs duties, fees, and other taxes for goods that are still in the possession of the department and are being cleared. Pursuant to the provisions of Article (228) of the Customs Law.

Article 210 of the Customs Law states:

(a) Objections to decisions of fines issued under Article (209) of this Law may be filed with the Minister within the specified period. The Minister may confirm the decision of the fine, cancel it, or reduce the fine if it appears to him that there is justification for that. (b) The decision of the Minister issued under paragraph (a) of this Article shall be subject to appeal to the Customs Court within thirty days of the date of its notification when the imposed fine, added to the value of the confiscated goods if any, exceeds (500) dinars. The Court may uphold, amend, or cancel the fine.

In this regard, the Court of Cassation ruled:

"Whereas the claimant proved his claim against the defendant, the General Customs Department, and whereas the amount claimed by the claimant was issued with a judgment that has acquired the final degree, and in accordance with the provisions of Articles 208/c and 210/b of the Customs Law and Articles 166 and 167 of the Code of Civil Procedure, the Court decides to rule to cancel the contested fine decision No. 109/8/5/238/1/2020/31570 dated 9/9/2020, which included amending the fine decision No. 109/8/5/238/1/2012/35922 dated 9/7/2012 and preventing the defendant from demanding the claimant with the contested amount and including the defendant in the fees and expenses and an amount of (1000) thousand dinars as legal fees for the claimant's agent after the acquisition of this judgment the degree of finality and the return of the guarantee provided after the acquisition of the judgment the degree of finality, where the Attorney General of Customs did not accept this judgment, which led to his appeal. On March 23, 2022, the Customs Court of Appeal issued the judgment" Judgment No. 3480/2022 -

The Court of Cassation ruled:

"Whereas the claim subject of the lawsuit is a claim for a decrease in sales tax resulting from an error in the customs item (assuming proof) issued by the Director General of Customs and based on Article (84) of the Customs Law and whereas the competent court is the Customs Court of First Instance and whereas the claimant did not deposit 25% of the amount subject of the lawsuit or submit a bank guarantee equal to 25% of the amounts required, then the lawsuit would be inadmissible and obligatory to be rejected in form and where the Customs Court of Appeal went to another doctrine, then its decision is subject to cassation" - Judgment No. 3553/2022 -

3.4 Customs Claim Prevention Suit Due to Prescription

Prescription is the passage of a long period of time without asserting a right without a legal impediment; in other words, the legal period for the right passes without it being claimed, and it is then not possible to file a lawsuit to claim the claimed right. This was due to the legislator's concern for the stability of transactions, as it may be difficult to claim and prove a right that has passed a long period of time; This concept is consistent with all legal relations, regardless of their nature, because prescription is a legal concept that dominates all branches of law and means the passage of the period that prohibits the raising of facts after they have become obsolete.

Here, the following question arises: Is prescription of public order?

Therefore, prescription is not of public order, and the court is not required to raise it on its own initiative. The prescription defense is a right of the debtor and it is incumbent upon him to raise it during the course of the lawsuit. The Court of Cassation ruled in this regard: "We find that the defense of prescription is not of public order and is a right of the parties and must be upheld and raised by an independent request before

dealing with the subject, and we do not find in the file of the lawsuit any defense of the passage of time, and therefore what the appellants express with this reason is contrary to reality and does not respond to the distinguished decision, so we decide to reject it." Judgment No. 1946/2022, your decision.

The Egyptian Court of Cassation ruled in this regard: "That the defense of extinguishing prescription or the adherence to acquisitive prescription is not related to public order, but rather is of the kind of defenses related to the subject of the lawsuit. Therefore, it is not permissible for the Court of Cassation to rule on it on its own initiative, nor is it permissible to raise it for the first time before it.

