



Science Arena Publications
Specialty Journal of Politics and Law

ISSN: 2520-3282

Available online at www.sciarena.com

2019, Vol, 4 (1): 46-54

Foundations of Law Enforcement Officials' Civil Liability

Mohsen Mehri¹, Mahmood Ali Zadeh^{2*}

¹ MA, Department of Private Law, Iran,

² MA, Department of Private Law the Holder of level 4 Seminary Degree, Judiciary, a Judge of the Private Law Court, Iran.

***Corresponding Author**

Abstract: Every case might reach a stage of sentence enforcement in which the file is sent to the sentence enforcement unit as a subsequent to which the officials are to play their roles. During the execution of a sentence, one might be breached of a right due to an inadvertent or intentional, voluntary or involuntary actions following which the civil liability of an enforcement officer is posited, generally being government employees. Law enforcement is the duty of the government as a servant ruler carried out by means of its employees. Now that the pillars of civil liability of the enforcement official is objectified, the government is to shoulder the supply of compensation charges according to the general and civil liability regulations only in cases of its administrative guilt and the enforcement official is only obliged to compensate the wastage, fault and usurpation losses. In some cases, the organization and enforcement officer become the causes of a person's incurrance of loss; the former for the defections in system quantity/quality and the latter for violation of his organizational duty when enforcing a judgment. Who would be responsible if the sentence is left unenforced or incompletely enforced or if an individual does not reach his goal? Is it the enforcement executor to be held liable or the head of administration? And, does the intention and will of them have an effect on the enforcement executor's liability? This study deals with the novel theories and scrutinizes the civil liability lawsuits of the enforcement officials.

Keywords: Civil Liability, Judgment Enforcement Officials, Lawsuit Investigation Authorities.

INTRODUCTION

What is stated in defining civil liability is that a person is to incumbently compensate the losses imposed on another person in any case in which case it is said that a person is held liable before another (Katouziyan, 1995). In other words, a person is held civilly liable when s/he is obliged to compensate the effects and results of loss s/he has caused to another (Lorasa, 1996). It can be stated in a more complete definition that "civil liability includes the commitment and requirement an individual has to the compensation of losses caused to another, whether be it a loss instigated by a person's actions or be it the actions done by individuals affiliated to him or her or be it a result of the properties and objects owned by him or her" (Hosseininejad, 1991).

As it is stipulated in article 12 of judgment enforcement law, "law enforcers perform duties under the supervision of an enforcement manager. Therefore, the executors should obey the orders of manager in regard of the quality and method of executive interventions within the framework of the law. It is evident that the enforcement manager is to manage and control the execution operation corresponding to the order of the court head (Ahmadi, 1996).

On the other hand, there is an important period in the legal and judicial processes termed enforcement shouldered by law enforcement officials who attend in a unit of court called civil and penal verdicts' enforcement unit. Individuals working in such a unit range from the court head to office manager and employees and assistant judges. An individual against whom a verdict is issued is not usually willing to sustain the sentence in which case the turn comes to referral to the governmental faculties for the judgment enforcement.

As it was mentioned, sentence enforcement officials are all organizational employees working in law enforcement unit and an array of individuals, from court head to assistant judges, play a role in enforcement and the reason for stating the execution process, even if briefly for such a reason that the detailed description of the foresaid process is out of the current research paper's scope, is that we wanted to get the readers acquainted with both execution officials and their way of functioning so that the civil liability resulting from their actions could be put forth. Thus, such topics as civil liability and law enforcement officials are firstly defined and the civil liability of the enforcement officials is investigated in a second place considering their being government employees and the effect it has on their civil liabilities.

