

**CIVIL LIABILITY OF THE GENERAL
PROSECUTOR OF CUSTOMS IN THE
JORDANIAN CIVIL CODE**

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Abstract

During the course of his work, the General Prosecutor undertakes many and varied matters, including investigation and pleadings of disciplinary violations of customs officials. In the course of carrying out his work, an illegal act may result, causing harm to others, and he will be responsible for it.

The responsibility here is the responsibility for the harmful act of wrongful damage, the harm, and the causal relationship between them. Whether his fault is in the form of a serious error, fraud, cheating, or denial of justice, his responsibility is based on the general rules of civil law, because there are no provisions to cover his liability other than the Civil Law, which is a deficiency to be avoided.

Keyword: Prosecutor, Civil investigation, responsibility, damage, wrongful.

INTRODUCTION:

The subject of the study: This study deals with civil liability of the customs prosecutor. It is expected that during the course of his work, the customs prosecutor may commit an illegal act that harms the defendant in the offense of smuggling or evasion of the general sales tax. Where this wrongful act would not happen if the Customs Prosecutor did not commit a wrongful act. This liability exists when the customs prosecutor violates an earlier legal obligation that requires him not to harm others by committing a wrongful act or an act that is prohibited but nevertheless he violates the legislator's rules and makes the wrongful act permissible. This act may be due to serious error in the Principles of law, performance of duties, or jurisdiction. It may be due to fraud or to the denial of justice.

The importance of the study:

This study is the first to highlight the civil liability of the customs prosecutor. It may be a reference to judges, customs prosecutors, and others. It highlights the nature of the civil liability of the prosecutor, the elements and scope of his or her harmful action

Objectives of the study:

This study aims to determine the civil liability of the customs prosecutor, the defining its serious error, its forms, types, and cases,

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with practical examples of it, and showing when the customs prosecutor acts takes the form of fraudulent act and when the Customs prosecutor is considered denying justice and to present recommendations to the legislator on the civil liability of the Customs General Prosecutor in light of the lack of provisions governing his civil responsibility.

Study problem: When the customs prosecutor is considered liable? And what is the scope of his harmful action?

Questions of the problem: What is the serious mistake of the customs prosecutor? What are the manifestations of this error? What are the cases of fraud, and denial of justice that are expected to occur from the prosecutor general of customs?

This study is based on the analytical method, under which the legal texts governing the responsibility of the customs prosecutor will be presented and analyzed to determine the deficiencies and shortcomings, and the presentation of the jurisprudential opinions and the relevant judicial rulings and analysis.

Study plan:

This study is divided into three sections. First, what is the customs general prosecutor? The second is the harmful act of the Customs prosecutor general. The third is the scope of the harmful act of the customs prosecutor. Its conclusion includes the most important findings and recommendations.

THE FIRST TOPIC

WHAT IS THE CUSTOMS PROSECUTOR GENERAL?

The nature of the customs prosecutor comes through several issues of concern. The first is to define it, the second to distinguish it from similar concepts, and the third to define its functions. Because knowing all these facts makes it easier for us to study the civil liability of the customs prosecutor

Based on the above, we see the division of this topic into three parts. We allocate an independent part for each of these issues as follows:

First part: Definition of the Customs General Prosecutor.

The second part: to distinguish the concept of the Customs General Prosecutor and similar concepts.

Third part: duties of the General Prosecutor of Customs.

FIRST PART

**DEFINITION OF THE CUSTOMS GENERAL
PROSECUTOR**

The Jordanian legislator defines the customs general prosecutor in the Customs Law¹¹⁷: The Customs General Prosecutor is a member of the General Customs Department and a person who has a service in the Customs Department for not less than five years may practice the function of the Customs Public Prosecution. He has the right to investigate, plead, appeal, the judgments issued by the Customs Courts¹¹⁸

It is clear from this definition that the customs prosecutor is a customs officer, i.e. a member of the General Customs Department, which is considered a public institution of the Ministry of Finance. He is considered one of the personnel of the Customs public Prosecution department, and is responsible of the customs crimes and prepare the pleadings before first instance and appeal Customs courts. He shall appeal the judgments issued by the first instance court before the Court of Appeal and to appeal the resulting judgments before the Court of Cassation. The Customs general

¹¹⁷ Law No. 20 of 1998

¹¹⁸ See Article 227 of the Customs Code.

prosecutor shall hold a university first degree in law with five years of service in the Customs department.

As for the Fiqh defines the Customs General Prosecutor as: who represents the general right in customs crimes and customs rights claims¹¹⁹. He represents the Customs Public Prosecution in criminal and legal customs cases¹²⁰. Who is responsible for investigating the customs crimes referred to him by the Director General of Customs¹²¹?

It is noted from the aforementioned meanings the Customs General Prosecutor that it confirms the nature of his work and his role. On the judicial side, the Jordanian Court of Cassation defines the Customs general Prosecutor as: the representative of the Customs Public Prosecution before the Customs Court¹²² the representative of the Customs Public Prosecution in cases before the Customs Courts, the only body granted the right to plead before such customs courts irrespective of the governmental authority collects the fees of that

¹¹⁹ Fayeze al-Faouri, The Customs Judiciary, without a Publishing House, Amman, 1991, p. 67.

¹²⁰ Aqil al-Nawaysa, The Customs Case, Al-Manar Library, Amman, 1997, p.45

¹²¹ Mohammed Hussein Al-Rikad, Criminal Lawsuit, Master Thesis (unpublished), Faculty of Law, Middle East University, Amman, 2009, p.59

¹²² The decision of the Jordanian Court of Cassation in its capacity as a jurist No. 1789/2009 dated 29/7/2009 Adalah publications.

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transactions¹²³. he is the one who exercises the function of the Customs Public Prosecution and has the right to investigate customs cases¹²⁴ and who represents the Public Prosecution in cases related to sales tax and customs issues, duly appointed by the Minister of Finance and holds a degree in law.¹²⁵ It is noted that when the Court of Cassation defines the customs prosecutor it confirms the fact that he represents the Customs Public Prosecution in customs cases before the customs courts, and appointed by the Minister of Finance.

In our turn, define the Customs Prosecutor as : (a public employee from the personnel and staff of the General Customs Department , holds a university degree in law, and spent a minimum of five years in the work of the General Customs Department and appointed under a decision issued by the Minister of Finance as a customs prosecutor to perform the duties of Investigation and pleadings in customs cases before the customs courts, namely the Court of First Instance and the Court of Appeal of Customs. It is the one who submits cassation appeals relating to cases before the Court of Cassation.

¹²³ The decision of the Jordanian Court of Cassation in its capacity as the jurist No. 964/2009 dated April 22, 2009

¹²⁴ The decision of the Jordanian Court of Cassation in its capacity as Law No. 262/2009 of April 20, 2008.

¹²⁵ The decision of the Jordanian Court of Cassation in its capacity as the legal entity No. 389/2008 dated 8/6/2008.

