Science Arena Publications
Specialty Journal of Politics and Law
ISSN: 2520-3282
Available online at www.sciarena.com
2018, Vol, 3 (2): 25-34

Specifying and Assessing the Basis of Government's Civil Liability

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Abstract: *According to thinkers, not only natural individuals have civil and punitive liability, but juridical entities such as juridical entities of the private and public law are also responsible for their acts. Among juridical entities of the public law the government is considered as the biggest and the most important ones. The government's civil liability as the sanction of the law jurisdiction principle consists in the forced obligation by breaking a law or the government. In the present research, we are aimed to state some instances concerning the government's civil liability and to clarify its meaning using a descriptive method and library references. It is hoped that, the research content helps future law studies to clarify and specify related concepts.*

Keywords: *Civil Liability, Fault, Lack of Fault, Government.*

INTRODUCTION

Legally, not only natural individuals have civil and punitive liability, but juridical entities such as juridical entities of the private and public law are also responsible for their acts. Among juridical entities of the public law the government is considered as the biggest and the most important ones. The government's civil liability as the sanction of the law jurisdiction principle consists in the forced obligation by breaking a law or the government. Now, the following questions are posed.

What is the basis of the government's civil liability? Is the fault considered as the basis of the government's civil liability like the private rights? How domain of the government's civil liability is determined? Is the lost obliged to prove the government's fault in order to receive compensation from it? Is the government responsible for the loss in which has no fault? Could be legally said that, whether the government as the biggest and the most important juridical entity in the economic, cultural, educational and development society has the civil liability or not? Perhaps, public believe that since the government possess a holy origin or a public power, so it has no responsibility towards their citizens and the principle of the government's immunity has been accepted. According the aforementioned question, it seems that there are some points to determine whether the government has substantially the civil liability or not? But there are some reasons to identify the government's civil liability and they are able to remove the ambiguities as follow:

- Government's decisions are not always based on the public will, so responsibility of the government's decisions does not lie with people.

- Again, the principle of harm decree that the government like other entities is not allowed to cause damage to others, otherwise it is obliged to compensate damage.
- Some of the government's activities are about applying incumbency. In such activities which are principally commercial or economical ones, the government's acts like merchants, craftsmen and such like. Indeed, the government acts like other people about trading and as a result, there will be no difference between them concerning the responsibility.
- Again, by approving the civil liability law in 1950, the government liability has been proved by relying on principles of the civil law (loss and causality). Although the mentioned law had some problems but it led to significant improvements and thereafter, bringing an action against the government in order to restore financial and spiritual rights of the lost was increased considerably.

Therefore, according to above reasons it can have stated that, the government has accepted its civil liability towards other individuals. Concerning mentioned cases in the present research, we are aimed to assess some instances regarding the government's civil liability using a descriptive method and library references in order to clarify its concept. In the present research, the civil liability, the arena and domain of accepting the civil liability, the basis of government's civil liability and pillars for the realization of the government's civil liability will be discussed. It is hoped that the research content be adequate to boost knowledge and awareness of enthusiasts and scholars of the law.

The concept of civil liability

The civil liability takes responsibity for accounting those contraventions committed by an individual about their duties and commitments and the responsible is someone who has an obligation and they are asked if they don't fulfill their obligations. But in legal literatures, there is not a same meaning about the civil liability term. Sometime it has been utilized in the general meaning and it means the legal liability against the punitive liability and the moral liability. In this concept, all titles of tortious liability requirements like encroach, destruction, balance, high usage in administrating others property and arising damage from breaking a commitment and damages arising from the crime all are came under the umbrella term "civil liability" (Badini, 2004). The term of civil liability has not been defined in the law. But article 1 of the civil liability law approved in 1950 has been stated that, "if an individual without any formal qualification intentionally or unintentionally causes financial or spiritual damages for the life, health, freedom, prestige or commercial reputation or other lawful rights of someone else, they will be responsible to compensate damages arising from their acts". So, it could be concluded that, for all cases in which an individual is obliged to compensate others damages, it can be said that they have a civil liability toward them. The definition is too general to include all alternatives of requirements arising from the contract, quasi-contract, crime and quasi-crime. In the legal term, the civil liability has two meaning including, general and specific.

In a general meaning, the civil responsibility consists in "the legal obligation of an individual towards others for doing or leaving an action whether its origin is legal or financial action or legal provisions are considered as its origin independently. Indeed, here the liability means compensating damage not the punishment".

The specific meaning of the civil liability consists in "the legal task of an individual towards someone else to submit the property instead of using someone's property or actions or it is defined as the task of compensating the arising damage from doing or leaving an action which has not been mentioned in the contract" (Mousa Zadeh, 2014).

