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# Effects and Competent Authorities for Investigation of the Lawsuits regarding the Civil Liability of Executive Officials

Mohsen Mehri<sup>1</sup>, Mahmood Ali Zadeh<sup>2\*</sup>

<sup>1</sup> MA, Department of Private Law, Iran,

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

**\*Corresponding Author**

**Abstract:** *If in civil liability, we seek after the key goal we would find compensation to be the chief and strongest goal. In other words, when a responsibility is fulfilled and its pillars take form, the next step in civil liability is compensation of damages resulted from it. The major and direct effect of the fulfillment of civil liability of the executive officials is compensation. The current research seeks to study the effects and competent authorities for investigation of the lawsuits civil liability of executive officials. In this regard, one should say that if the conditions of civil liability of an executive official get fulfilled due to personal mistake or other causes of civil liability like destruction and usurpation he will be personally responsible and the government will be merely accountable in the event of administrative misconduct. Now if the government is sued due to the negligence of an official and government is forced to compensate the damages the government has the right to refer to the executive official in charge. Then, in those cases where government acts as the employer and the executive officials are either working under the National Services Act or under the Labour Law the damages suffered by a third party due to the performance of certain official order the civil liability of the government and the executive official should be insured. On the other hand, there are some cases where the quality of damaging act is so that causes the executive official to be free from the damage compensation. In the current essay we seek to show how this compensation is done? What are its methods? Who does determine it? Who pays it?*

**Keywords:** *Damage Compensation, Civil Liability of Executive Officials, Immunity of Executive Officials.*

## INTRODUCTION

One of the most important stages of the legal procedure is the execution of court decree. Execution of decree is the ultimate end of trial. In other words, the man whose right has been trespassed and referred to the court in order to reclaim it struggles to have his rights back and receiving a piece of paper as decree does not provide his intention. Thus the execution of the civil decrees of the courts is so important that the legislator has codified certain laws for it.

To reach its goals, the government undertakes a number of responsibilities and obligations and uses the means, tools and human forces which are under its control in order to fulfil these goals through extended activities in the society. The scope of daily activity of government with its numerous organizations in the form of triple powers (legislative, executive and judiciary) as well as the military forces is always associated with a number of mistakes of the staff and as a result some damages and harms to other real or legal persons.

Although the government has the power to perform its own actions this power is not in contradiction with liability. Moreover, the major goal of the government and executive officials as the agents is the governance of justice administration. As a result, if justice fails and causes damage the government as the representative of the society is responsible for the damage compensation based on distributive justice. Duguit is one of the critics of governance theory was the first person in France who propounded the idea that government has not been established for governance rather for providing services and if a power has been given to the government it is intended to be used for facilitation of service providing (Badini, 2005).

The officials in charge of the execution of decrees are organizational employees of the decrees execution unit that is composed of all ranks ranging from the president of court to the justice executive who have a share in the execution. In civil liability there is a general principle which contains the compensation of all types of damages (Musazadeh, 1998). In civil liability the chief goal is the compensation of the damages of the harmed person. In fact, in the criminal trial after the demonstration of the crime the question is raised as to what should be done by the convict? While in civil liability after the demonstration of the responsibility of the one who has caused the damage the question is raised as to what should be done for the one who has sustained the damage? (Yazdanian, 2000) Our discussion is also concerned with the civil liability in special sense of the word, i.e. extra-contractual liability, and by the civil liability of the officials in charge of the execution of the court decrees we mean the latter liability.

One should see what effects are expected from the civil liability of the executive officials. The major and direct effect of the fulfillment of civil liability of the executive officials is damage compensation. And then we will turn to the judiciary affairs related to the lawsuits of the liability of the competent authorities for investigation. In this essay we will say that how these damages are compensated? What are its methods? Who determines it? Who pays it?

## **Research Literature**

### **Executive Officials as the Government Employees**

Government as a concept refers to an extensive political organization which is established for providing the social relations and preservation of the social order and protection of human character and at the same time for providing the public interests and needs (Ashuri, 1994).

As to the legal background of civil liability of government we need to note that in jurisprudential texts no major discussion has been made of the civil liability of the government. The reason for this defect might be due to the fact that government as an organization in its modern form is a newly established institution and there is limited space for discussion in this regard. The only case where one can detect a trace of the foot print of government's liability in jurisprudential texts is the issue of a judge's fault.

In the article 57 of Islamic Criminal Code it is stipulated that: "whenever an illegal action is taken place by one of the official authorities the one who has given the orders and the one who has executed the orders both are condemned to undergo the punishment specified in the law. However, the agent who has executed the orders mistakenly as legal actions will be merely condemned to pay atonement or financial guarantee".

In article 58 the content of article 171 of Constitution is repeated: "In the event that one suffers financial or spiritual damage as a consequence of a failure or mistake of a judge in the case, the verdict, or the application of the verdict to the specific case, in case of guilt, the one who is guilty is liable in accordance to Islamic criteria; otherwise, the damage is compensated by the government. In all cases the reputation of the accused will be cleared and restored".

If the chief goal of the rules of civil liability is compensation of material and spiritual damages of the injured party and restoration of the damages the government and executive officials should not be exceptions to this rule.

### **Effects of the Civil Liability of Executive Officials**

We need to specify which effects are resulted from the civil liability of executive officials. The major and direct effect of the fulfillment of civil liability of executive officials is damage compensation. We will turn then to the judiciary affairs related to the lawsuits regarding liability of competent authorities.