THE SECOND PART

THE DIFFERENCE OF THE CONCEPT OF THE CUSTOMS GENERAL PROSECUTOR FROM SIMILAR CONCEPTS

The concept of the Customs General prosecutor differs from many similar concepts. Among the similar concepts: a civil public prosecutor, a state security general prosecutor, a military prosecutor, a prosecutor of the police court, a prosecutor of sales tax and income. Accordingly, we present the different aspects between them as follows:

FIRST: THE CUSTOMS GENERAL PROSECUTOR AND THE CIVIL PUBLIC PROSECUTOR:

The Customs Prosecutor is considered a customs officer, relating to the Customs Department and appointed by the Minister of Finance, to represent the Customs Public Prosecution in customs cases before the customs courts. While the civil Public Prosecutor is a judge who represents the Public Prosecution and is administratively subordinate to the Minister of Justice. He is appointed by the Judicial Council. His position is at the Court of First Instance. He is the head of the judicial police in his area of jurisdiction. He is responsible for representation of the general right and monitors the progress of

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justice. It supervises prisons and detention centers, oversees the implementation of laws, represents the executive authority in the courts, initiates public lawsuits and executes criminal judgments. He investigates and prosecutes crimes and follow up the offenders , receiving information and complaints, investigating and pleading in penal cases, and whether his place of work is a court of peace, first instance, criminal , juvenile , Corruption or appeal¹²⁶

It is clear from the foregoing that the concept of a civil public prosecutor is broader than the concept of the customs prosecutor and the powers granted to the civil public prosecutor are wider, in addition to the fact that he is a judge and not an employee, appointed by the judiciary authority, represented by the Judicial Council, and not by the Customs general prosecutor who is appointed by the Minister of Finance

SECOND: THE CUSTOMS GENERAL PROSECUTOR AND THE STATE SECURITY GENERAL PROSECUTOR.

The Prosecutor General of Customs shall be responsible for representing the Customs Public Prosecution in the field of customs issues only, while the State Security General Prosecutor represents

126 See Articles 8-28 of the Jordanian Criminal Procedure Code No. 9 of 1961 and its amendments.

the State Security Prosecution in the crimes of treason, espionage, terrorism, drugs, currency counterfeiting, conspiracy and incitement. The State Security General Prosecutor is a military position in connection to Jordan Armed Forces (Arab Army), being appointed by the Chairman of the Joint Chiefs of Staff¹²⁷. The differences between them in terms of their different respective bodies and their different respective issues.

THIRD: THE CUSTOMS PROSECUTOR GENERAL AND THE MILITARY PROSECUTOR GENERAL:

The Customs General prosecutor is a civil servant who works for a public institution. This department is affiliated with the Ministry of Finance. While the Military Prosecutor is a military judge reported to the director of military justice. The military justice director holds the title of military general attorney. The military prosecutor occupies the position of military public attorney at the Military court of appeal, or any other military court or unit.¹²⁸ It is noted from the foregoing that the Prosecutor General of Customs is of a civilian character while the Military Prosecutor is of a military figure and holds the title of military judge, and is concerned with military cases

¹²⁷ See Articles 2 and 7 of the State Security Court Law and its amendments No. 17 of 1959.

¹²⁸ Article 10 of the Law on the Formation of Military Courts and its Amendments No. 23 of 2006.

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arising out of crimes committed by individuals of the Armed forces, not as the customs general prosecutor who is specialized in customs issues only.

FOURTH: THE CUSTOMS GENERAL PROSECUTOR AND THE POLICE PROSECUTOR GENERAL:

The Prosecutor General of the Police is appointed by the Director of Public Security or his deputy. The Prosecutor of the Police shall initiate and prosecute the claims of right against the members of the Public Security and shall be brought before the Police Court¹²⁹. Therefore he is different from the customs general prosecutor appointed by the Minister of Finance, whose scope of work is customs issues and not police cases, ie committed by members of the General Security Service of any kind.

FIFTH: THE CUSTOMS GENERAL PROSECUTOR AND THE TAX GENERAL PROSECUTOR:

The tax prosecutor is a public employee of the Sales and Income Tax Department. He is responsible for the work of the Public Tax Office in all cases where the sales and income tax department is a party of it, before the first instance Tax Court and the Tax Court of

¹²⁹ See Articles 80 and 85 of the Public Security Law and its amendments No. 38 of 1965

Appeal.¹³⁰The Prosecutor General of the Customs and the Prosecutor General of the tax are of the same category as a public official, both of them are departments of the Ministry of Finance. Each prosecutor has his independent place of work relating to his department. The Minister of Finance is the authority who appoints the Customs general Prosecutor, while the Director of the Tax Department who appoints the Tax general Prosecutor in addition to the difference in the type of cases in each of them.

THIRD PART

TASKS OF THE CUSTOMS GENERAL PROSECUTOR

The purpose of presenting the duties of the customs prosecutor is not only the knowledge of these tasks, but such information will help us in investigating his responsibility, its elements and the extent of the harmful act committed by him. In order to know later whether the act committed by him is legitimate and of his main jurisdiction or is illegal and not related to his work. The duties of the Customs General Prosecutor is as follows:

First: Investigation:

¹³⁰ Article 58 of the General Sales Tax Law and its amendments No. 6 of 1994

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To investigate the smuggling crimes and customs violations of all types, which are referred to him by the Director General of Customs, or the Directorate of Customs Cases, or the Director of the Customs Public Attorney. After the investigation is completed, he prepares the summary of the investigation and the necessary recommendations through the so-called investigation report. The recommendations of the General Prosecutor shall be implemented by the administrative authorities of the Customs Department.¹³¹

The cases that the customs General Prosecutor may investigate are customs cases only. While others, such as bribery, forgery or theft, or any offense that has no customs nature or status or smuggling character, are cases out of his jurisdiction. He is not entitled to investigate them because they are outside his jurisdiction. He is not authorized to investigate them. in this regard, the Jordanian Court of Cassation , in its penal capacity ruled that: "... whereas the statements of the suspect appellee have been reported by the prosecutor of the Customs who is not entitled to investigate the accused for bribery offenses, but his duties are limited in smuggling crimes Therefore it is not considered taken by the prosecutor

131 See Article 227 / A of the Customs Law, and Muhammad al-Rikad, The Criminal Criminal Case, supra, p.59

having a Jurisdiction and cannot considered as an evidence legally in itself “¹³²

Second: Pleading¹³³:

One of the duties of the Customs Prosecutor is pleading before the Customs Court of First Instance and the Court of Appeal, i.e., to attend trial hearings and to represent the Customs Department, whether in criminal or juridical proceedings. He may discuss witnesses and suspected in his defense brief and present memorandums, statements and pleas.

Third: challenge the judgments¹³⁴:

One duty of the Customs Prosecutor is to appeal the judgments of the Customs Court of First Instance, whether penal or civil, when it is against the interest of the Customs Public Prosecution. As well as he shall appeal the criminal or civil judgments issued by the Customs Court of Appeal if they are against the Customs department. The rest of the methods of challenge as objection, retrial and veto by written order is not legally allowed to resort to use, as it is not allocated to him.