In should be noted the liability concept has a wide range and it is not limited to the civil liability. Some liabilities are including, moral, administrative, political and criminal responsibilities and such like. The abovementioned concepts have considerable differences with each other, so they do not interpret similarly.

For example, the moral liability mainly has the personal and individual aspect, and its result is feeling sin and guilty, again the act does not necessarily cause a moral responsibility and it does not have an objective and external aspect. When inappropriate thoughts come into an individual's mind, perhaps they feel responsibility and fault, but the civil liability has the typical and social aspect and before committing a crime the burden of responsibility is not imposed to people. Again, in the concept of the civil liability causing damage is the prerequisite for the realization of responsibility. But in the moral responsibility the damage is not important.

There are considerable differences between civil and punitive liabilities as follow:

1. The purpose of punitive liability is to maintain the public discipline and to support society's public interests, but the civil liability is aimed to compensate individual losses. Albeit, by the evolution of punitive law the concept of compensation is gradually replaced with the punishment. But, it should be pointed out that, in this case the compensation has the social and public aspect not the individual one, as well.
2. Law is considered as the punitive liability origin and the crime should be arised from the law (the principle of lawful punishment), but the origin of the people civil liability is not necessarily found in a specific law.
3. The domain of these two reliabilities is different. In some cases, like vagrancy or political crimes the punitive liability does not bring the civil liability. Again, some civil liabilities are not considered as a crime. For example, if someone takes possession outside of the boundary of their own property so that, their act makes some problems for their neighbors, it is not considered as a crime but they will be responsible in terms of the civil liability. Albeit, doing an inappropriate act in some crimes like robbery, malversation and fraud will bring about both liabilities. In such cases, the convict is not only punished by the law, but also they are obliged to compensate arised damages for the private complainant.
4. Attending punitive affairs has an individual aspect, so to determine the punishment level the purpose of the convict is of the most importance. But in the civil liability, in accordance with social interest the fault loses its moral concept and it will have a social and typical aspect.
   The normal behavior of staff or their internal reactions are not considered as a criterion to distinct faults, but the human behavior is important. The criterion is a social and typical topic, so although mad and minor don't have the distinction ability but they will be responsible as well.
5. Again, there is a considerable difference between civil rules of procedure and punitive rules of procedure. It should be pointed out that, the punitive liability is discussed in the domain of punitive law but the political liability is introduced in the domain of the basic law. So, in the present research, our discussion is limited to the civil liability and its domain. After introducing the civil liability concept, now, we are aimed to present its domain briefly.

The domain of accepting civil liability

The civil liability domain is divided into two categories as follow:

1. The contractual civil liability
2. The non-contractual civil liability

The contractual civil liability is arised due to establishing a contract commitment. When someone betrays and consequently causes some problems for their partner, so they are obliged to compensate losses.

In this case, according to the origin of the main commitment the guarantee of the offender is called the civil liability. On other words; the contractual liability consists in a commitment which is made by the breach of the private contract content for individuals and it actually has two provisions:

- The existence of a contractual relation
- The existence of a causal link between the damage and breaking a contract

To define the non-contractual liability, it can be said that, two parties have no agreement with each other and one of them intentionally or unintentionally cause damage to another, so it is called the non-contractual or an out of contract liability. For example, the law decree that people need to be aware of their action and word, don't be thoughtless, don't accuse and don't intend to kill anybody.

If an individual does not act according to public duties specified by the law and consequently their act causes any damage for others, so they are obliged to compensate damage arising from their act (Mousa Zadeh, 2014). Indeed, the civil liability is a part of punitive requirements. It is formed either due to breach of contract between two parties or it is not related to the contract, so compensation of losses is necessary merely due to arising damage. Although the civil crime has a criminal nature but it does not have a criminal title in criminal law, so its sanction is paying compensation or to compensate damages. Generally, rules and regulations concerning the civil liability, in all legal systems especially in the Iranian one, paying a considerable attention to the fault agent, but according to provided concept and definitions regarding the civil liability in the Iranian legal system and other legal systems, the basis of the government civil liability has been determined as follow:

1. The civil liability based on the government fault
2. The civil liability based on lack of government fault
3. **The basis of government's civil liability**
4. In the classic literatures and conventional law, discussed theories regarding the civil liability (about natural or juridical individuals of the public law), have been concentrated on two main theories including, the fault and lack of fault or risk. If a responsibility is assumed for the government like other natural and juridical entities, it will be adjustable and approvable with the same bases. Hence, before specifying and assessing the basis of government's civil liability in the Iranian act of parliament, a brief explanation concerning two known theories, namely the fault and lack of fault or risk, is provided as follow:

A) The civil liability theory based on the fault

According to the theory, the civil liability is discussed only when the damage agent has committed a fault to cause a detrimental act. The evidence of this responsibility is the moral assessment of the damage agent behavior, so if their behavior exceed the necessary limit to maintain others rights, they are obliged to retrieve the damage, but if their behavior is not abusive, they are not responsible. According to the fault theory, the exclusive reason to adjust one's responsibility towards damage compensation is the existence of a causal link between their fault and damage. The fault theory is stabilized on another basis; and it could be said that, the thought of compensating damage is an old morality and humanity ideal. According to morality, the damage arising from a fault should be compensated. Again, when a faulty compensates damages arising from their detrimental act, repenting of their sin can disburden their mind (Mousa Zadeh, 2014). According to the abovementioned theory, when the government's fault is proved, its civil liability is discussed. On other words, the existence of a causal link between the fault and damage is considered as the mere reason to adjust one's responsibility towards compensating damage. When the responsible of a detrimental happing is searched, the faulty that has been caused the damage is the first factor came into mind. Theoretically, the responsibility based on the government's fault is also divided into two theories:

a. The theory of government's indirect liability

Governmental organizations are not directly considered as a faulty for establishing their tasks. Since, all faults arising from of an administrative organization are not originated from it, but there is a clear separation between the administrative fault and personal fault. The separation of administrative fault and personal fault is extremely common, as in accordance with the fault theory, the damage needs to be compensated by the damage agent. On other words, everyone is responsible for their own fault. It means that, on the one hand, the government is responsible for their own organization fault, imprudence and its structural weakness and on the other hand staff shoulders the responsibility of their own faults. Again, the logic prerequisite of such a principle is that, the staff fault does not lie with the government and vice versa.

b. theory of the government's direct liability

According to the theory, the office is a juridical entity in the public law and like any other juridical individuals needs to shoulder the responsibility of detrimental acts of their personnel. There is no separation between administrative and personal faults in the theory; indeed, all faults lie with the government. The principle has been originated from the concept of natural personality. So, if an agent does an act by using the employee title, indeed the act has been done by a public juridical entity. The principle has been originated from the concept of natural personality. A juridical individual acts through their organs and their acts belong to themselves. So it should be responsible with the same title. Then, if a staff commit a minor or major or even an intentional fault, its responsibility lies with the office and it is the simple results of establishing the principle that any kinds of fault with high or low intensity is attributed to the juridical individual.

B) The civil liability theory based on lack of fault or risk

Until the end of 19th century, according to lawyers, the fault was considered as the exclusive prerequisite to establish a civil liability. But the increasing development of machines threatened the human life unprecedentedly. As a result, lawyers and courts realized that, there will be several injustices thorough using a legal system limited to the government's fault-based responsibility. Indeed, according to some lawyers, the fault cannot be considered as the mere factor to create responsibility, indeed, the causal link between the damage and detrimental act is enough (Katouzian, 2003). On other words, the damage arising from an individual's fault should be compensated, whether the detrimental act is based on the fault or not. Generally, there are two theories regarding the basis of responsibility without fault, which are discussed briefly in the following:

1. Risk theory
2. The theory of social equality about public expenditures
3. The risk theory

According to the risk theory, "if the government or someone else does an act, even though their act does not considered as a fault or a crime, it will able to cause a risk and they need to be aware of its bad or good effects. "For example, people working at a factory or a corporation are always imposed to several happenings like sickness and mental or physical harms. On the one hand, these accidents are caused by utilizing dangerous devices or apparatuses in the environment provided by the employer, and on the other hand, the employee enjoys advantages obtained from the factory or corporation, so the justice implies that damages arising from the working environment lie with the employer, and it means that they need to shoulder consequences of the dangerous environment they have made".

In addition to the mentioned dangers in the working environments, people are imposed to other harms arising from activities of governmental organizations including, the danger of explosion in a refinery or a public

factory, failure to execute verdicts (with the responsibility of the judicature), performing military activities or experiments and such like.

c. **B. the theory of social equality about public expenditures**

According to the theory, all citizens are equally obliged to pay money for expenditures that the government has provided to supply public interest or to make discipline. Accordingly, if the operations of a public organization cause to make damages to an individual or specific people the mentioned equality will be dissolved. As, according to this theory, all citizens enjoy public interests, while a specific group need to shoulder its damages. So, the government on behalf of the society is obliged to compensate damages to establish the mentioned equality again to avoid gratuitous usage of public which causes to make damage for the lost. The abovementioned theory is also used as the basis of the liability in some of the Iranian rules and provisions.

