

The Proof Of Civil Liability Of The Government Concerning Court Judicial Decisions By Criticizing And Analyzing The Arguments Of The Proponents And Opponents

Rwsearcher. Reza Dehghani (correspond author)

Department of Theology\ Farhangian University of Urmia\ Iran.

Ass.Prof.Dr. Seyyed Mehdi Qureishi

Ass.Prof.Dr. Mohammad Hassan Javadi

Urmia University\Iran

إثبات المسؤولية المدنية للحكومة فيما يتعلق بالقرارات القضائية للمحكمة من خلال انتقاد وتحليل حجج

المؤيدين والمعارضين

الباحث. رضا دهقاني (الكاتب المسؤول)

جامعة (برديس) أورميا؛ قسم الإلهيات/ جامعة المعلمين رجايي في أورميا/ إيران

dr.rd.iran@gmail.com

أ.م.د. محمد حسن جوادى

أستاذ مشارك. سيد مهدي قريشي

mh.javadi@urmia.ac.ir

sm.ghoreishi@urmia.ac.ir

جامعة أورميا/ إيران

الملخص:

في إيران، مثل العديد من البلدان الأخرى، فإن المسؤولية المدنية للدولة والمؤسسات الوطنية هي المبدأ المقبول، وإمكانية تقديم العريضة للشعب من الحكومة، على وجه الخصوص، من القضاة والقضاء في المادتين 171 و173 من الدستور، والجزء الآخر في المادة 167 من الدستور، أيضا في البند الأخير من المادة 11 القانون الجنائي المدني والمادتين 255 إلى 260 من قانون الإجراءات الجنائية المنصوص عليها صراحة. ولذلك، فإن المسؤولية المدنية للدولة في القرارات القضائية هي مطلب للدولة لتعويض الشخص الذي تعرض للضرر نتيجة لارتكابه فعل غير مشروع من الانتقصير أو الخطأ والخطأ من القضاء أو موظفيها يعزى إلى الحكومة أو الفعل غير القانوني للحكومة أو واجب الحكومة دفع التعويضات المنصوص عليها في القانون، لذلك، فإن تحمل هذه المسؤولية عن الدولة هو نتيجة منطقية لسيادة القانون والعدالة. في هذه الورقة، نوضح المسؤولية المدنية للدولة مع الحجج القانونية ضد الخسائر التي تسببها القرارات القضائية باستخدام المنهج الوصفي للمسح والطرق المقارنة والوصفية في بعض الأحيان للمقارنة السببية.

الكلمات الرئيسية: المسؤولية المدنية، الحكومة، القرارات القضائية، أسباب المؤيدين والمعارضين.

Abstract:

In Iran, like many other countries, the civil responsibility of the state and the national institutions is an accepted principle, and the possibility of the petitioning of the people from the government, particularly from judges and the judiciary is expressly stipulated in Articles 171 and 173 of the Constitution, and Article 167 of the Constitution, also in the last clause of Article 11 of Civil responsibility Law and Articles 255 to 260 of the Penal Procedure Code. Therefore, the civil responsibility of a state in judicial decisions is a requirement of the state to compensate a person who has suffered damage as a result of the wrongful act of wrongdoing or the error and mistake of the judiciary or its employees are attributable to the government or the government's illegal act Or the government's duty to pay damages as prescribed by law, so taking such responsibility for the state is a logical consequence of the rule of law and justice. In this paper, we are to describe the civil responsibility of the state using the descriptive method of the survey and comparative and sometimes descriptive methods of causal comparison with legal arguments against the losses caused by judicial decisions.

Key words: civil responsibility, government, judicial decisions, Reasons for supporters and opponents.

Introduction:

In history, private judgment and jurisdiction transformed from the right of direct taking to optional consolidation system and from optional consolidation system to forced consolidation and from that to the public judgment, and the State managed it by judiciary and some courts. Consequently, liability has had adventurous and changed fate. Since the genesis of the first communities, the foundations has been changed and moved toward evolution. "The thought of anyone's responsibility for his actions is as old as human life"

Judges and judicatory protect the lives, property and dignity of persons and their decisions also should be in harmony with their task, though such results are not obtained and judicial decision-makers also enjoy a strong shield of immunity and in this case losers also find themselves against ruling power, as well ; and justice dictates that any law breaking and any loss in the form of material and spiritual does not remain without compensation.