Since that is the case, and it is established by the papers and records, in the manner that the appellant bank has acknowledged that it did not raise the defense of prescription before the court of the subject, which is one of the substantive defenses in which the reality is mixed with the law, it is not permissible for it to challenge it for the first time before the Court of Cassation, and its complaint in this regard becomes unacceptable." Case No. 16823 of the Year 85 Judicial, Commercial Chambers - Session 2016/12/2

Article 245 of the Customs Law states on prescription as follows:

(a) If it appears at any time that the customs duties and fines due under this Law on any goods have not been paid or have been paid in short for any reason, the Department shall collect the customs duties, fines, or the shortfall in accordance with the provisions of the Law on the Collection of Public Funds in force within three years from the date of completion of the declaration.

(b) No claim or lawsuit for the refund of customs duties, taxes, or fines that have been paid more than three years ago shall be heard.

(c) As for cash guarantees of all kinds, they shall be transferred by operation of law and in a final manner to the treasury if the parties concerned do not submit the documents and complete the required conditions that enable the determination of the status of these guarantees within the deadlines specified in this Law.

In all cases, it is not permissible to claim the remaining balance of what was transferred to customs duties and other taxes after the expiry of three years from the date of payment of the insurance amounts, unless the delay was due to the Department.**

(d) The provisions of the two preceding paragraphs shall not apply to the guarantees paid for the purposes of filing lawsuits under this Law.

Through the interpretation of the previous text, we find that the customs department has the right to collect the duties and fines that are due to be collected and have not been paid or have been paid in short, and that its right to collect these duties and fines lapses after the lapse of three years from the date of the last customs declaration. In addition, no claim or lawsuit for the refund of these duties and taxes shall be heard after three years of their payment. The Court of Cassation ruled:

1. Article 245 of the Customs Law permits the customs department, in the event that the duties and fines due have not been paid or have been paid in short, to collect the duties and fines or the shortfall within three years from the date of completion of the declaration.

And since the amounts subject of the lawsuit are inspection fees and supervisory and administrative services fees belonging to the customs department, therefore the provisions of Article 245 referred to, which specified the collection period of three years from the date of completion of the customs declarations in accordance with which the import was made, are the applicable ones.

And since it is established through the customs declarations that they were cleared in the period between 17/5/2011 and 9/7/2011, and since the customs department issued the demand letter to the claimant on 13/8/2013, which means that the demand of the customs department was within the three-year period stipulated by Article 245/a of the Customs Law.** (- Judgment No. 467/2017 - Your Decision)

As the Court of Cassation ruled in one of its decisions:

1. It is inferred from Article 245 of the Customs Law that the customs department has the right to collect the duties and fines due to be collected and that have not been paid or have been paid in short, and that its right to collect these duties and fines lapses after the lapse of three years from the date of the last customs declaration, in addition to the fact that no claim or lawsuit for the refund of these duties and taxes shall be heard after three years of their payment, and that what is stated in the aforementioned text does not include a lawsuit to prevent a claim.
2. If the subject of this lawsuit is to prevent the claim, and therefore the statute of limitations that governs the claim subject of this lawsuit is the long statute of limitations stipulated in Article 449 of the Civil Code, which states: (The right does not lapse by the passage of time, but the lawsuit cannot be heard by the denier after the lapse of fifteen years without a legitimate excuse, taking into account the special provisions contained therein).

And since the Customs Court of Appeal has reached the same result, its distinguished decision in this regard is in accordance with the principles and the law, and therefore the two reasons for the appeal do not apply to it, so it is necessary to reject them. (Jordanian (Civil) No. 2135/2011)

Through the previous decision, we find that the text referred to does not include a lawsuit to prevent a claim if the subject of this lawsuit is to prevent a claim. From here we find a contradiction between the decisions of the Court of Cassation in this regard. Therefore, the statute of limitations that governs the claim subject of this lawsuit is the long statute of limitations stipulated in Article 449 of the Civil Code, which states: (The right does not lapse by the passage of time, but the lawsuit cannot be heard by the denier after the lapse of fifteen years without a legitimate excuse, taking into account the special provisions contained therein).