For example, "article l of the bill about how lands and estates are bought to perform government's public, military and development programs approved in 1979 states that, " when ministries, public organizations and corporations, municipalities, banks, public universities and such like need to buy lands, buildings, installations or other rights of mentioned lands belonging to natural or juridical entities that its cost has been already provided by the administrative system or the budget and program organization, so the administrative system can buy them directly or through a specific organization according to provisions of the law".

Indeed, according to the above-mentioned law, the administrative system is not allowed to seize lands, buildings and installations belonging to juridical or natural entities without paying the compensation. The risk theory has been criticized because according to the theory the defendant will be responsible even if they have not done any bad or censurable action. To criticize the risk theory, it is stated that, effects of human actions not only afflicts themselves but have some consequences for others, and it means that, some individuals are enjoyed and others are damaged. But these consequences are unavoidable and they are considered as the result of the social life. In the battle of life, no one can acclaim that has no damage to others. All financial and spiritual advantages are obtained through others loss. The constant battle is due to the life's nature, so other's losses cannot be identified as the mere reason to make commitment for compensating damages. So, some lawyers have been tried to balance fault and risk theories by considering the uncommon action as the basis of the liability. Indeed, the uncommon action is not as drastic as the fault and it is a kind of imprudence, so it can be attended as a step towards the risk theory and an intermediate and complex one.

According to article 132 of the civil law, "no one is authorized to occupy in their own property when they cause any damage for their neighbor, provided a normal occupation is performed to satisfy demands or avoiding damages". The article wants to emphasize that, getting right through an uncommon action by which other people are damaged will lead to take responsibility. In new rules like the labor law, although the compensation of labor's damages is emphasized, but according to the traditional theory, by expansion of employees obligations to provide safety equipments, training and supervising, their civil liability has been linked with their fault and mistake.

In article 12 of the civil liability based on the risk theory it is stated that, "those employees liable to the labor law are responsible to compensate damages arising from administrative staff or their labors during the work, provided it is specified that the employee has provided personnel with all necessary cautions or even by performing cautions the damage has not been unavoidable. According to article 91 of the labor law and based on the act of supreme council of the technical support "in order to supply protection, health and hygienic requirements of labors in working environments all employees and managers of working environments specified in article 85 of the mentioned law are obliged to provide labors with all necessary equipments and

train them to learn how to use safety devices as well as they are obliged to supervise about regarding hygienic and protective rules".

In article 95 of the labor law, the responsibility of executing technical rules and criteria as well as occupational health lie with employees and managers of working environments, but in note 2 of the mentioned law, it is stated that, "when employees and managers of working unites specified in article 85 of the labor law provided labors with all necessary equipments for technical protection and the occupational health, but if the labor attempts to use equipments regardless of prior training and recommendations and without attending available rules and instructions, there will be no responsibility for the employee". These schemes indicate that, in many cases, by following the risk theory the fault and failure of the defendant to perform their tasks has been considered as well. However, there are some instances that an individual is legally obliged to compensate damages even without performing or leaving an action, or showing an abnormal behavior. Its clear instance is article 1 of the mandatory insurance of the civil liability concerning owners of road motor vehicles against the third person.

According to the abovementioned article, "all owners of motor vehicles, all kinds of trailer and trains including juridical or natural entities, are responsible to compensate all physical and financial losses arising from the accidents of mentioned vehicles or their cargos with the third person". But, to answer the discussed objection against the risk theory, some lawyers stated the theory of right guaranty. According to the theory, the basis of liability in such cases is the assurance of lawyer. Because everyone is authorized to live in a safe society to enjoy their own property and the law is obliged to support them.

Although, condemning somebody who has not committed any crime is actually condemning a blameless, but the victim is also blameless and depriving them from compensating their damages is tantamount to condemning a blameless. According to the theory, identifying the civil liability of individuals is actually concerning to avoid trouble between the lost rights and the freedom of the owner that should be resolved in a way to advantage the lost. Albeit not in all cases, but when maintaining someone's rights is not accompanied with other's persistence.

Pillars of the realization of the government's civil liability

According to aforementioned issues concerning the concept and basis of the government's civil liability, pillars of the realization of the government's civil liability are assessed briefly. In the existence of three following pillars the government's civil liability is realized:

1. Fault
2. damage
3. the existence of a causal link between the fault and damage

A) fault

The first pillar for the realization of the government's civil liability is to prove the government and its staff's fault. From the viewpoint of the civil law, the fault means doing something that an individual is forbidden conventionally or contractually or abstaining from doing something. The fault can be divided into three groups including, civil, punitive and administrative ones. According to administrative provisions, three concepts of negligence, contravention and fault are totally considered wrong. Article 1 of the administrative procedure approved on Sunday 1967/08/06, acclaims that these three concepts are fault and it has defined them as follow:

- The fault consists in intentional contravention of provisions concerning administrative duties.
- The contravention means disregarding administrative discipline.