Study Literature and Background:

Civil Liability:

Civil liability is a branch of legal responsibility. Although the traces of ethics can be found wherever the term "responsibility" is used, it does not mean the equality of the two rather there are surely differences between them that the ethical responsibility means shamefulness of the conscience and feeling guilty and it is more of a personal aspect (Katouziyan, 1995). As it can be seen, the realm of ethical responsibility reaches to the boundaries of an individual's inside and it is interlaced with the world of an individual's inside. A bad and wrong thought can be accompanied by ethical responsibility while the realm of action and authority of civil liability is the external world and it is manifested in the external world. Thus, their most fundamental difference can be realized as the personal nature of the ethical and typical responsibility and social nature of the civil liability. The law world is the arena of the civil liability and it is here that the civil liability enters the scene. Ethical responsibility is not so much related to the law world, though there are some who believe that all the responsibilities are laid on the foundation of ethical and religious regulations. It is not right to throw ethics completely away in civil liability because it is still accompanied in the majority of the cases with ethical resonance in its basics. So, assessing the civil liability only based on external criteria can block the path to serving justice (Badini, 2005).

On the other hand, the primary objective, in criminal liability, is the compensation of the losses incurred by a victim. In fact, after justifying the crime in criminal lawsuits, the question is raised as to what should be done with criminal? Whereas, the question posited after substantiation of the responsibility of the harm cause in civil liability is that what should be done to the victim? (Yazdaniyan, 2000) Apart from what was mentioned above, the civil liability and criminal liability differ in other aspects, including their conditions, responsibility source, procedures domain, effects and results. The mentioning of the differential aspects does not bar the coexistence of both of the responsibilities in a case such as betraying in what one has been entrusted or fraud that incorporate both of the responsibilities. Another point is that being relieved of criminal liability in such cases as writs of prosecution suspension does not contradict civil liability and it takes its own path (Katouziyan, 1995).

On the other hand, civil liability differs from administrative responsibility. There is a general principle in the former that encompasses the compensation of any loss (Musazadeh, 1998). However, these two responsibilities differ in such cases as conditions, goals and trial method. Administrative responsibility proves an accentuated presence in cases that it comes to the government employees' civil liability and, as it was mentioned above, the execution officials are also government employees in its governance sense. Hence,

besides providing for the administrative responsibility of a person recruited by the government, an administrative fault might also cause losses to a private person and be followed by civil liability of the public servant. Thus, administrative responsibility, as used in respect to administrative transgressions, plays an important role in civil liability of the government and its employees.

Personal Responsibility of Enforcement Officials and Administrative Infringement:

In cases that a loss is caused by an enforcement official's fault and an administrative transgression comes about, each of the administration and enforcement officials are responsible to the same extent of their involvement in the occurrence of loss. In other words, every person is responsible for what s/he does. The legislator's objective is in line with the actualization of this same axiom. He wishes holding both the government responsible for the defectiveness of its organization and the servant bound to the faults s/he has performed so he delineates a boundary between the two (Katouziyan, 1995).

If the enforcement officials are held responsible in case that the administrative and personal guilt of them has caused the incurrence of loss by another, it would be like requiring them to compensate the losses they have not caused and if the organization is only held responsible, it would be as if carelessness and disorder and damage to public properties are advertised. So, one should accept that enforcement officials and government are to be held both responsible before the victim at any time that the damage is incurred by the fault of the enforcement officials as the government employees and the defectiveness of the administrative instruments (Katouziyan, 1995).

Of course, there is another idea in this regard that the victims are more inclined towards complaining and receiving compensation from the government considering the government's financial affordability and the government can also refer to the employee involved in the imposition of loss after making the compensation (Ghama'ei, 1997).

Article 11 of civil liability law stipulates that "the employees of the government, municipalities and their associated institutions that intentionally or unintentionally cause losses to individuals when performing their duties are personally responsible for the compensation of losses but it is the corresponding office or institution that has to compensate the losses when the imposed loss is found irrelevant to an action by them and related to a defect in an instrument in their offices and institutions ...".

Inadvertent occupational faults of the government employees is in fact related to the weakness in the public organization's structure in which case it is the government at which the responsibility directed (Katouziyan, 1995); the only exception in regard of the government's acceptance of responsibility in respect to the actions done by its employees has been as stipulated in Act 171 on judgment in Iran as well as article 12 of civil liability law regarding the employer's responsibility for the harmful actions of his or her workers in case that the relationship between the employee and the office is found matching the rules of Labor Law (Ghasemzadeh, 1999).