3.5 Arbitration in Customs Claims

The resolving of disputes arising from customs-related issues be as a pivotal aspect influencing the smooth flow of services and goods across borders . The interactive between nature of customs claims often gives

rise to disagreements between parties involved, necessitating a mechanism that is both efficient and tailored to the complexities of international trade law. Arbitration, as a dispute resolution mechanism, holds particular relevance in the context of customs disputes because of its ability to offer a forum for honest adjudication, specialized expertise, and expedited resolution. The economic implications of delayed or protracted customs conflicts can be substantial, impacting not only the disputing parties but also the broader spectrum of international trade. Hence, understanding the nuances of arbitration in the context of customs claims becomes imperative for stakeholders seeking effective, timely, and confidential resolutions.

1. **Legal Framework of Arbitration in Customs Claims:** Arbitration in the context of customs claims operates within a well-defined legal framework, encompassing both international agreements and domestic legislation. Understanding this legal foundation is crucial for comprehending the legitimacy and enforceability of arbitral decisions in customs-related disputes.

- **International Agreements and Conventions:**

One of the primary pillars of the legal framework for arbitration in customs claims is found in various international agreements and conventions. The United Nations Commission on International Trade Law (UNCITRAL) provides a model law on international commercial arbitration (UNCITRAL Model Law, 1985) that many jurisdictions adopt or use as a reference. Additionally, the New York Convention of 1958 (United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards) facilitates the enforcement of arbitration awards across borders, enhancing the global enforceability of decisions in customs disputes.

- **World Trade Organization (WTO):**

The World Trade Organization, as a key player in international trade, provides a specific framework for dispute settlement, which may include arbitration procedures for customs-related conflicts. The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) within the WTO establishes guidelines for the arbitration of trade disputes (World Trade Organization, 1994), contributing to the harmonization of practices in the resolution of customs claims on an international scale.

- **National Legislation and Arbitration Laws:**

At the national level, individual countries often have legislation that addresses the enforceability and recognition of arbitration awards, including those arising from customs disputes. For example, the Federal Arbitration Act (FAA) in the United States provides a comprehensive legal basis for the recognition and enforcement of arbitration agreements and awards (Federal Arbitration Act, 9 U.S.C. §§ 1-16, 1925).

2. **Arbitration Procedures in Customs Claims:** Arbitration procedures in the context of customs claims constitute a structured and specialized process designed to efficiently resolve disputes arising from international trade activities. This section examines the key elements of arbitration procedures in customs claims, including the selection of arbitrators, the formation of arbitration panels, and the enforcement of arbitration decisions.

- Selection of Arbitrators:

The appointment of impartial and knowledgeable arbitrators is paramount to the effectiveness of the arbitration process in customs claims. Parties involved in a dispute often have the autonomy to select arbitrators or may agree on a method for appointing them. The arbitrators play a crucial role in interpreting customs laws, trade regulations, and contractual obligations, ensuring a fair and informed resolution.

- Formation of Arbitration Panels:

In complex customs claims, the resolution process may involve the formation of arbitration panels, which consist of multiple arbitrators. These panels are often composed of experts with diverse backgrounds, including legal, trade, and industry-specific knowledge. The panel format allows for a comprehensive assessment of the dispute, drawing on the expertise of each member to reach a well-informed decision.

- Enforcement of Arbitration Decisions:

Arbitration decisions in customs claims, once rendered, require a mechanism for enforcement to ensure compliance with the agreed-upon resolution. The New York Convention (United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958) serves as a key instrument facilitating the enforcement of arbitration awards across national borders, enhancing the global enforceability of decisions in customs disputes.

Arbitration in customs claims presents numerous advantages that have put it as a preferred method for resolving disputes in the international trade field. Offering flexibility, arbitration allows parties to tailor proceedings according to their specific needs, a crucial aspect in addressing the intricacies of customs-related issues. The dimensions and velocity, as explicated in the UNCITRAL Arbitration Rules (UNCITRAL, 2010) and ICC Arbitration Rules (International Chamber of Commerce, 2021), contribute to an accelerated resolution when juxtaposed with conventional litigation. Moreover, arbitration proceedings, governed by the ICDR Rules for International Arbitration (International Centre for Dispute Resolution, 2014), typically maintain a higher level of confidentiality, safeguarding sensitive trade information. The ability to choose arbitrators with a special expertise in customs matters, as highlighted in the Understand on Rules and Procedures Governing the Settlement of Disputes (World Trade Organization, 2021), ensures that decisions are informed and tailored to the complexities of customs claims. All these advantages underscore the appeal of arbitration as an effective and efficient mechanism for resolving customs disputes in the international trade landscape.

