

Investigating Civil Responsibilities of City Halls Regarding Directives of City's Islamic Council

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Abstract

Government's responsibility regarding its measures was discussed throughout history and after formation of modern governments various hypotheses have been proposed regarding its boundaries. One of such hypotheses is the division between application of authority and application of tenure. In this respect, the main challenge that this research is going to address is determining the responsibilities of city hall in administration of city's Islamic council directives and at the end of the research explanation of cases of civil responsibilities of city halls regarding non-administration of the directives of city's Islamic council will be clarified. Interpretation hypothesis which is written article 11 of national civil law established in 1339 is inefficient for compensating for damages caused by city halls measures in violating city council's directives. Right guarantee and quality hypotheses can be considered as a basis for tolerating public expenses, in addition to interpretation hypothesis, complement public institutions civil responsibilities/ it seems that due to the establishment of law authority principle cased by constitution and implied interpretation of individuals' equality facing law in addition to no loss principle, we can consider a justified legal basis to expand data of public institutes responsibilities according to new hypotheses. Creation of support mechanisms such as foundation of special funds mandatory insurance of risky public institutes risky operations, can be considered as guaranteeing supposed measures.

Keywords: Civil responsibility, city council, city hall, application of tenure, application of authority.

Problem statement

Civil responsibility is the necessity to compensate for the damage that is caused by an individual outside contractual requirements or criminal activities. Despite this, in other words, civil responsibility is a branch of judicial responsibility, which means the commitment necessity that an individual has regarding compensating the damage he has caused to another, including if the mentioned loss is due to the activity of an individual or others related to him, which includes contractual responsibility, and responsibility outside contract (forcible responsibility). Currently forcible responsibility exists when someone is harmed due to violation of legal duty and there is no need of a pre-existing commitment or contract.

Absolute civil responsibility withdraws to this contractual responsibility, which civil responsibility principle established in 1339 uses the term in the mentioned definitions.

With the expansion of societies responsibility based on interpretation was not able to bring a good number of losses under his wing. Therefore, some founded the basis of responsibility according to hypotheses without interpretation and stated that whenever an individual is harmed due to the activity of another, the individual is responsible for compensating the loss.

A question rises that whether the basis of public institutes civil responsibility is the general basis of civil responsibility which is discussed in private laws, or it has its own specific rules. There are various views in this respect. A group of lawyers founded the basis of public institutes civil responsibilities based on interpretation and stated that public institutes are responsible regarding their workers activities when their activities are performed while fulfilling their duty and it is related to their error. Public institutes greatly limit their civil responsibility domain and responsibility is only recognized regarding administrative errors of the employee which occurs unintentionally. And if the activity of the employee is during fulfillment of duty and intentionally with a grave error, they consider it separate of civil responsibility of public institutes and bring forward the employee`s personal responsibility.

Today in most of the developed countries they have expanded the domain of public institutes civil responsibility based on above mentioned hypotheses, by accepting civil responsibility of public institutes to support the rights of the harmed, and in a way consider a responsibility beyond civil responsibility principles in private laws for civil responsibility of public institutes. While, as it will be investigated later, Iran`s article 11 of civil law has considered some sort of an immunity for public institutes regarding civil responsibility and recognizes employees of public institutes personally responsible due to their activities which are performed during fulfillment of their duties which have caused harm, without considering whether loss was intentional or unintentional and recognizes the institutes responsible only regarding equipment or organization deficiencies. This concept is general and ambiguous, which its assertion is done with difficulty against public institutes.

A group consider that a public institute is only responsible regarding its official workers activities and another groups expands the civil responsibility of public institutes territory to all

the general employees of public institutes, all the official and contractual and mandatory and optional volunteer employees and legislative and administrative and even authorial activities of Executive Branch. Finally what is of great importance in this research is the violation of city halls in administering directives of city council and the condition of civil responsibility of city halls in this situation, which will be discussed extensively.

Research questions

What is the basis of civil responsibility of city halls regarding violation of directives of city council?

What basis can revolutionize the horizon of public institutes civil responsibility in Iran according to modern systems of laws?

What is the position and record of this basis in Iran`s law system?

What is the scope of public institutes in civil responsibility?

According to these hypotheses regarding which individuals and activities public institutes must be recognized as responsible?

What is a just reference for presenting a lawsuit of public institutes civil responsibility?