The Theory of Direct and Indirect Responsibility of Government in Respect to the Actions of Enforcement Officials:

The indirect responsibility is suspended on the substantiation of a harmful action done by a certain person who has done an activity on the account of the office (Lorasa, 1996). It means that the government is responsible for the breach of its own executive formation and organization rules and the sentence enforcement officials are bound to their own faults. So, the rational prerequisite of such an axiom is that the fault of the enforcement official has nothing to do with the governance and government in its general sense because the enforcement officials should not be blamed for the government's fault (Ghama'ei, 1997).

In regard of indirect responsibility theory, the government compensates the losses on behalf of the enforcement officials and subsequently refers to the enforcer based on his or her fault and shortfall. The positive point in this theory is that the compensation of the victim's losses is sought in civil liability and, as it can be seen, this method can compensate the losses and the enforcement official's insolvency becomes less accentuated. Some have posited the government and employee's joint responsibility to distance away from the

result that the enforcement official, as an employee, might lack the power of covering and compensating the loss and it is exercised in some other countries, as well. But, it can be stated in negating the theory in Iran's laws that joint responsibility is an exceptional issue that has to be affirmed by the legislator and, for the time being, the transversal responsibility of the government and officials cannot be ruled with such a shortcoming. However, it can be asserted that the government is obliged to the compensation in case of a loss imposed to a third party by an enforcement official following which it can refer to its functionary. That is because the primary responsible person is actually another person and the compensation is made by the one under the command and control of whom the loss cause works with the consideration of certain expedencies, especially for supporting the victim of loss.

In regard of the direct responsibility, the pillar is not necessary in supporting the compensation of victim's losses to the maximum extent possible (Katouziyan, 1995). In the meantime, in this theory, the government, as the enforcement officials' employer, is responsible for compensating the losses and, at the same time, it cannot refer to the enforcement officials after compensating the losses based on their guilt (Badini, 2005).

There is no distinction made in this theory between administrative fault and personal fault of the enforcement officials. Thus, in case of an assistant judge's imposition of a loss of a sort on a third party in the course of performing the assigned duties, the organization with which s/he has entered an employment contract is to shoulder the responsibilities. The most important justification about this theory is that an organization, as a legal personality, has to firstly assess these officials in terms of their moral and professional efficiency and healthiness when recruiting them. So, any loss caused by them is a result of such a shortfall of the organization. The biggest merit of the theory is that the loss compensation becomes the responsibility of a personality that can afford it. Legal personality operates by way of its organs and its actions belong to itself hence it is held responsible under the same title. Therefore, whenever an enforcement official, as a government employee, commits a light or heavy fault and/or even an intentional one, it is the office to compensate the loss as ruled in this theory and the simple result of this axiom that faults, with whatever the degree and the type, are attributed to legal persons (Ghama'ei, 1997).

Thus, there is no need for delimiting the two flanks of the enforcement officials' responsibilities following which neither being stressed out by the risk of performing a duty nor the immunity resulting from finding oneself irresponsible at any case would prevent the work progress. The best options specified by law can be found in direct responsibility cases and the followings are the most substantial direct responsibilities of government, as an employer, pinpointed in comparative law:

- 1) In case that the enforcement official, as government employee, is found solely perpetrating a forgivable carelessness, the great employer shoulders the compensation of the negligence-induced loss with no referral to the employee so that the enforcement officials' initiatives could be guaranteed and the low-income employees could be protected. So, here, intention and male fide should be absent.
- 2) If the loss is attributable not to certain individuals or factors.
- 3) Such a responsibility has been stipulated for supporting the fundamental rights. In other words, the loss compensation is per se so much important and topical for the society that the government accepts it for the sake of public interests.

Now, that the two abovementioned theories were investigated, it can be seen firstly that the civil liability law which is based on fault is per se closer to the first theory knowing the parties' fault and guilt as a criterion and even though it cannot be stated that guilt is the most important premise of civil law, it is at least one of the two wings thereof. Moreover, considering the increasing importance of the civil liability's deterrent role during the recent decades, some have begun speaking about revitalization of guilt (Badini, 2005).