Judges and judicatory are safe because they are granted immunity from invasion of malcontents of justice, but since the human resource of this process is from human being and because of the nature of judgment and trial and the defect of judicial organizations, they can't be immune from mistake and even fault; so by exploring and clarifying the issue after examining the civil responsibility of the State, it is tried to criticize the immunity and civil responsibility of State with the reasons for pros and cons.

1-1 The reasons for cons of State civil liability (their reasons for State immunity)

1-1.1 Independence of Judiciary from the State

Judiciary is independence from the State and consequently the judges are independence completely from State, too. The State also identifies the independence of judges from the intervention of any authority in their affairs and so any authority cannot interfere in judging affairs, but they are all obedient and submissive against the order of courts by the rule of law, and all courts and consequently judges are granted such independency. Since the courts are not under the State domination, the State has no right to remove the issue from judicial agenda or modify the order issued by judge or stop its implementation. Therefore, the State's liability against judges' decisions does not justifiable. (Ra'fat 1952 ,105 ; Tamavi 1977 , 54)

Review and evaluation: The claim mentioned is not enough and convincing to exonerate the State from civil liability, because, first, there is a mistake about the State conception in the above mentioned claim, second, specific conception of the State has been picked up. Therefore, with respect to the separation of powers, none of the branches of the State is responsible for the actions of other branches and, however, it means that some people know the State responsible for the judicial undue decisions. The state in general, is the set of powers and governing institutions and in summary, it is the government and undoubtedly in this interpretation, jurisdiction is considered a symbol of the State's symbols and consequently, the State is responsible for that. If Executive or, in the proper sense of word, the State tries to compensate the loses resulted from judicial order, in fact, the State acts as administrator and the custodian of public property. (Sha'er 1978 , 118)

Second, negating the responsibility of the State against judicial acts based on negating adherence relationship is not correct unless the principles of government's responsibility to the governing powers arise from the rules of Civil Law in which the responsibility is based on master-slave relationship after proving employee's fault; i.e. the State is responsible for the acts of their employees while on duty because they are the State's citizen; While, according to the rules and principles of responsibility in Administrative Rights such a reason is not true, because it is possible the State even directly is responsible for the theory of advisable fault. (Ra'fat 1952 ,104)

1-1-2 Disagreement between administration and the judiciary

Some argue that although the State is responsible for its employee's adverse actions, the judicial decisions cannot be considered as other administrative actions and the State's liability cannot be generalized to these cases; because:

First, the legislator has enacted various warranties which guarantee the judge's purity and good performance of his duty, and on the other hand, excellence and competence of judges than other people and having special features of volunteers of this position, and their knowledge of law

guarantee the people rights and freedom. Then, there are many differences between judges and other employees in the offices, so this idea that the State has civil liability for its employees' actions should not also extend this responsibility to judges, because those guarantees for judges are not related to other employees and this causes the acts of judges be removed from the realm of government responsibility.

Second, the legislator has considered many guarantees for the parties so that they can defend themselves and push the judicial decisions to their advantages and meet their rights on the basis of equality and fairness, but there are not such decisions for people who lose by the adverse action of administrative employee. Moreover, different regulations have been enacted which are responsible for lack of haste in auditing and they prevent the judge to decide in a wrong way, and on the hand, methods and ways are prescribed to reject and contest for issued orders so that finally the judge's order be a symbol of truth and this also highlights the lack of responsibility for judicial decisions.

Third, in this regard, some site to disagreement between the relation of the judiciary and the parties, and administrative agencies and concerned persons about reference quality and referring to the judiciary is optional; while, concerned individuals and persons who benefit from administrative agencies have to refer and so confirmation and exposition of the States responsibility for the actions of administrative employees is common that is coordinated with mandatory element of reference, but reference to the judiciary is optional, the State's responsibility in this section is not comparable with the State's responsibility in the administrative section and consequently, it is essential that the government is immune from liability for judicial decisions.

In the law of France, French judges have considered certainty of States' responsibility for administrative employees, and do not consider any responsibility of the State for the acts of the judiciary liaisons. (Sha'er 1978 , 130)

Review and evaluation: Firstly, although the guarantees of the legislator to choose the judge or his performance lead to the fault resulted from judicial decisions would be far less than the fault of administrative employees but do not lead to negate fault, because the judge is a human and no human other than innocent is clear from fault, and if we consider judge to be responsible for any fault caused to loss for such a reason, it may lead to closure of the judiciary. Moreover, judge's error may be resulted from the lack of timely notification defect in the judicial system; In this case, what the difference there are between a judge and other administrative staff.