132 Decision No. 335/1999 of 22 July 1999, published by Adalah.

133 Article 227 / A of the Customs Law.

134 Article 227 / A of the Customs Law.

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FOURTH: INVESTIGATING DISCIPLINARY
VIOLATIONS COMMITTED BY CUSTOMS
OFFICIALS WHILE CARRYING OUT THEIR DUTIES:

The duties of the Customs Prosecutor shall be to investigate the disciplinary offenses committed by them during the performance of their customs duties, and to investigate them by authorization from the Director General of Customs.¹³⁵

Therefore, we clearly see the functions of the Customs General Prosecutor and the powers assigned to him, and he must comply with them and not exceed them, or treating himself as a civil public prosecutor, so that he exercises the authority and competence of the civil public prosecutor. For example, he may not perform any of the following acts:

1. Investigate any crime that is not a customs offense.
- 2 - The exercise of orders on the judicial police.
3. Supervision of prisons and detention centers.
- 4 - Move the public criminal case, not customs.
5. Pursuing any crime that is not considered a customs offense.
6. Issue judgments in non-customs cases.
- 7 - Questioning the defendant in a non-customs offense

¹³⁵ Mohammed Al-Rikad, The Criminal Case of Customs, op. Cit., P.60

8. Inspection of houses without the permission of a civil public prosecutor for the area in which the house is to be inspected.

9. to report letters, parcels or publications at Post offices.

10. To issue an order to control the telephone conversations.

11. Enter houses without a note.

12. Arrest of any person

13 - Imprisonment of any person.

14. Arrest of any person.

15 - Giving way.

16. The hold or release of goods.

Since all the foregoing matters are outside his jurisdiction and they are under jurisdiction of the civil prosecutor or the court in accordance with the case requirements.

THE SECOND TOPIC

HARMFUL ACT OF THE CUSTOMS GENERAL PROSECUTOR

When the Prosecutor General of the Customs undertakes his work, he may commit an unlawful act, resulting in injury to third parties. If the wrongful act is not committed, such person would not

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suffer such harm. When such an event occurs, the civil liability of the customs prosecutor is established in this respect. The civil liability that arises in this regard is not the contractual responsibility due to the absence of the contractual association between the Prosecutor General of Customs and the victim. On the other hand, the responsibility that arises here is the responsibility for the wrongful act. In order to understand this responsibility, we must present its nature, elements, and its scope. For this purpose, we divide this topic into three parts

The first requirement: the concept of harmful action to the Customs General Prosecutor.

The second requirement: Elements of the harmful act of the Customs General Prosecutor.

Third requirement: Scope of the harmful act of the Customs General Prosecutor.

FIRST PART

THE CONCEPT OF HARMFUL ACT OF THE CUSTOMS GENERAL PROSECUTOR

Harmful action is considered one of the sources of commitment¹³⁶. It is one of the most important and most prominent of these sources, most common and widespread in addition to the contract. The harmful act is the same as the tort liability. However, the Jordanian legislator preferred the name of harmful act instead of the tort liability, since the designation of the harmful act is a term derived from the Islamic Fiqh.¹³⁷

The Jordanian legislature, through the Civil Code, regulated the provisions of responsibility for the harmful act in general and specifically through articles (256-292). We generally mean that he did not specify provisions or articles on responsibility for the harmful act of doctors or engineers community and others, including the

¹³⁶ The Jordanian legislator chose to name the harmful act instead of naming the tortious responsibility prevailing in the civil law of Egypt, Syria, Iraq, Lebanon, Algeria, Tunisia, Morocco, and Libya, and the Jordanian legislator, in his name, to call the act a misnomer.

¹³⁷ Adnan Al-Sarhan, Nuri Khater, Explanation of Civil Law, op. Cit., Pp. 363 and 364.

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Attorney General of Customs, and merely provided for general provisions applicable to all without distinction or exception. It should be noted that the legal regulation established and prescribed by the Jordanian legislator for responsibility for the harmful act is meticulous and orderly. It has come to cover all aspects of the harmful act, whether due to personal acts or the work of others, or to objects or animals, as well as to forced acts and encroachment. Our main target is the organization of responsibility for personal actions, to measure, forward and apply them to the Prosecutor General Customs When the wrongful act is committed,. To achieve this purpose and stand firmly on the responsibility of the prosecutor of the Customs General for the harmful act, ie when he committed an illegal act, the causes harm to third parties, we see the intended and desired view of the concept of responsibility of the General Prosecutor of Customs for the harmful act, and the elements of responsibility for this act,

FIRST: THE MEANING OF THE RESPONSIBILITY OF THE CUSTOMS GENERAL PROSECUTOR FOR HIS HARMFUL ACT:

We know that the harmful act or also called tort liability¹³⁸ is one of the sources of obligation, which is one of the most important and

¹³⁸ See Explanatory Notes on the Jordanian Civil Code, Publications of the Technical Office of the Jordanian Bar Association, 1992, I, 3c, 1, p. 275.

most common sources and widespread in addition to the contract. As mentioned above, what we are concerned about in this respect is the responsibility for personal actions only. So we will only talk about harmful acts within the scope of personal actions¹³⁹. Responsibility for personal acts in general is: the general rule and the general Shariah of responsibility, which is established when a previous legal obligation is made requires not to harm others has been violated and the wrongful damage is a source of liability within the scope and limits of the legal texts governing it. For the Customs General Prosecutor, the meaning of his personal responsibility for his actions is to: (a) it exists when a breach of an earlier legal obligation made by him and requires him not to commit it, even that he commits it. Therefore such damage caused by him, which is illegal is the source and origin of his responsibility. In other words, during the course of carrying out his work of investigating or pleading in customs proceedings, the Customs General Prosecutor violates the legislator's orders , which requires not to harm others and not to cause damage to third parties and whether the third party is the defendant or the suspected , or the owner of the goods, the carrier , the holder , the importer , the exporter or owner of the transporting vehicle used in smuggling or other. For example, the work of investigation and pleading is permissible and legitimate and not

¹³⁹ Article 256 of the Jordanian Civil Code stipulates that: "Any damage to third parties is required by the actor and not to be distinguished by ensuring damage."

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prohibited by the legislator if made under rules and regulations and if the Customs General prosecutor complies to the ethics, values, traditions, conditions, instructions, duties and obligations of his work, and his work was in conformity with law and without any legal breach resulting in harming his clients and referrals so as not to harm him, Humiliating, assaulting, threatening, blackmailing or compromising them, forcing them to confess, recording false confessions, arresting or imprison them or deliberately failing to answer their requests for the release of goods, means of transport, or other Illegal acts that cause damage to them .