Qualified Authorities for Trying the Civil Liability Lawsuits of Enforcement Officials:

1) Administrative Justice Court:

Tribunal is a specialized authority. However, since its qualifications regarding the trying of the claims proposed against the government are general and inherent, the principle would be that the tribunal is

qualified when doubts come about in trying of such cases by the general courts and excluding the civil liability claims' trial from the qualification of the tribunal entails explicit statement of the legislator (Musazadeh, 1998).

In Iran, according to Act 173 of the constitution and article 11 of the law, the administrative tribunal is generally qualified for trying the claims proposed against the government and it seems that trial of the government and public servants' civil liability claims is within the qualification circle of the administrative tribunal. In other words, any claim proposed by legal and real persons as specified in private law about the administrative actions of the government's organizations, institutions and employees are to be enumerated amongst the civil liability claims triable by the tribunal.

The tribunal's duty in civil liability claims is only based on the point that whether the harmful action has been conducted against law, regulations or mores and has it been materially guilty or not? There are these others who know the tribunal's qualification as being vaster and, meanwhile objecting to the inappropriateness of this note that causes wandering of the victim, believe that verification of all pillars of the government's civil liability is within the qualification of the tribunal and it is only by force of the aforementioned note that the compensation rate featuring an specialized aspect is within the qualification circle of the general courts (Musazadeh, 1998).

Disqualifying the tribunal as the only authority for trying the civil liability of the government and enforcement officials, as government employees, is caused by to perceptions. First of all, government's civil liability claims are based on private law rules and their procedures are based on civil procedure; secondly, the administrative tribunal, as a specialized authority, solely tries the claims on violation of general law regulations and the subject is not within the qualification domain of the tribunal wherever that the proposed claims are partly or wholly based on private law regulations. Therefore, the tribunal is qualified for trying the cases proposed for an administrative action's being found opposed to the law and/or when a corresponding authority is found disqualified for trying the case or when there is found a breach or abuse of the responsibilities and duties or when there is violation of executing the rules and regulations or when there is a case of preventing the fulfillment of the duties as a result of which a right of a person is wasted (Musazadeh, 1998).

2) Disciplinary Court of Judges:

In case that a judge causes another to suffer a loss when performing his duties, the government is obliged to compensate the loss if a loss of a type is imposed on a person as a result of a judge's unintentional fault that is considered as a type of professional fault. But, when the loss is found stemming from the judge's intentional fault, he is to personally compensate it (Jalilvand, 1994). Based thereon, trying the judges' occupational violations is the responsibility of the disciplinary court of judges and public prosecutor offices (Jalilvand, 1994).

3) General Courts:

The authorities qualified for the government's civil liability in Iran are administrative court of justice and general courts. In fact, a claim is seminally proposed in the tribunal that plays the role of identifying and verifying the administrative fault, as opined by the tribunal's judges. Administrative fault is enumerated one pillar of the government and its employees' civil liability. But, it is thereafter that the role of general courts becomes highlighted. The important duty of verifying the other pillars of liability, to wit the existence of loss and causality relationship and, finally, declaration of liability and sentencing the loss compensation, is shouldered by these courts. Also, in cases that the organization is held liable by default, the claim should be firstly spoken before the general authorities and trying the group of claims based on the government employees' personal fault is also to take place in the general courts from the beginning (Ghama'ei, 1997).

Modern Theories of the Enforcement Officials' Civil Liability:

The materials presented so far in the previous paragraphs have been based on fault theory. In other words, the enforcement officials should have perpetrated a fault of a type when enforcing the verdicts and the imposition of a loss of as ort should have happened so that liability could become actualized. In the forthcoming part, we are looking for the assumption that whether the civil liability domain of a law

enforcement official can be expanded if s/he is found not having perpetrated a fault? That is because it is possible for a loss to come about during judgement enforcement even without the existence of a fault, including personal or administrative, if the basis only be the emergence of loss. In such assumptions, the loss compensation is cancelled. Thus, in such a discussion, we are seeking to investigate the other theories on liability foundations and see if it can be proposed in losses originating from the verdict enforcement. This type of liability that is so-called as “faultless liability” is in fact a supplement and complement of the liabilities that are based on fault theory and they can case-specifically make up for the shortcomings. However, the issue should be still investigated and adjusted.