- The negligence means an unintentional failure to fulfill administrative duties.

Now, the following question is discussed that, what faults are considered as administrative ones? In the general concept, it can be said that, the administrative fault is discussed when principles of the public rights are violated. The following cases show examples of breaking principles of public rights according to the context of Article 2 of the governmental council law:

a. the illegitimacy of legal acts concerning the public rights
b. breaking principles of the qualification
c. violating or misusing of authorities
d. contravening to fulfill legal provisions
e. abstaining from doing duties

B) the existence of fault

The second pillar of the civil liability is the existence of fault. Indeed, after proving the fault the arised loss and damage is discussed. First, a precise definition of the fault is provided, and then all kinds of fault are assessed.

Definition of the fault

Article 1 of the civil liability law approved in 1960 states that, "if an individual without any legal justification intentionally or improvidently makes problems for someone's life, health, property, freedom, prestige, commercial reputation or any other their legal rights and subsequently causes financial or spiritual losses they will be responsible to compensate their act".

Kinds of loss

As mentioned above, the loss is divided into two groups:

a. Financial loss
b. Spiritual loss

Financial loss

Bringing an action against governmental organizations should be relying on the claim that, mentioned organizations infringe people's right and they can make a loss. According to the following circumstances the arised damage is compensable:

1. When the loss is definite.
2. When the loss is direct.
3. When the loss is predictable.
4. When the loss is not venial.
5. When the loss is specific (Mousa Zadeh, 2013).

Spiritual loss

The civil liability of the government is not limited to financial losses. Spiritual losses arised from government's acts need to be compensated as well. In a general division, spiritual losses can be divided into two categories:

1. Loss of an individual's reputation which is actually considered as their spiritual wealth.
2. Emotional trauma

Indeed, compensating people for their spiritual loss especially emotional trauma is difficult and assessing them with monetary measures is not acceptable. But, in order to satisfy the lost, spiritual and financial compensation of the loss is not avoidable. Article 171 of the Iranian constitution has also predicted that spiritual damages arised from the judge's fault or their mistake need to be compensated by the government. It specifies that, "if someone suffers from any spiritual or financial damage due to judge's fault about an issue, a dictum or adjusting a dictum to a specific case, provided their fault is proved, according to Islamic standards the culprit is considered as a guarantor, otherwise, the damage is compensated by the government, however, the culprit is rehabilitated.

C) The casual link between fault and damage

To incur a civil liability not only fault and damage are considered as its prerequisites but the existence of a causal link between them is also necessary. Indeed, it should be proved that, the damage has been arised due to the faulty behavior of the government or its staff. Here, the damage level can be determined easily and assessing the faulty behavior of the government or its staff is of the utmost importance. On other words, when the detrimental behavior of staff is the main reason to cause damage, so the damage is attributed to the office. But, identifying the reason of doing damage is not easy because it is not always due to the behavior of a governmental staff or unit and a variety of reasons should be considered. The most important ones are as follow:

a. Arising a damage due to acts of several juridical individuals
b. Arising a damage due to establishing various rules
c. Arising a damage due to the interference of external factors

Conclusions

As mentioned before, not only natural individuals have civil liability, but also juridical entities such as juridical individuals related to private and public law are responsible for their acts. Again, among public juridical entities, the government is considered as the main and the biggest ones and according to its authorities and activities in different arenas, specifying the basis of its civil liability is an unavoidable and necessary affair. Similar to other legal systems such as the France one, provisions of the civil liability in the Iranian legal system has a great attention toward the fault agent, so the basis of the government's civil liability is covered by two aspects:

1. The civil liability based on the government's fault
2. The civil liability based on lack of government's fault

Assessing the legal system of the government's civil liability in the Islamic republic of Iran specifies that, in various provisions, the government has responsibility for some pillars and individuals such as judges, the armed forces personnel, members of delegation board of companies' share and escapees. But about other employees, according to requirements of the article 11 of the civil liability law, the government only takes responsibility for any losses made by employees like deficiencies in office equipments, so it can be concluded that, there is a legal gap in our legal system. For example, people are suffering from activities of the government and its personnel for years but there is no authority to compensate their losses. Hence, it is necessary to clearly predicate the civil reliability of the government and its personnel in a public and comprehensive law.

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