On the Other Hand , Arbitration in customs claims, although a valuable tool for dispute resolution, encounters several challenges and unresolved issues that impact its overall effectiveness and fairness. The intricate nature of customs laws and regulations adds a layer of complexity to arbitration proceedings, requiring arbitrators to navigate nuanced legal interpretations and evolving international standards (Berman, 2003). Furthermore, despite the existence of international conventions like the New York Convention (United Nations General Assembly, 1958), the enforcement of arbitration awards in customs claims remains a challenging aspect, marked by divergent enforcement procedures and reluctance among

certain jurisdictions to fully recognize and enforce foreign awards (United Nations General Assembly, 1958).

In addition to these challenges, customs disputes may involve issues of public policy, introducing complexities in the adjudication process as arbitrators strive to balance private interests with broader public welfare concerns (Van Harten, 2009). Furthermore, the absence of a formal system for creating precedent in arbitration contributes to the lack of consistency in outcomes for similar customs claims. Unlike court decisions, arbitral awards do not establish binding precedents, leading to potentially disparate interpretations of customs regulations and trade laws in different cases (Kaufmann-Kohler & Schultz, 2004).

To address these challenges and unresolved issues, ongoing efforts are essential to refine arbitration processes, promote global cooperation, and adapt mechanisms to the evolving landscape of customs regulations and international trade laws. Acknowledging and actively addressing these challenges is imperative for maintaining the credibility and effectiveness of arbitration in resolving customs-related disputes.

4. Conclusion

The research dealt with the topic of the lawsuit to prevent a claim and its procedural impact on customs duties and fines in the Customs Law and its amendments, a comparative study. The importance of the study lies in addressing the lawsuit to prevent a claim and stating its special conditions when it is a lawsuit to prevent a claim specifically for state funds and its procedural impact on customs duties and fines in the Customs Law. The Jordanian legal library lacks general or specialized works on the Customs Law. Specialized legal research in the research of the Customs Law is still limited despite its importance and danger and its inclusion of important issues for research and attention, including the issue of prescription and the extent of the application of those rules in practical application. In addition to the importance of this topic for judges and customs lawyers. The problem of the research lies in the study of the lawsuit to prevent a claim and its legal conditions when the lawsuit is against the customs department, as the law stipulated special conditions for accepting that lawsuit and the Court of Cassation dealt with contradictory decisions, especially with regard to the prescription of those funds. There are questions and legal texts that are not understood and ambiguous, which need more clarification and study.

The researcher recommends a number of findings and recommendations, the most important of which are:

4.1 Findings

1. The law allows the filing of a lawsuit to prevent a claim at the Customs Court due to either non-entitlement or prescription.
2. The only reference for objection and review is Amman.
3. The Jordanian market suffers from high customs tariffs, high costs, and the disruption of goods.
4. The items of customs tariffs on goods are not fixed and may change at any time.
5. The law requires special formal conditions for filing a lawsuit to prevent a customs claim, the most important of which is the payment of a guarantee.

6. The prescription of the claim for customs duties and fines is three years from the date of completion of the declaration.
7. The customs duties and fines paid that are not due must be claimed within 3 years of payment.

4.2 Recommendations

- The researcher recommends that the Jordanian government amend the Customs Law to clarify the conditions for filing a lawsuit to prevent a claim, especially with regard to the issue of prescription.
- The researcher also recommends that the Jordanian government reduce customs tariffs and simplify the customs procedures in order to facilitate trade and investment.
- The researcher recommends that the Jordanian government establish more than one reference for objection and review in customs cases.
- The researcher recommends that the Jordanian government stabilize the items of customs tariffs on goods, as they are not fixed and may change at any time, which sometimes hinders the work of customs clearance agents and their estimates.
- The researcher recommends that the Jordanian government increase legal research on customs law.

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