On the other hand, however, if the guarantees considered to be effective for some judges and consequently the fault in some courts is decreased, there are the judges of other courts whom the mentioned guarantees are not enough and therefore there are many faults in their acts, because all judges do not have the same rank and scientific level and awareness and understanding and accordingly, it is not possible that the orders issued by courts are always considered as a symbol of truth.

Secondly, reference of the parties to the judiciary is not always optional, because in matters related to criminal and penal affairs or associated with public order and public prosecutor also brings an action against someone, in this case, dealing with such an issue in the courts will be obligatory, inversely, referring of beneficiaries or persons benefited from administrative services to the offices is not also a permanent and obligatory matter; for example, persons referring to the economic centers. In addition, in some cases, referring and the relationship between the persons and judicial institutions and justice liaisons is essential than referring to administrative employees; in the cases that it is related to quitclaim.

1-1-3. The conflict of responsibility and the validity of res judicata

Some believed that justification of res judicata in the orders was offence to personal responsibility of judges due to accuracy of order, and accordingly due to the existence of mentioned criteria in the orders having adjudged attribute, they cling to it in discussion about the State's responsibility, and accepting the State's responsibility is incompatible with the correctness of orders; in other words, they believe that the mentioned effect on the orders is an obstacle for responsibility emersion against judicial decisions and they insist on the lack of responsibility principle. (Tamavi 1977 , 53)

Review and evaluation: Disadvantages of this opinion are that there is not any conflict between the strength of res judicata and compensation claim against adverse judicial decisions, because: first, injured person does not try to reverse mentioned order, second, the claim of compensation is different from the subject of res judicata order in terms of subject, demand for relief and also the parties. (ALhalv 2000, 444)

1-1-4. Conflict between responsibility and judicial decisions

Given that judicial decisions related to public order is in the scope of the State sovereignty, accepting the State's responsibility in running the government is necessary for compensation by the State; however, we cannot ask the public power which protects public order, to prosecute and punish offenders and investigate petitioners' claims, and on the other hand, we cannot consider the State responsible for some people who sustain a loss due to establish justice and arresting person or detaining property and, ... ; in other words, the State has supremacy and intrinsic determination due to its domination and public power and surpass other people's determination, therefore, it is not possible to consider it responsible, because one of public supremacy characteristics is that individuals should be bounded over it rather it be bounded over compensation for others.

Because of that in law and regulation of countries including under Article 11 of Civil Liability of Iran, the State's responsibility for sovereignty affair has been denied or has been viewed as suspect. However, as discussed in the foundation of State's responsibility, it can be logically based the State's responsibility on the principle of individuals' equality against taxes and public costs, and because activities and actions of governmental organizations, including judicial and administrative, have been done for public interesting, if some people sustain a loss from these activities, it is not fair that only those few people sustain damage and sacrificed. Therefore, justice and fairness imply that damage is prorated among all members of society. (Abu al Hamd 1373 ,527)

1-1-5. The need for high cost to the State

If we accept that whenever the judicial authority makes a wrong decision, he like other administrative employees will be responsible, but the State will be charged with the damage compensation, In this case the State has to pay it from public treasury which will be a heavy burden for the State and consequently it will decrease the State property and lead social reforms to become slower.

Review and evaluation: First, with respect to the multi-stage procedures and revising court rulings, and knowledge of judges to the rules and regulations, presence of a lawyer in the hearings, experts' comments, doing primary researches, and judges' fault about important claims and indemnifying heavy losses is very rare, therefore, in these few and rare cases compensation does not lead to impose heavy costs to the State and consequently eliminating reforms. (Sha'er 1978 , 130 ; Tamavi 1977 , 55)

Second, what differences are there between judges' actions and administrative ones that the losses resulted from administrative employees should be compensated from public treasury, although such faults are abundant in reality, and the losses resulted from judicial decisions remain without compensation and/or the judge will be responsible for them?

1-1-6. The judge's immunity principle

Judicial agencies are guards of justice, freedom and revival of the people; therefore, they should be independent and safe against Lord of influence, authority and their willingness to fulfill their great task and do not be worry about their career change, dignity insecurity and pursuit. The judge's immunity principle is gained from valuable experience which has converted stooge judges of authoritarian rulers to the independent and powerful judges in transition from tyranny to democracy. (Hashemi 1377,402)

The judge's immunity principle requires that Judges in the performance of their duties would be immune from civil and criminal prosecution.