Hence , it is clear from the above, that the responsibility of the customs prosecutor for the wrongful act is when he has done his work unlawfully or illegally, not because this profession is forbidden, while it is not , but because when he did so unlawfully and against the legislator orders not to harm others. Therefore, this responsibility is a penalty for the conduct of the customs prosecutor, who violates or abuse the legal rules requires him not to harm others, regardless of the person or his character. It also arises when the customs general prosecutor does not comply with law during exercising the investigation or prosecution or when he exercises the powers and authorities with no legal mandate , or when he behaves as public prosecutor in the broad sense, which leads him to use powers and authorities not invested to him and is prohibited by law to practice them or carrying out them such as arrest and search, or

issuance of arrest writ and travel banning decisions against smugglers and violators of the Customs Law, and when he fails to abide by the principles of honesty, safety, impartiality, objectivity and respect for others, or when it violates the morality, customs, traditions, values and controls of the actions of the customs Public Prosecutor, each order provided by Customs Law or , The Code of Criminal Procedure or the Penal Code. It also applies when the Customs General Prosecutor violates or neglects or violates a legal provision that requires him not to insult or defame, the defendant appearing before him, to demean him or to dishonor him or to prejudice his private life, or any other right protected by the legislator from harm, tampering or abuse . Definitely, this liability exists when the Customs General prosecutor affects the honor, integrity, and impartiality of the complainant or others. This is because the General Prosecutor is not entitled to do so, and because such acts are contrary to the law and have nothing to do with the investigation or pleading process. It is the right of third parties and whosoever may be shall remain, his honor, reputation, consideration, status and private life away from harm and abuse either from the Customs General Prosecutor or others.

It is difficult to limit the examples on violation made by the Customs General Prosecutor during his work course in investigation or pleading , but the general rule is that any action or behavior that

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made by the Customs General Prosecutor in violation of a legal provision, shall make him liable due to resulting damage and loss .

THE SECOND PART

THE ELEMENTS OF PERSONAL RESPONSIBILITY OF THE CUSTOMS GENERAL PROSECUTOR FOR THE WRONGFUL ACT

The personal responsibility of the Customs General Prosecutor for his performance in the process of investigating or pleading in customs proceedings is as follows:

(A) The wrongful act (harm): In general, the wrongful act is defined in the explanatory notes to the Jordanian Civil Law¹⁴⁰ regarding the text of article 256 of this law: "Harmful act is a civil liability even if made by a non-recognized person, and that the term (harm) in accordance with the provisions of Article 256 of the Civil Code is sufficient and clear from all other terms and denominations such as the terms of illegal act , unlawful action or act prohibited by law and other terms" .

Based on the above, the damage (harm) is the first element of personal responsibility, which is the wrongful act. It follows that this element is also the first one of the personal liability of the Customs

¹⁴⁰ Explanatory notes, op. Cit., P. 277.

General Prosecutor, in respect of his harmful action, which is the subject of personal liability. In order to consider him as liable in this field he shall make any wrongful action against others.

Damage in this respect is meant to be: "exceeding the limit to which the duty is to be placed or the limit to be reached in the act or omission which causes the damage."¹⁴¹

Undoubtedly, the harm caused by the above-mentioned meaning is different from the concept of harm, and moreover, it is a concept that is not synonymous to it at all. It is proved that the damage is an unlawful act issued by the customs prosecutor, such as insulting, defaming, the requester of attestation, for example, while the damage is the harm or adverse effect resulting from the wrongful act of the Customs General Prosecutor, which affect the requester of attestation or others. It is clear that the responsibility of the General Prosecutor for his wrongful act, the harm to the complainant or the suspected or the owner of the goods, The importer, exporter, the carrier, the owner of the transporting vehicle, the clearing agent or company, or any other person, which has been produced and verified, remains in existence, even if he has no intention of causing damage. This is because the civil liability and responsibility in Jordanian civil law and Islamic Fiqh is also of a substantive nature and no any personal factor is considered, a factor relating to the will

¹⁴¹ Adnan Al-Sarhan, Nuri Khater, Explanation of Civil Law, op. Cit., Pp. 378-379.

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of the actor or his understanding, intent or awareness of the consequences of his action¹⁴². Therefore how is the matter when the Customs Prosecutor General is a person with full awareness of the consequences of his action as a general? Accordingly, in the light of the foregoing, the basis for the responsibility of the Customs Prosecutor General for a personal error requires that the first element of this responsibility be proven, which is the harm and the wrongful act. This wrongful act may be derived from the Penal Code such as acts of slander, humiliation, threats, extortion, breach of trust, bribery, forgery, beatings, etc., and may be derived from civil law such as assault of name, character, reputation, financial consideration, social status, etc., or any other applicable law that prohibits the commission of unlawful acts. And the customs general prosecutor commits it. Therefore, it is necessary to mention in this regard the most important illegal acts envisaged to be committed by the Customs Prosecutor General causing harm to the third parties:

1. To state in his investigation, pleading or response to the request or summons of statements certain words or terms that violate the dignity, honor, integrity, impartiality, integrity, arrogance, objectivity, or acquittal of the complainant, the suspect or the referral , or to commit, libel, defame, humiliate or impair his private life : A criminal, a dangerous smuggler, a sailor, a despot, a

¹⁴² Abdel-Moneim Farag al-Sadah, Sources of Obligation, Study in Lebanese and Egyptian Law, Dar al-Nahda al-Arabiya, Cairo, 1, 1979, p.485

barbarian, an unjust, racist, stupid, ignorant, incompetent, useless, mistrustful, harassing, dishonest, dishonest, dishonorable or false. Which deprives him of his honor, dignity and reputation, which in essence constitutes guilt or defamation or defamation of him, or directs those words to a member of the complainant's family or to the suspected or referral to him.

2. To state in his investigation, pleading or response to a request or summons submitted to him, or in any memorandum or regulation submitted to the court, or explanations or decisions included in the investigation file, or the file of the case false terms or words : to say that the complainant or the suspected offered a bribe for the purpose of releasing goods or means of transport, or for purposes of not being considered in the investigative stage as a suspect, but as a witness, or to say that he has committed hundreds or thousands of smuggling offenses, or that he leads smuggling gangs or is working to pay bribes to customs officers Or that the goods they have entered are goods that are prohibited, poisonous, lethal, or causing cancer , or other phrases seen later as non-genuine, or is a liar from the Prosecutor General of Customs intent to abuse and defame .

3. If he does not comply with the legal investigation: If the prosecutor of the Customs General does not comply with the law, his action is illegal. For example, if a person other than the customs general prosecutor is allowed, but an ordinary employee who does not have the position of a customs public prosecutor, to investigate

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with the defendant, or to issue arrest, detention, search, seizure, travel-banning, confiscation of goods, destruction of goods or confiscation of vehicles. All these decisions are illegal because they are not within the employee powers. The issuance of such decisions is illegal and is liability, as long as it results in damage to the affected person, whether the affected victim, the owner of the goods, the importer, the exporter or the carrier, or any other person.