How trial ethics and lawsuit presentation facilitation of reasonability against public institutes are possible?

What is guarantee of administering a just court`s issued sentences in public institutes civil responsibility lawsuits?

Research Hypotheses

The dissertation is based on the hypothesis that the interpretation written in article 11 of national civil laws in 1339 is inefficient for compensating the losses caused by activities of city halls in violating directives of city council.

- 1- Equality and right guarantee against tolerating public expenses hypotheses, in addition to interpretation hypothesis, can be considered as a complement of vicil responsibility basics of public institutes in Iran.
- 2- Considering the establishment of principle of law`s authority due to the constitutions and implied interpretation of individuals` equality facing law in addition to non-harm principle, it seems that we can consider a justified legal basis to expand the domain of public institutes civil responsibility according to new hypotheses.
- 3- Assumed scope of public institutes in this dissertation includes the Three Branches and the institutions under their surveillance and leadership institution and the institutes under its surveillance.
- 4- Considering in public institutes civil responsibility lawsuits private harmed faces a public power and public power operates toward public interest, administrative courts, which in Iran Justice Bureau is a clear example of it, must be considered as just reference to assess the considered public qualification.

- 5- Creation of support mechanisms such as founding special funds and mandatory insurance of risky activities of public institutes can be considered as guarantee of supposed administrations.

Legal nature and identity of city halls

Legal identity is divided into two groups in public laws. First groups, which government is one of them and is defined as a human group that form a political society in a specified legislative framework in which the ultimate and superior power is applied to all members and social groups that are related to that society and a specific organization is tasked with application of governance and maintaining public discipline, thus a government is visualized. Second groups are institutions that have an independent legal identity by the laws sentence, such as city halls. According to article 7 city hall law, city hall has an independent legal identity. First legal effect of this issue is that city hall can independently work as law and obligation. Government, and consequentially all the ministries, organizations, and dependant systems have a unified legal identity and generally are subject to public rules. However, city hall is subject to a rule when the rules clearly mentions city hall or with general submerging phrases include city halls, for example if it is written "all institutes" in the text of law and that law clearly mentions the city halls.

Second legal effect is that unlike governmental organizations that are in a unified organizational hierarchy and follow a single organization in the affairs that are related to them, city hall has its own hierarchy. For example all the governmental ministries and organizations are obligated to operate according to rules of Management and planning organization of the country in formalities regarding their budget. However, city hall's budget is approved by City's Islamic council. This division is due to independence of city hall's identity in the accomplished rule.

Third legal effect of city hall's independence is that government is sentenced to monitor complex rules and regulations in solving current affairs which going through them requires difficult and lengthy formalities. Any changes in these kind of regulations must be made through Islamic consultative assembly and observing the constitution. However, city hall with an independent identity does not follow governmental rules, but follows the rules are approved by city council according to city hall rules. City hall can obtain approval for their regulations through city's Islamic council. Since major macro-planning and city hall's supervision is up to the council and this institution takes his measures independently, city hall's activities have higher flexibility than government and governmental organizations.

Legal nature of city's Islamic council

The most important local institution which has the responsibility to control city's affairs is city's Islamic council. It's a local organization with independent legal identity which collectively

applies the city management through two forms of monitoring and decision making. Albeit currently management of Islamic council is neither total nor complete and a portion of local affairs is performed by governmental organization and non-governmental public institutes. Islamic council has a separate and independent identity from city hall and government. Accordingly it becomes the subject of right and obligation and can personally present a lawsuit and be responsible for presented lawsuits. Another effect of city's Islamic council's identity is the possession of ownership right. Although this law is absolute according to article 588 of commerce rules, article 75 of organization rules, city's Islamic council duties and selections and the selection of mayors established in 1375 restricts this right. Our opinion on this article implies that all the moveable and immovable properties which are acquired through city hall's budget and is presented to the council, belongs to the city hall. Therefore, properties that assigned or will be assigned to the council through various ways such as people's gifts is under council's ownership and is not included in the mentioned sentence.