All precedent, custom and the present doctrine support judicial immunity scientifically, theoretically and practically. The main reason for this is fear of retaliation which endanger the judicial independence against the parties' interests. Judges should make decisions without any fear

of the parties. Because it is possible that sentenced person resort to reprisal action against judge and this strengthens the idea of judges' immunity.

On the immunity of judges and judicial decision-makers against Civil Liability, First, transferring the burden of responsibility of judicial times to the public to avoid personal revenge, fearing that people stay aloof from custodianship of judiciary career, existence of opportunity and sufficient possibility for reversal of judgment based on private motive or mistake, undertaking of judges against public and not against the parties and unfairness of individual punishment.

Consequently, according to the general rule whenever judge has authority, it is not possible to file a lawsuit against him for decisions and actions taken in the context of its powers and authority. Likewise, if judge issue an incorrect and unjust order in the execution of his duties, Mistakes will not bring a lawsuit against him and he should not be penalized for the issued order or bound over to pay damages; therefore, regarding country interest, judicial authorities should be immune except the cases such as his incapacity.

Review and evaluation: The principle of judicial immunity is a logical matter, because if judges do not have such immunity, doing task fairly will be very hard and even impossible, however judges are always at risk of lawsuit and if the public rule of Civil Liability adapt to judge, in this case, the judge will place against the claims of defendants who the issued order is not in their interest; therefore, judges will spend half their life and duty for issuing order and other half in the responsive position for issued order.

Anyway accepting responsibility of judicial decision-makers does not mean negating their value, but, in fact, it is respecting the dignity, freedom, prestige, life and property of loser. But despite accepting the principle of immunity in some countries, now there is no absolute immunity and it has been faced with several exceptions in many ways.

1-2. Reasons for State's Civil Liability

1-2-1. proper understanding of the conception of State sovereignty

Supremacy and sovereignty of the State is initially understood absolutely and so sovereignty is understood as opposite to liability and non-addable to it and orders against the State was not supposed to be issued, because in this case the State's status was degraded into commons, but in new law, despite confessing to the supremacy and sovereignty of State, the State's liability is not only opposite to its sovereignty but also considered as its requisite. In this case one of lawyers says: "It is better that the State should be the owner of deserved and perfect model for its compatriots, this is not possible unless it imposes the responsibility to any compatriot at the time of losing ". (Arsalan 1988, 19 ; Soleiman 1988,19)

1-2-2. Democracy phenomenon

Absolute sovereignty and supremacy and not surrendering before judicial order and law related to dictatorship, but the advent of democracy in Europe from the sixteenth century AD was a start that had a great impact on writers of the eighteenth century in the former conception of supremacy and returned it to the nations that later, generally led to a great change in the State's responsibility. (Soleiman 1988,14) Therefore, by the release of democracy and its extension in most countries, accepting State's responsibility against its actions looked natural, because its slogan was 'respect for the law and equality and submission of all before the law and democracy' government is based on legitimacy and surrendering before all; hence supremacy and sovereignty that is an auditor attribute for such a political dominant, does not hinder the State's commitment to compensate losses caused by its actions. (Sharghavi 1985 , 55 ; Soleiman 1988,14)

1-2-3. Increasing of criticism about absolute immunity of the State

Over time, the lack of responsibility of the government was criticized by the lawyers, because it was said that the lack of absolute responsibility of government was incompatible with justice and caused elimination of the equality of compatriots against public costs that is a fundamental right and should be respected; although it was not specified in Constitution Convention. These criticisms gradually led to legislators' interfering and accepting explicitly the responsibility of State in legal texts, and in some cases when taking a claim against employee was subject to permission from the relevant department, the legislator allowed to take a claim against employees without obtaining

prior permission from the related department so that departments cannot abuse their rights in this way. (Soleiman 1988, 23)

1-2-4. The emergence of the community principality school

Based on the theory of individualism school, the State is as a guard that its main task is supporting individual and taking over their internal and external security, not interfering in affairs that leads to limitation of their freedom, because the purpose of government is the welfare and well-being of individuals and therefore, it is better that individuals are free completely, since government intervention per se is harmful. Many changes caused to depart from religion and school of individualism to new religion named school of community principality. School of community principality means that the State must try that all people have the benefit of their rights and freedoms and it is better that many laws which guarantee the kinds of freedoms are enacted to accomplish this task; this matter is like the doctrine of individualism and therefore it should not be a problem to damage the members of community, and hence in this case, it is natural that the State's responsibility for its malignant actions is stabilized. Therefore, emergence of new school and increasing of the State's intervention in various economic fields and providing various fields that individuals can benefit their rights and freedoms, led to create a liability system by which it is possible to defend the rights and freedoms specified in constitutions and declarations of human rights, so that some lawyers have said: "Administrative liability is produced by the school of community principality".