1) Risk Theory:

Faultless liability is the objectification of the civil liability that was proposed in 19th century as a result of industrial changes and machination of the human life rendering the activities dangerous and adding to the imposition of losses. It was under such circumstances that it was made clear that fault, as the only basis of liability, is a constrained framework incapable of compensating all the losses sustained by the victims. According to this theory, nobody can dodge the responsibility via resorting to the element of fault and justifying the absence thereof. In Islam’s laws, there is, as well, an axiom stating that no loss should be left uncompensated.

As ruled in this theory, the losses stemming from the unusual risks should be compensated even without substantiation of any faults, for example when the actions of an individual set the ground for the coming about of a dangerous environment that imposes losses to the others. Based thereon, it only suffices the victim to prove the relationship between the imposed loss and the actions done by a person in civil liability claims (Lorasa, 1996). The proponents of risk theory reason that the person causing the risk has more information about the risk and accident prevention than the others. Hence, besides regulating their activity level to the extent that is socially optimal, imposition of pure liability makes them motivated to gather more information and improve the quality of their actions and services so that the costs of the contingent losses could be maximally reduced (Linden, 1993). Some jurists know such a liability as a special visage of the fault theory implementation due to the following reasons: firstly, the theory is limited to the time at which there is a risk imposed by such activities; in other words, there should be a direct causality relationship between the loss and activity. Secondly, since the higher the risk of an activity the larger the amount of care exercised by the doer in line with prevention of loss imposition. Actualization of risk is indicative of the idea that the loss cause has not exercised the due care and s/he has fallen short of fulfilling his or her duty (Badini, no date). In other words, the law has ruled the verdict enforcement not the loss imposition permission and it is generally assumed that each of the verdict enforcers performs his or her duties with sufficient information and precision. Thus, the legal permit of verdict enforcement is not to be regarded as loss imposition permit.

Concerning the civil liability of the enforcement officials, it can be stated that it is based on fault. To put it differently, the experts’ liability is fault-based and, now, if we are to find a loss compensation foundation when it is found flawed in cases that there is no fault, a person performing his or her duty or providing public service should not be imposed with a liability of a type at any cost for such a reason that these enforcement actions do not have personal benefits to him or her. Thus, the enforcement officials cannot be at all held liable to the compensation of losses in which they have had no fault and guilt. For instance, if a person about to enforce a penal verdict destroys the subject and object of crime as a result of which a loss of a type is imposed on a person who has not been playing a role in crime perpetration at all rather his or her properties have entered the crime instrument by mistake and subsequently destroyed, why should the enforcement officials shoulder the responsibility assuming the absence of any administrative and personal fault and the otherwise is deemed unfair if the loss compensation is aimed at serving justice.

It is worth mentioning that enforcement officials perform duties within the domain of the government’s authorities, now, it remains to be investigated whether the government can be held liable in such occasions or not? It had been stipulated in article 323 of the former Islamic penal code of law that “when it is proved that

the military or the police personnel has taken a shot in adherence to the execution of an imperative legal order and s/he has not breached any regulation, s/he cannot be asked to guarantee the murdered person's atonement and it is the public treasury house to pay the atonement except in cases that the murdered and/or the injured person's blood could be shed with immunity". It is explicitly stated in the article that this should have been done with no violation so fault is annulled and it is not fair to hold the government agents liable for the compensation of the losses caused parallel to the performing of duties based on legal permissions and within the framework of the qualifications and the law but the public treasury house has been held responsible for the compensation for the creation of risk and loss. This is while we are bearing witness to such activities directed at some individuals that are, in some cases, a lot more intense than the activities resulting from administrative fault. Some know article 12 of civil liability law as laid on the foundation of risk theory but it has to be asserted that this article, as well, legally follows the fault theory's rulings by its default consideration of an employer as guilty (Ghama'ei. 1997).