4. If the General Prosecutor does not comply with the moral values and controls that must be met: The non-compliance of the General Prosecutor with honesty, impartiality, integrity, objectivity, transparency and honesty shall be considered an illegal act, if any harm is caused by such acts. Such as deceiving, cheating, lying to the defendant , or making a false accusation in order to obtain an unlawful confession

B) Damage:

Damage is the second element of the personal responsibility of the customs prosecutor for the harmful act. The general harm in this area is what affects a person's right or legitimate interest¹⁴³ or the harm suffered by others, either in themselves, in their money, in their

¹⁴³ Abdel Hakam Fouda, Civil Compensation (Contractual and Compulsory Civil Liability), in the Light of the Jurisprudence and Judgments of the Court of Cassation, University Publications House, Alexandria, 1989, p.17

feelings, freedom or consideration¹⁴⁴ which is the harm caused to them by the violation of their rights or Is a legitimate interest of him and whether that right or interest is related to his property, passion, liberty, honor, dignity or health.¹⁴⁵ The damage caused by the wrongful act can be defined by the Customs Prosecutor as: (harm affecting the defendant , Goods, importer or exporter, carrier, holder of the goods, owner or driver and means of transport used Smuggling or any other person who, during the investigation, pleading or exercise of the profession of a customs prosecutor, is unlawful, or whether such unlawful act is prejudicial to the offer, honor, dignity, reputation, consideration or financial position of such person or any of his protected and protected rights Or in the interest of its draft decision).

This damage may be material, which is expressed as financial or economic damage because it infringes on the material right of material value, so it affects the funds or debts of the affected person.¹⁴⁶ For example, the prosecutor of the Customs General decides without having the right or authority or power to do so

¹⁴⁴ Abdul Aziz Al-Lusamah, Civil Liability for Tort (The Harmful Action), its Basis and Conditions, Dar Al-Thaqafa, Amman, 1, 2002, p.63

¹⁴⁵ Adnan Al-Sarhan, Nuri Khater, Explanation of Civil Law, op. Cit., P. 410.

¹⁴⁶ See Article 267/1 of the Jordanian Civil Code, which has addressed and regulated this type of damage

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destroy the smuggled and unlicensed goods belonging to the defendant, or confiscate or sell the means of transport by public auction, although there is no legal provision permitting him to issue such a decision or perform such work.¹⁴⁷ Because it does not affect the financial liability of the affected party against the wrongful act of the General Prosecutor, but it also affects his honor, dignity, reputation, financial position or social status. The Customs Prosecutor shall, for example, slander, defame the defendant or to insult him, or to accuse the company belonging to him that it is specialized only in smuggling or is about to bankruptcy or liquidation or financial deficit and suffering heavy debts, or to accuse this company as promoter of prohibited steroids, harmful to health and killing or toxic or carcinogenic.

It should be said that such damage, in order to be compensable, must be met by several conditions:

1 - **The damage is established:** it is intended to be fixed certainly and confirmed, and so if it actually and truly, and in this sense the

¹⁴⁷ Abdul Majeed al-Hakim, Abdul Baqi Bakri, and Mohamed Taha al-Bashir, Civil Law, Provisions of Commitment, C2, Publications of the Iraqi Ministry of Higher Education and Scientific Research, Baghdad, p. 528.

damage is the case and whether the damage is a loss suffered by the affected person or a lost profit.¹⁴⁸

2. **The damage is direct:**¹⁴⁹ this means that the damage is a direct result of the wrongful act of the Customs Prosecutor General, so it is not possible to say that the injured person may be compensated for the damage caused by the wrongful act.

3. **Damage affects a legitimate interest of the party.**¹⁵⁰ In this the damage must affect a legal right or interest of the affected party by the wrongful act of the Customs General Prosecutor so that such damage may be compensated

C. **Causal relationship:** The third and final element of the personal responsibility of the General Prosecutor is the causal relationship. It is not sufficient for the Customs General prosecutor to have the wrongful act and damage caused to him and to harm the victim but his act shall be unlawful and a damage resulted from him affect ting the suffering person , but his unlawful act shall be the cause of the occurrence of the damage and this is expressed by the

¹⁴⁸ Abdul Majeed al-Hakim, Abdul Baqi Bakri, and Muhammad Taha al-Bashir, Civil Law, Provisions of Commitment, C2, Publications of the Iraqi Ministry of Higher Education and Scientific Research, Baghdad, p.528

¹⁴⁹ Saadoun Al-Ameri, Compensation for Damages in Public Prosecutors, Publications of the Legal Research Center, Baghdad, 1981, p. 19.

¹⁵⁰ Adnan Al-Sarhan, Nuri Khater, Explanation of Civil Law, op. Cit., P.455

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causal relationship between the wrongful act and the harm, which is a right and in accordance with the logic and the requirement of Article 256 of the Jordanian Civil Code, which states: "Any damage to third parties is necessary even if not discriminatory to ensure damage." The judge and through the written and personal evidences submitted to him may determine and decide if the causal relationship existed between the unlawful act and damage. The burden of proving the causal relationship is held by the victim affected by the act of the General Prosecutor of Customs, and as the plaintiff in the claim of liability and claim for compensation for the damage caused by the act of the Customs General prosecutor. The General Prosecutor shall have the right to prove that there is no causality or existence of any matter subject to legal evidence. The question raised in this area is: Which theory of causation taken by the legislator in this regard? Is it the theory of equivalence of causes or the theory of the strongest reason or the theory of productive or effective reason?

The answer to the proposition stems from the text of Article 266 of the Civil Code, which states:

"In all circumstances, the guarantee shall be valued to the extent that the injured person has suffered damage and loss of profits provided that this is a natural consequence of the harmful act"

The last part of this provision, in particular the latter part, requires that the damage be direct so that it can be compensated, that is, the damage is the result of the wrongful act, and therefore the theory of the active or productive reason is the theory adopted by the Jordanian legislator in this area.¹⁵¹

THIRD PART

SCOPE OF THE HARMFUL ACT OF THE CUSTOMS GENERAL PROSECUTOR

The scope of the harmful act of the customs prosecutor is to determine what acts committed by the customs prosecutor, which are considered as illegal and result in harm to the injured person, whether the affected person is the defendant in a customs investigation case or whether he is suspected in a customs offense or a witness or an expert . The unlawful acts of the General Prosecutor, which leads to the existence of a civil responsibility, can be summarized as follows:

First: material error:

The customs prosecutor, while exercising his duties, must not make a serious error. The serious error in general is: gross error, or

¹⁵¹ Adnan Al-Sarhan, Nuri Khater, Explanation of Civil Law, op. Cit., P. 455

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error that does not come from a careful person,¹⁵² which foresees the wrong conduct of the perpetrator,¹⁵³ a mistake that is not committed by a person interested in the duties of his work,¹⁵⁴ It is a deficiency arising from a single act or set of acts which indicates the incapacity and incapacity of the perpetrator to achieve the purpose of his or her work,¹⁵⁵ which is the excessive neglect that is equal to the applicable ignorance of the law, ¹⁵⁶a mistake that is not committed by the prudent person, The highest degree in the scale of error, which is a gross, obscene, or extraordinary mistake that cannot be imagined from the average person¹⁵⁷

¹⁵² Mahmoud Mahmoud Mustafa, State Responsibility for the Work of the Judiciary, PhD Thesis, Faculty of Law, Egyptian University, unpublished, 1938, p. 207.