Elected hypothesis regarding civil responsibility of city halls regarding directives of city council

The relationship between city council and city hall is effective and completely indirect. Therefore, in article 74 of councils rules established in 1375 the legislator obligated that the council or any of its members don't have the right to interfere in installation or dismissal of city hall's workers or give them orders. Therefore, the relationship between council and city hall is through a medium and the agent of this relationship is the mayor. There is no clear distinction between the duties of the mayor and the city hall. Therefore, since the mayor is the highest executive position and is considered as the only agent of the relationship between the council and the city hall, as established in article 73 rules of forming mentioned Islamic council the right to hint ,question, and impeach the mayor regarding his performance or city hall operations. The relationship between city hall and city council is one of the most controversial and the most sensitive stages of mayor's duties. This issue in our country, which its people still are not widely used to participate in local affairs, is one of the main problems of city halls. As the majority of people of the city are not accustomed to city life and regulations of controlling the city which are achieved by city halls, they are not aware of the reason for emergence of "Genesis organization). Even knowledgeable and conversant people in issues are seen less. City hall, is the executive branch of the city, since administers all directives of city hall according to law.

City's Islamic council monitoring method in city hall's affairs according to case is as follows:

Monitoring virtue of city hall's handling

Monitoring maintenance of capital, pecuniary and generic assets, and moveable and immovable properties of city hall

Monitoring income accounts and expenses of city hall

Monitoring trades of city hall

Monitoring normal current virtue of city hall

Monitoring health affair of city range

Monitoring the affairs of theaters, cinemas, and other public locations
Monitoring graveyard creation
Monitoring administration of construction plans

Public courts qualifications limits

Assessment reference in lawsuits of civil responsibilities of public institutes in Iran is administrative justice Bureau and public courts. First the lawsuit is presented to the bureau and its role, according to the opinion of the judges, is only identification and authentication of administrative errors, which is one of the components of civil responsibility of public institutes. However, thereafter the role of public courts becomes highlighted. The important duty of authentication of other components of responsibility, existence of loss and causality relationship and finally announcing liability sentencing for compensation is their responsibility. Furthermore, where fault of an organization is assumed lawsuit must be presented against public references from the beginning. Assessment of the lawsuits that are based on personal error of the public institutes` employees are also presented in public courts. Accordingly, in cases when loss is due to collection of administrative and personal errors, the choice of assessment reference to beginning the lawsuit is up to the harmed. If he chooses non-governmental organizations as the litigant, to prove his error, which it may be the administrative error the employee at the same time, he must take his lawsuit to justice bureau to determine the loss rate and compensation method, and then present it in a public court. However, if he chooses the delinquent employee to compensate the loss from the beginning, it is possible to present the lawsuit in public courts from the start, and this is an outcome that is not compatible with the logic of civil responsibility of public institutes regarding their employee`s activities. The basis for legislating such a responsibility for public institutes, which is an indirect one, is to facilitate compensation of the harmed losses and supporting him against giant and powerful brigades of public institutes. However, the hierarchy that is considered for assessing the harmed lawsuit is in contrast with the ultimate purpose of this responsibility. Lengthy trials and the confusion of the harmed between public and administrative references, inevitably dissuades him from pursuing the lawsuit.

Conclusion

One of the accepted principles in developed countries is that public institutes are recognized responsible for the activities of administrative organizations which cause harm to others. No doubt such a principle must be accepted in every country, since governments have long abandoned individual ruling and organize the affair according to intervention or system principle. As a result in service provision approach, governments take measures of publication, education, health care and construction affairs and the like as their incontrovertible duty. It`s clear that the intervention of public institutes in affairs, which is increasing, leads to an increase in administrative intervention of public institutes. Therefore, it`s not logical that public institutes public institutes quail from the responsibility of the lawsuit that is presented by the harmed

against them. It is necessary to establish a compromise between rights of the harmed and power exercise of public institutes so that legal sentences can equally be applied to both of them. The collection of these two beliefs is possible when society compensates the loss of the harmed that were harmed for the society through representative, public institutes.

In case of judicial activities that which are considered as the activities of public institutes, due to the unavoidability of judicial errors principle and principle of necessity of compensating the harmed loss, it has lead to the attribution of judicial errors not to the judge but to the judicial system. Although in Iran`s law due to principle 171 we had a significant progress in this respect, considering laws of advances system we have a long way to go as principle 171 only includes the convicts and does not include individuals who are arrested as suspect or accused or their rights are violated and other harmful activities of individuals who foreman of justice administration. Other shortcomings are no codification of conditions and components of civil responsibility and no tracing of a clear boundary between interpretations of the judges and case and sentence errors which their compensation is up to public institutes, it was better if like other countries violation of the initial sentence in research stage or other stages of trial was as an indication of fault perpetration or error.