It can be stated in the end that in cases that faults are not issued on the enforcement officials' side and a loss of a type has come about as a result of judgement enforcement, the government, as a person employing the enforcement officials, can be held liable for the loss compensation. As assumed in act 174 of constitution, the course is aligned towards the foresaid direction when the government becomes responsible for the loss compensation in the absence of fault. Of course, not all the cases should be considered deserving compensation by the public treasury house in a baseless manner because the otherwise would be per se a means of injustice and the cause of larger loss imposition.

2) Right Guarantee Theory:

Borris Stark, a famous French jurist, has proposed right guarantee theory. In spite of what has been asserted by the proponents of fault and risk theories, he has attended to the lost interests and radical rights of the victims and has made a lot of efforts to safeguard their rights. According to the right theory, the right to have full authority of one's own self and that of his or her relatives as well as the right to take advantage of one's own properties are fundamental rights of all human beings (Ghasemzadeh, 1999).

Based on this theory, if a person is imposed with a loss of a type, the government is obliged to compensate it because the government, as a servant and not as an employer and not even for its employment relationship with its own enforcement officials, is obliged to grant the required security to the society for the preservation of such rights and it is assumed in cases of abuse that the government has fallen short of supporting the victim. Thus, it has to directly shoulder the compensation of the victims' losses following which it can refer to the loss cause for retrieving the amount it has paid to the victim.

There is a trace of such a perspective in Iran's laws that are drawn on jurisprudence in such a manner that articles 255, 260 and 313 of the Islamic penal code of law stipulate that the atonement is to be paid from the public treasury house in cases that the loss cause is not clear or when a loss cause is found not affording the payment and this is a distinct example of fundamental right¹.

In regard of the discussed assumption that the government is responsible for law enforcement in the society and hires functionaries for doing so and it is committed firstly to enforce the judgements and secondly exercise due care when performing them so that the losses resulting from administrative and personal faults of the enforcement officials could be prevented, if a loss of a type comes about with the absence of a fault, the government, aiming at supporting the society members' rights, should not leave the losses uncompensated and its role in such cases is more accentuated because it is per se responsible for law enforcement. As a specimen, if a pursue occurs in line with performing such an executive operation as stopping a car following which an individual incurs a loss of a type, is it ruled by justice to leave it uncompensated or be compensated by the government? It has to be emphasized again in the end that agreeing to this theory should not be

¹ Scientific legal report, "civil liability of the public institutions", p.120

without establishing framework and stipulating explicit provisions in otherwise case of which more losses would be imposed in the public interests.

3) Insuring Government Theory:

The idea was first posited by Morris Horrio. He believed that all of the society members are insured against the losses caused by the governmental actions and the government's liability in this theory is laid on the new insurance theory. So, if an insurer is to compensate and make up for the losses caused to an insured, there is no need for the substantiation of a fault of an organization or an agent assigned with public service therein so that the responsibility for the imposed loss could be proved because a common insurance regime governs the society (Ghorouri, 1977).

Leon Dugi is of the belief that the entire losses caused by all of the organizations assigned with public service when performing their duties should be compensated by the government based on the government insurance principle (Ghoruri, 1977). According to this theory, when a loss of a type is imposed by the enforcement officials, as government employees, on the individuals, the social insurance incorporates them all and the resultant losses are to be compensated by the government equally to all the society members.

The theory is valuable in regard of the fact that no loss would be left uncompensated and, on the other hand, it is accompanied by this positive point that the victim should only prove cause and effect relationship hence s/he is not required to justify the fault, including personal or administrative, in regard of the actions done by enforcement officials. It is generally like the time an insurance firm receive premiums and insures the entire individuals in the society against the civil liabilities resulting from public activities (Ghoruri, 1977).

But, due to the same reason that was the basis of the other ideas mentioned herein, realizing government responsible for the compensation of losses caused by its agents is not rational and it is per se a cause of injustice and imposition of losses that might have come about even by the male fide, intention and personal fault of the enforcement officials. Furthermore, insurance contracts cannot form the basis of actions in this regard because the existence of insurance contract is necessary in relationships between an insurance company and a policyholder and such a contract does not externally exist in the relationships between the government and the enforcement officials and the individuals do not pay any money, premium or interest within the format of any contract for being insured.