¹⁵³ Sayed Mohamed Amin, The Tortious Responsibility for the Work of Others in Comparative Islamic Jurisprudence, PhD Thesis, Faculty of Law, Cairo University, unpublished, 1964, p. 302.

¹⁵⁴ Saad Harmoush, The Big Error, Dar al-Fikr, Beirut, 2008, p. 19.

¹⁵⁵ Ali Hussein Mazhar, Criminal and Civil Liability of Judges and Prosecutors, People's House, Cairo, 2010, p.156

¹⁵⁶ Mahdi Asif, Legal Error, Dar Al-Nahda Al-Arabiya, Cairo, 2010, p. 142

¹⁵⁷ Jaber Nassar, Civil Liability of Public Prosecutors, Al-Ma'aref Establishment, Iskandariyah, 2007, p. 185.

It was also known that the error was committed by a playboy in his work.¹⁵⁸ The above definition of gross error is generally recognized as an error committed by a person who is negligent, absent-minded or negligent in his or her work and is not interested in the ordinary person's concern.

With regard to the serious error of the Customs General Prosecutor, the jurisprudence or the judiciary has never given a definition of it. On this basis from this point of view we can know that:

- The error committed by a public prosecutor who is careful, vigilant, insightful and caring of his work.
- The error referring to the prosecutor is characterized by significant ignorance of the law, or excessive negligence in his work.
- The mistake that cannot be imagined to come from a second prosecutor who is dedicated to his duties and work.
- The mistake that is made by the Customs General prosecutor during the performance of his work, unintentionally or deliberately, but because of his negligence in his work, and lack of keenness and insight, and ignorance of the basic principles of the law and its work and jurisdiction, and resulted in damage inflicted on others

¹⁵⁸ Fuad applies, Response and Discrimination of Judges and Prosecutors, Dar al-Shaab, Cairo, 2011, p. 147.

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For the images of the serious mistake made by the customs prosecutor during his work, they are as follows:

A - The material error in the principles of law:

The basic principles of law are the basic rules of law, which are the simplest of legal rules and are among the basic principles of the law.¹⁵⁹ A serious error in the principles of law is achieved when the customs prosecutor commits a violation of the law or makes mistakes in its application or interpretation

The violation of the law is the denial of an existing legal provision, or the confirmation of a non-existent legal provision. This situation is available if, during the investigation of the complainant, he is left with a legal text that is not likely to be interpreted, although it must be taken into account. Its fault in applying the law is when a legal provision is applied to a fact without the final application of that provision. The error in interpreting the law is when it misrepresents the proper understanding of a legal text, misinterprets its meaning, and interprets it in a way that distanced itself from the spirit or the desired wisdom.¹⁶⁰

The law in this regard is without doubt the law in the broad sense, which includes legislative texts, regulations and executive

¹⁵⁹ Said Ahmed, The Origins of Litigation, Legal Book House, Cairo, p. 344.

¹⁶⁰ Awad Al-Zoubi, The Origins of Civil Trials, Dar Wael, Amman, 2003, p. 877.

instructions, the principles of Islamic law, custom, the rules of justice, and international treaties and conventions.¹⁶¹

A practical example of the serious error in the principles of law, envisaged by the Customs Prosecutor, is the following:

1. Issuing a decision to detain or arrest the defendant.

Since this authority is not for the Customs Court of First Instance and, when such a decision is made, it has committed a serious error relating to the principles of the law.

2. Issuing a decision to release a detainee or to release a person convicted of a customs offense:

The General Prosecutor cannot go beyond his powers or deny the court's authority to release the whistle-blower in smuggling offenses. The law restricts this power to the Customs Court and not to the customs General prosecutor.

3. The customs General prosecutor does not permit the defendant (or his attorney) of the defendant to attend the investigation of the defendant without a legal reason, or legitimate justification.

4. The customs General prosecutor uses violence, threats, beatings or extortion with the complainant during the investigation, in order to obtain recognition from him.

¹⁶¹ Awad al-Zu'bi, The Origins of Civil Trials, Dar Wael, Amman, 2003, p. 879.

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5. The customs prosecutor compels the defendant to sign white records from the minutes of the investigation, and after leaving the two cases, he shall record and record confessions and statements that have not been issued by the suspects.

6. Initial investigation of the complainant in public.

7. The Customs General Prosecutor issues a decision against the defendant without investigation, or a decision shall be made on a person who has nothing to do with the offense committed.

It is noted through these examples that the Customs General Prosecutor has made a serious mistake in relation to the principles of the law both in terms of violating a legal provision. For example, the complainant may not be investigated publicly but in secret. Here, when the public prosecutor investigates him publicly, he commits a material error.

The ignorance of the principles of law may lead him to errors in interpretation of law. He may change the actual meaning of the legal text. For example he considers the legal text permitting the arrest of the defendant is not limited to the court, but it may also permit him to do so while the text does not include such an interpretation.

His error in applying a legal text is through the application of a legal text that does not apply to the conduct of investigations. Such as the application of a provision for the investigation of crimes or

economic crimes on a case of customs investigation, i.e. the issue of smuggling and not an economic issue or a criminal case.

Therefore, when such a serious mistake is made by the customs prosecutor during the course of his work, his civil liability is established as long as the defendant is harmed. Such an error has always been made by the Prosecutor in carrying out his work and has been characterized as a serious and relevant error in connection with legal principles. In other words, the customs prosecutor's responsibility is a serious mistake in respect of legal principles, when it is signed by him and he carries out his work, resulting in damage to the defendant.

B) Material error in carrying out a duty:

A serious mistake in the performance of duty is the second form of gross error that is expected to be obtained by the customs prosecutor during his / her work, namely: unjustified negligence in the performance of work or due performance, or excessive negligence.¹⁶²

In our view, this error may also be called gross negligence or unusual negligence in the sense that it is the highest level of negligence in the customs prosecutor. A reason and logic from another prosecutor who is accused of his work is not considered ordinary, but rather a short- It is also clear that when such negligence

¹⁶² Ashraf Shahin, Explanation of the Lebanese Civil Procedure Law, Dar Wahba, Beirut, 2005, p. 416.

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occurs, the location and degree of the customs prosecutor, his place of work, and the type of offense of smuggling in which he investigates or pleads should be disregarded, so as to say that such negligence is perceived by others or is justified Such as the age of the Prosecutor, the novelty of his or her attachment to investigative work or any other cause. This is because whoever carries out and is charged with such work should be stripped of any excuse or excuse that would preclude his accountability because of the importance, gravity and place of the public prosecutor's work

In our opinion, the customs prosecutor shall have grossly neglected the performance of his work if the following conditions are met:

- If the gross negligence occurs while he holds the title and position of the Customs Prosecutor General.
- If the gross negligence occurs and he performs the work of the customs prosecutor.
- Not to be negligent deliberately, otherwise it is cheating or fraud.
- To cause harm to the defendant or any other person

Examples of gross negligence of the Customs Prosecutor include:

- If a decision is made on the witness instead of the complainant.
- If a decision is made to believe the right of a complainant without completing the investigation.