The State's task in the various fields is gradually extended and its action became as ordinary people which include many kinds of tasks and actions, and sometimes its actions led even other people to be damaged, especially those actions that the State's staff are doing on their duties are responsible for them, therefore the State's liability was also flourished and evolved widely. Eventually, the State' responsibility for the personal actions and faults of employees who damaged someone because of their responsibility, came to existence normally.

Conclusion

Judiciary agency is the backbone of each legal system due to responsibility for heavy duty of fulfilling justice and security. The independence and immunity of judges and the judiciary against doing their great task is a rational and logical matter so they can do their tasks confidentially; therefore, the immunity problem seemed to be unexceptional, but the principle of immunity was gradually criticized by the emergence of intellectual movements, and fundamentally, the judicial immunity should not be interpreted in such a way that the cost of judicial justice is imposed to the loser, rather the rule of individuals equality for public costs and tasks requires that the State's liability for some cases will be endorsed.

By the enactment of Constitution and accepting human sanctity, freedom and dignity, multilateral sanctions have been granted to protect individuals right and the legislator has declared explicitly the personal responsibility of judges in the Article 171 and following that, the provisions of mentioned principle have been explained approximately in the other laws and regulations including Article 11 of Civil Liability and Articles 255, 256, 257, 258, 259, 260 of Islamic Penal Code.

Although the principle and mentioned Article is considered as an efficient step in the legislation movement of country, uncertainties associated with some of the words used in it and sovereignty castle caused article 171 cannot achieve its main goal.

But it is certain that truth and justice lose their objective concept, without responsibility. In any case, accepting the responsibility of judicial decision-makers does not mean denying their value, but, in fact, it is reverence, honor, freedom, dignity, life and property of the loser and despite accepting the principle of immunity, now judicial immunity has not been remained immune and in many ways it has faced some exceptions.

References

- Abd al Hamid, Abu al Hamd, *Administrative Law in Iran*, 4th edition, Tehran, Tehran University, 1373, 527.
- Ahmad, Arsalan Anvar, *Non - Contracting State*, Encyclopedia of Jurisdiction and Jurisprudence of the Lord, 123, B.T., 95.
- Mohammad Ja'far, Ja'fari Langaroudi, *Legal schools of Islamic law*, First edition, Tehran, Ganje Danesh Press, 1370, 645.
- Majed Raqeb, ALhalv, *Administrative Court* , First edition, Knowledge base in Alexandria , 2000 AD, 444.
- Vahid, Ra'fat, *State officials for their actions before the judiciary* , The Law and Economy, 9, 1952 AD, 105.
- Abbas, Zera'at, *Islamic Penal Statute in the present legal system*, 3th edition, Tehran, Ghognus Press, 1384, 43.
- Hamed, Soleiman, *The theory of personal error in the area of administrative responsibility*, First edition, 1988, 14.
- Ramzi, Sha'er, *Responsible for the work of judicial authority*, First edition, 1978 AD, 118.
- Sa'ad, Sharghavi, *Administrative judiciary*, Cairo, Knowledge House, 1985 AD, 55.
- Manuchehr, Tabatabayi Motameni, *Administrative Law*, First edition, Tehran, Ganje Danesh Press, 1378, 62.
- Mohammad, Tamavi, *Administrative judiciary*, Arab Thought House, 1977 AD, 54.
- Naser, Katuzian, *Civil Liability*, 3th volume, Tehran, Tehran University Press, 1370, 13.
- Garu, theoretical and practical studies in the Criminal Law, Mina al Din Neghabat's translation, First Volume, Tehran, Farhikhteh Press, 1377, 421.
- Reza, Musazadeh, *law of treaties*, 4th edition, Tehran, Mizan Press, 1389, 263.
- Sa'd Ibrahim, Najib, *Encyclopedia of jurisprudence*, 64th volume, Special case law, 7.
- Seyyed Mahmud, Hashemi, *Fundamental rights of Islamic Republic*, 2th volume, 3th edition, Dadgostar Press, 1377, 402.
- Yousef, Yasin Omar , *Independence of judicial power in the positive and Islamic systems* , First edition, Beirut, Dar Al-Hilal, 1995.