Thus it is better to limit the idea to where the government is found liable for the administrative fault and light negligence of its enforcement officials and/or if the government should be held generally liable, it should also be given the right to refer to the guilty official. In other words, the final scale of distinguishing liabilities is again fault and the aforementioned theories should be solely applied for filling the gaps of the fault theory.

Conclusion

Liability is the legal commitment of an individual to the compensation of the loss s/he has caused to another person whether be as a result of his or her fault or activity and it is classified to certain types, such as ethical, criminal, civil and administrative. Civil liability incorporates the commitment and requirement of an individual to the compensation of the losses s/he has caused to another person whether it is the result of the person's own actions or the outcome of the actions done by individuals associated with him or her or be it stemmed from the objects and properties owned by him. The concept intended in the current article is obligatory civil liability and extra-contractual requirements of the law enforcement officials that originate from the dos and don'ts of the law and constitute civil liability in its specific sense.

Verdict enforcement is an important stage of a lawsuit wherein the individuals, from the enforcement manger to the assistant judge and enforcement officer, involved. Such a concept as judgement enforcers is a general term that encompasses all of them. It was also expressed that verdict enforcement officer is a person who assists the operationalization of the signification of a court's verdict by the order of an enforcement manager. In fact, a government employee responsible for actualization of the contents of a writ of execution is commonly

termed enforcement officer. As it is stated in article 12 of the civil law verdict enforcement law, enforcement officials work under the supervision of an enforcement manager. Therefore, enforcement agents should perform their executive actions within the framework of the imperative laws of the enforcement manager. It is evident that the enforcement manager, as well, is the same way obliged to manage and control the enforcement operation as ordered by the court head.

This is what deemed expedient by the administrative justice because if it is taken to strict via holding the government, with its own specific time and conditions, liable to the compensation of the losses caused by all the enforcement officials, they will fall short of exercising due care in performing their duties. On the other hand, it is an instance of injustice if the enforcement officials are held liable to compensate the losses they have caused under any circumstances as a result of which they will be stripped of innovation in providing service to the public.

Thus, a moderate method should be sought that secures judicial justice. In other words, the first thing is compensating the losses incurred by a person in the course of verdict enforcement and secondly the loss should be resupplied from a source in such a way that the loss cause is inflicted with incapability and insolvency. Therefore, the government as a legal person, though differing in its fault from a real person, is to be careful in hiring qualified functionaries and secondly try eliminating all the defections in its formation so that the law enforcement and verdict execution could be flawlessly carried out. The enforcement officials, as well, are to be held liable to the compensation of the losses they cause for any reason outlying their administrative duties and law or when they commit abuse and take extreme measures (fault).

References

1. Ahmadi, N., (1996), "civil procedure", Tehran, Atlas Publications.
2. Badini, H., (2005), "philosophy of civil liability", 1st ed., Tehran, Enteshar Corporation.
3. Ghama'ei, M., (1997), "government's civil liability in respect to the actions of its employees", 1st ed., Tehran, Dadgostar Publications.
4. Ghasemzadeh, M., (1999), "basics of civil liability", 1st ed., Tehran, Dadgostar Publications.
5. Ghoruri, Sh., (1977), "civil liability of legal persons", Tehran, Tehran University Press.
6. Hosseininejad, H., (no date), "civil liability", 1st ed., Tehran, University Jihad Publication Center of Shahid Beheshti University.
7. Jalilvandi, (1994), "civil liability of the judges and government in Iran, France, the US and England", 1st ed., Tehran, Yalda Publications.
8. Katouziyan, N., (1995), "extra-contractual requirements", 1st ed., Tehran, Tehran University press.
9. Linden A., (1993), "the Functions of Tort law", from linden Canadian tort law.
10. Lorasa, M., (1996), "civil liability", tr. M. Ashtari, Tehran, Hoghoughdanan Publications.
11. Musazadeh, R., (1998), "administrative law", 1st ed., Tehran, Mizan Publications.
12. Yazdaniyan, A., (2000), "realm of civil liability", 1st ed., Tehran, Adabestan Publications.