- If a witness asks him to return from his statements because he was falsely, and asked to give the correct testimony, to be exempt from punishment, or even to condemn the future complainant because he testified falsely and the prosecutor refused it.

There is no doubt that there are many other and varied cases and examples. In any case, when such a serious negligence is made by the customs prosecutor and the complainant or another person is harmed, the civil liability of the customs prosecutor is due to his gross negligence in performing his duties.

C - Material error in jurisdiction:

Exceeding the jurisdiction of the Customs Prosecutor is considered the third form of the serious error that is expected to occur from him. This means to practice investigation or issue a decision without being legally competent and aware of it. His work is a general prosecutor

Moreover, the attorney of the defendant asking him to declare that he is not competent in the investigation. The fact that the offense is committed and on the basis of the presumption is not a crime of smuggling, but a theft or forgery, but it continues to be investigated and the complainant is harmed by the continued investigation by an unqualified prosecutor.

Second: Fraud:

Fraud is one of the mistakes of the customs General Prosecutor. It is expected to commit a fraud during the course of his work, especially in the field of preliminary investigation with the defendant

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of the crime of smuggling and the crime of evasion of the general sales tax

In general, fraud is defined as: the use of fraudulent methods to camouflage the truth,¹⁶³ to act in a manner contrary to justice in response to the factors of love, hate, hatred or personal interest.¹⁶⁴ Knowingly, is to deceive facts or matters that are consistent with misleading, distorting or attacking the truth with the particular aim of the perpetrator.¹⁶⁵

We define the fraud committed by the customs prosecutor as: (The customs prosecutor during the investigation of the defendant in the case of his investigation for a crime of customs smuggling or an offense of evasion of the general sales tax by using means, or methods of fraud with the defendant in this case. These methods are characterized of their ability to mislead, disguise and alter the reality and truth established in the investigation file, in order to obtain a confession from the complainant, or to issue a decision that he believes to be right or to prepare for his future conviction by the competent court, From before Prosecutor General of Customs for the

¹⁶³ Ammar Shukri, State Pleading on the Responsibility Resulting from the Actions of Justice Judges, Dar al-Risala, Beirut, p.256

¹⁶⁴ Sfeir Fouad, The Discrepancy of Judges, Dar al-Halabi, Beirut, 2005, p. 408.

¹⁶⁵ Fayyad Samih, The Litigation of Judges, Dar es Salaam, Beirut, 2002, p. 185.

purpose of harming him, or revenge, or to terminate the proceedings as soon as possible investigative or for any other reason).

And we believe that there are conditions that must be met to confirm existence of fraud made by the Customs Prosecutor General and these conditions are as follows:

- There should be an investigation case before the customs prosecutor.
- The Customs Prosecutor General shall use this method with the complainant methods or methods of fraud.
- That these methods and methods to camouflage or change or alteration in truth and fixed facts.
- To be affected by the complainant, and damage to them
- The use by the customs prosecutor of such methods or methods intentionally or in bad faith or for special reasons or for others.

Practical examples of the use of fraud by the customs prosecutor with the defendant include:

- The General Prosecutor of the Customs alludes the defendant that he is a witness in the case and not a defendant, for the purpose of providing information that he would have given to him if he knew that he is not a witness.
- The General Prosecutor of the Customs alludes the defendant that his action is not punishable by him, and he shall not be considered a smuggler or he shall be covered by the general

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amnesty, and he shall not be harmed if he made everything and admitted the crime.

- The General Prosecutor of the Customs alludes the defendant that the rest of the defendants denied the offense and testified that he alone is the one who committed the smuggling offense. The defendant pleads guilty to this accusation and makes statements and confessions condemning him and condemning the rest of the complainants.

There is no doubt that there are other practical examples concerning the fraud committed by the customs prosecutor, which is considered to be a mistake, when it results in damage to the victim, whether the complainant or any other person.

Third: cheating:

The customs prosecutor is human being and may commits errors or wrong acts. In this sense, it may be that the prosecutor of the Customs Department may commit cheating during the investigation course, either for the purpose of harming the defendant or for the purpose of completing the investigation proceedings or for any other purposes.¹⁶⁶ Also known as intentional wrongdoing, motivated by personal interest or motivated by hatred or favoritism,¹⁶⁷ which is to show reality in reality¹⁶⁸

¹⁶⁶ Sfeir Fouad, The Discrepancy of Judges, Dar Al-Halabi, Beirut, 2005, p. 415.

¹⁶⁷ Ashraf Shahin, Explanation of the Lebanese Civil Procedure Law, Dar Wahba, Beirut, 2005, p. 423.

In view of the absence of any specific definition of the customs prosecutor's cheating, we see that it is: (a) The General Prosecutor's deviation in his work from what is required by law, with the intention of deflecting another defamation or complaint against the complainant or in favor of his personal interest. (A) The customs prosecutor deliberately deviates from the integrity, impartiality, fairness, objectivity, honesty, honesty, fairness and fairness of the customs law in an intent to achieve his or her special interest, or for reasons of revenge, hatred, revenge or any other cause.

Practical examples of cheating committed by the Customs Prosecutor include the following:

- The Customs General Prosecutor informs the defendant that he will hold all his vehicles, not the only vehicle used in the smuggling, and the defendant believes the statement of the prosecutor general customs, and initiates the sale of the rest of the vehicles at a low price.

- the customs prosecutor informs the defendant that his lawyer has submitted documents that harm him, and the defendant is true to his words and assaults his lawyer or his isolation and suffered losses as a result of this, despite the absence of such an order by his agent.

¹⁶⁸ Spring of Michel Abu-Yazbek, Reasons for the Dispute of the Members of the Judiciary, Dar al-Jil, Beirut, 2002, p. 415.

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- The General Prosecutor of the Customs orders the defendant to pay the expenses of witnesses to the prosecution. The defendant pays these fees or expertise fees, which is not binding and legally charged, at the request of the customs public prosecutor. However, the prosecutor obliges him to obey him and inform him that the law requires him to pay it.

- The Customs General Prosecutor informs the defendant that he decided to prevent his trial, and he can travel, and then found that he decided to suspect him, and was transferred to the investigation file of the court and issued a ruling in absentia, including imprisonment and mandatory civil obligations and prevent him from travel and confiscation of funds.

It should be noted that there are many examples of the cheating that is expected to occur from the Customs Prosecutor during the course of his work, in which the defendant is harmed and has the right to prosecute and dispute the customs prosecutor on his basis.