Unfortunately in Iran`s laws a just solution regarding administration method of sentences against public institutes due to method convicted payment to public institutes established in 15/9/65, since courts sentences administrative unites do not take any measures regarding the assets belonging to administration of the convict not before one and a half year after the issuance date of the sentence. Therefore, this delay that brings about a reduction in money`s value leads to the imposition of another loss to the harmed, especially when proving the case that the public system had the required credit or sufficient legal income but still refuses pay for the loss is not easily possible. To secure the rights of the harmed foundation of special funds and insurance can have an effective role. Insurance leads to expansion of loss compensation and evolution of conditions. Courts by relying to civil responsibility insurance, in addition to rigor, have expanded the concept and territory of compensable loss less in condition of fulfillment of civil responsibility. These factors today have led the governments, governmental and non-governmental institutes, and city halls of most of the countries assign a portion of or all of their civil responsibility to insurance institutes. In this regard, countries procedures are different. In some countries such as Germany civil responsibility lawsuit presentation against public institutes have is secondary, which means the harmed primarily goes through all the existing legal and judicial ways of compensating his loss, and if he didn`t get any results, presents a lawsuit against public institutes. However, in our country civil responsibility lawsuit presentation against public institutes lacks subordinate description and in rare cases public institutes insure the activities of their workers, for which schemes must be predicted and institutes pay to their responsibility insurance perforce in activities that the chance of loss is higher.

Regarding assessment, unlike advanced countries that utilize a different and effective solution, Iran has adopted interstitial solutions. There is difference of opinions in whether qualification of

administrative justice bureau is limited to identification of administrative error of the employee or the institute or bureau has a general qualification. However, it must be noted the majority of public institutes civil responsibility lawsuits follows public laws regulations. Affairs such as authentication of administrative fault, and the distinction of personal fault is possible through the amount of intervention of each factor that cause harm using administrative laws regulations and the bureau as a private reference must have a general qualification. This dichotomy leads to the prorogation of the lawsuit and confusion of the harmed among administrative and public references. However, if we consider the bureau's qualification general for the harmed's interests, we have taken a fundamental step to strengthen this institution. Finally, we should point out that public institutes must be responsible for the loss that is inflicted on individuals through positive and negative activities. of administrative organizations. Due to the acceptance of the growth in responsiveness of public institutes regarding their activities, public institutes must be recognized as responsible regarding all of the activities of their workers during fulfillment of duty that harms others. Therefore, public institutes must use utmost accuracy in employing their employees and workers, with the purpose of prevention and reduction of losses and supporting country's public budget. When employing a worker they should observe meritocracy principle and try to put them in appropriate organizational position according to their expertise and merit.

An individual must be recognized as responsible regarding his subsidiaries activities. Whenever a subsidiary makes a mistake or a fault and harms others, superior subsequently is recognized as responsible in compensating the loss that the harmed does not deserve, since superior is responsible for his subordinate's actions. This responsibility stands on the basis of administration error in employees' appointment or in monitoring their measures or their guidance. Therefore, if the harmed proves that the loss he is inflicted with was during the fulfillment of duty, delinquent is a guaranteed responsible.

The necessity for codification of a comprehensive law in proportion with occurred evolutions in which the harmed's rights guarantee decisively and effectively are frontispieces in this dissertation I emphasized so that in the end the hope of fulfillment of public institute principle servant of the bright horizons accede. Paying attention to the below points will be helpful in codification of this law:

- With a comparative perspective to other legal systems, bring the expansion of public institutes civil responsibility domain under attention.
- Founding supporting funds to compensate for the physical and general loss.
- Determining just court and preferably administrative justice bureau and considering a specific trial ethic regarding public institutes' civil responsibility lawsuit with simple and clear conditions of presenting a lawsuit against public institutes for the harmed with adoption of measures for mandatory insurance of the group of activities of public institutes that are considered dangerous by nature.
- Extending the responsibility of public institutes in urgent cases such as natural and unpredictable disasters regarding measures of optional colleagues and public institutes

and volunteers in addition to its official employees, till public institutes do not have any objection for the activity.

- Adoption of legal measures for realization of right and reclamation of the lost rights in all the stages of trial including discovery, pursuit, and punishment according to principle 171 of the constitution

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