Fourth: Denial of justice

The most important of these duties is the investigation of the cases sent to him by the Director General of Customs directly or from the Director of Cases at the Customs Department or by his direct supervisor, the head of the investigation department at the Customs Prosecution Directorate or by the Director of the Department of Public Prosecutions. He must investigate with diligent care, without negligence, indifference. During the course of his work, he must

realize that the defendant may be prohibited from traveling, or that his money is being held, and that he is harmed by prolonging the investigation without legal justification. He must be aware that the defendant is innocent until proved guilty, that the complainant may be innocent of the offense assigned to him or that the value of the investigation is too large, and once the defendant has been found guilty of the offense, there are large sums will enter the state treasury, The investigation has results either in favor of the complainant or in favor of the state treasury, and both cases are in the interest of justice.

From this point of view, the customs prosecutor must perform his work with due diligence and without delay or without a legitimate excuse. Since it has denied justice. denial of justice in general is : "Refusing to fulfill the right,¹⁶⁹ or explicitly or implicitly refraining from adjudicating a case or deciding on an application or summoning,¹⁷⁰ and is also known as the laxity and deliberate slowness in dismissing the case.¹⁷¹

In the light of the absence of a specific definition by the jurisprudence or the judiciary to deny justice by the General

¹⁶⁹ Jaber Nassar, Civil Liability of Public Prosecutors, Al-Ma'aref Establishment, Iskandariyah, 2007, p. 235.

¹⁷⁰ Rabi Michel Abu-Yazbek, Reasons for the Dispute of the Members of the Judiciary, Dar al-Jil, Beirut, 2002, p. 417.

¹⁷¹ Sfeir Fouad, The Judges' Criticism, Dar Al-Halabi, Beirut, 2005, p. 430.

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Prosecutor, we define it as: ((a) the public prosecutor explicitly or implicitly refrains from dismissing an investigation by closing the investigation even though it is ready to close and make a decision; The decision to prevent a trial, or the decision to keep papers, despite the existence of such a request or refusal to answer positively or refusal to request a summons submitted to him by the complainant or his agent or any other person related to the investigation and resulted in damage from this denial).

Practical examples of cases of denial of justice by the Customs Prosecutor include:

- If the defendant or the accused submitted a request to the Customs General prosecutor to obtain explanations from him as required by law, for the purpose of penal reconciliation and termination of the case, but he refused to give these explanations, and the applicant was affected by this denial, and there was no legal or legitimate material justifying impediment.

The prosecutor denied him, but for reasons of personal refusal to give him explanations.

- The Public Prosecutor of the Customs refused to give the applicant (the defendant or the suspect) explanations for the purpose of canceling the travel ban issued by the Director General of Customs, and his refusal was not justified, which led to the continuation of the travel ban decision and the denial of the

applicant to travel for him or his work; Performing Hajj rituals or attending the consolation of one of his origins or branches.

- If the Customs General prosecutor refuses to give explanations for the purpose of releasing goods that are subject to perishable damage, and if he does not have an acceptable excuse, the result of his failure to damage the goods and the loss of material will be serious.

- The failure of the customs prosecutor to close the investigation, despite its readiness to close, and the perpetrators were harmed by this illegal delay.

- The Prosecutor does not conclude the investigation case without taking any action for more than three years. Refusal to hear or interrogate the defendant or to hear witnesses to the prosecution. The delay resulted in damage to the defendant, such as the maintenance of his travel ban, the failure to release his vehicle, the non-release of his goods or the incurring of expenses and fees.

Thus, we have finished talking about the extent of the harmful act of the customs General prosecutor, which is not provided for by the legislator in particular, but is clear through the general rules, and we urge the legislator to deal with this matter.

CONCLUSION

This study dealt with a topic that has never been discussed before by the Fiqh and scholars, by research, analysis and rooting, both in particular, independently and in general. In spite of its importance and seriousness, this study aims to shed light on this subject and try to address the civil liability of the Customs General prosecutor in all its aspects.

This study concluded a set of results, and a set of recommendations as follows:

First: Results:

1. The Customs General Prosecutor is a public official who is a member of the Customs Department and has a service in the Customs Department for a period of not less than five years. He is appointed by a resolution of The Minister of Finance as a customs general prosecutor to carry out the investigation and pleadings before the customs courts, Or tax, in terms of status, subordination, duties, obligations and scope of work.

2. Except for the investigation, prosecution, appeal of judgments and the investigation of disciplinary violations of customs officials, any act performed by the General Prosecutor during the course of his work is unlawful and contrary to the law, and subject him to civil responsibility, whenever damage is caused to others

3. The Customs General Prosecutor is prohibited from: arrest, detention, inspection, travel ban, release and release of goods, seizure of goods, arrest or entry of houses without a warrant, supervision of prisons and detention centers, investigation of any non-customs offense, Monitoring communications, letters, post offices and sentencing.

His civil responsibility for such acts is carried out by him, resulting in injury to others.

4. The civil liability of the customs prosecutor shall be the responsibility for the wrongful act, ie tortious liability, not contractual liability.

5. Harmful action of the Customs Prosecutor is a breach of an earlier legal obligation that he is not to commit to commit such breach, yet he is committed to the commission and results in injury to the complainant or any other person. Whether the owner of the goods, the importer or exporter, the carrier, the holder of the goods, the owner or the driver, and the mode of transport used for smuggling.

6. The elements of harmful act of the Customs General prosecutor is: the wrongful act, the damage and the relationship of causality.

7. The scope of the adverse act of the General Prosecutor is: serious error, whether in the principles of law, due diligence, jurisdiction, fraud, and denial of justice.

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8. The legislator did not deal with the civil liability of the Customs General prosecutor in particular and individually. This is a deficiency that must be avoided.

9. The legislator did not explicitly specify the scope of the harmful act of the General Prosecutor

SECOND: RECOMMENDATIONS

The Jordanian legislator, through civil law, tries to deal with the civil liability of the customs prosecutor in particular and individually, in view of the importance and significance of the work of the customs prosecutor, and because of the large number of mistakes made by the customs prosecutor, since he believes he practices the role of the civil prosecutor, or because he represents primarily the customs department, ie, the body that works for it, which is a competitor in all customs issues, whether investigative, penal or juridical, and whose primary purpose is to serve the customs department. On the rights, freedoms and interests of others. In this sense, and in order to achieve justice and fairness and to ensure that harm is not done to others and because the general rules do not help much, we urge the legislator to stipulate that:

1- The responsibility of the General Prosecutor for serious error, whether this error is related to the principles of law or the performance of duty or specialization and to know the serious mistake of the General Prosecutor.

2 - The responsibility of the General Prosecutor for fraud in his work and defines the intent of fraud in this area.

3 - The responsibility of the customs prosecutor for cheating in his work and know the intent to cheat in this regard.

4 The responsibility of the public prosecutor to deny justice, with the definition of a denial of justice

5 To ensure neutrality and impartiality, we urge the legislator of the Customs Law to instruct the civil public prosecutor to carry out the investigation and pleadings before the customs courts, or at least to make the customs public prosecution subordinate to the regular public prosecution.

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