#### **Damage Compensation**

In this section we show how this damage compensation is done? What are its methods? Who determines it? Who pays it?

##### **1. Methods of Damage Compensation**

###### **A. Restoring the previous conditions**

The best state for every injured party would be returning to the conditions before the damage. Here the damage is compensated in a way that no damage has ever taken place (Parvin, 2001).

Of course it is necessary to be noted that in this method of the effect of the damage compensation is merely concerned with future and does not have anything to do with past. Then, if in the execution of the decree by the executive officials damage is sustained by someone one of the methods for compensation of the damage is restoring the previous conditions.

Of course, although the closest state to justice and satisfaction of the injured party is restoring the previous conditions this method is not possible in all cases and we are forced to make use of other methods. Of course, we should bear it in our minds that restoring the past conditions is the best method from the point of view of the injured party and in some cases specifically in our case even if the restoring the past conditions is possible it could cause hardship for the one who should compensate the damage which has been incurred due to his unintentional negligence.

###### **B. Restitution of the Property**

One of the other methods of damage compensation is restitution of property. This method is closely near to the previous option. The point is too simple to the effect that due to the execution of a decree a property of the third party is lost which should be restituted in order to see the damages compensated. This option like the previous one is related with the future and does not have anything to do with the past.

In this case who is responsible for the restitution? Here one needs to say that this differs from one case to the other. If the property is under the control of the executive official, he is required to retribute it based on the legal decree issued by the higher court but if the property has been transferred to a governmental organization due to the execution of court decree the president of the organization is required to retribute it within the framework of administrative law.

###### **C. Indemnity Payment (Similar or Price)**

In a place where restoring the past conditions is not possible or the property is not available an equal substitute is given to the injured party as indemnity either in the form of like or price. Then, this method is known to be damage compensation via giving the like. In other words, the value of the lost property should be given to the injured party either in the form of like or price (Katoozian, 1995). Using these means has special rules in each case though they can be referred to collectively as giving substitute in general sense because giving the like or price of the lost property is in one sense giving the substitute of the lost property.

###### **1. Giving Similar Property**

If the property of the injured party is damaged either via destruction or occasional involvement or other sources after the demonstration of the civil liability of the officials in charge of the execution of the decrees they are required to pay the like. In article 311 of Civil Code as to forcing the usurper it is stated that "... if the property itself is destroyed its similar or price should be given..." The phrase suggests that one is free to choose between the similar and price but in view of the difference between the articles 312 and 329 of Civil Code it becomes clear that if there is a similar property the executive official is required to provide the similar and the injured party cannot ask for the price either and the writers of civil law as well as the majority of Shia jurists are unanimous on this issue (Katoozian, 1995). The philosophy of priority of the similar over the

price lies in the fact that delivering the similar is better compensating the damage than the price and causes the complications resulted from the calculation of price in terms of time and space to be deleted. On the other hand, this type of compensation via providing the similar thing lost by the injured party is the best solution because it restores the past conditions and lets the injured party not suffer to find the similar.

Sheikh Ansari in his *Makasib* has defined the similar based on the ideas of the majority of jurists as follows: a similar consists of a thing whose parts are equal with the intended thing in view of its price (Ansari, 1991). Parts in this context, Ansari further elaborates, refers to realities the name of the intended thing can be said of them. Some other jurists have argued that a similar is of equal parts and interests and close properties. To put it otherwise, a similar property is something whose types are equal in all essential features that are involved in their being property insofar as the essential features exist in that kind of property. Indication of essential features is done to let the accidental features stand outside because accidental features including time and place are influential in the scale of its propertiness and price while it does not have any effect on their similarity to each other (Najafi, 2009).

If a similar property is not found in the intended place or time what should be done? Whether the damage should be left uncompensated or the executive official who has caused someone to suffer damage undergoes hardship which is itself a clear example of unbearable obligation? It is indeed the common law that decides whether there is an excuse or not. Now the expectation of finding a similar is itself new damage that is imposed to the injured party again which is itself against the principle of no harm. Then, payment of price is asked in order to compensate the damage.

## **2. Payment of Price**

If an executive official causes damage during the execution of a decree and his civil liability becomes revealed while the past conditions can be restored or the property itself can be restituted or a similar can be provided and given the content of the cases seems not to be an example of the unbearable obligation and at least the executive official does not undergo any hardship the decree of the compensation appears to be permissible. However, wherever such conditions do not exist the executive official is required to pay the price. When the price is at stake the problem is that which time's price should be paid? In jurisprudence and legal doctrine in the light of the issue of usurpation which can be as such a source of the civil liability of the officials there are various theories.

It is also interesting to note that today payment of money is the most popular method of damage compensation except in some cases of spiritual damage. Regardless of these aforementioned exceptional cases other examples of damage are compensated via money under the decree of the court. But in determination of the amount of money by the court one should pay attention to two points: firstly, amount of money should be in proportionate to the scale of incurred damage not to the degree and scope of the mistake done by the executive official because this latter mistake could be exaggerated or even underestimated. Moreover, sometimes the executive officials are condemned to compensate damage that has not been resulted from their fault but the compensation law forces them to cover the damage. Then, scale of mistake should not be the basis for calculation rather the damage suffered by the injured party is decisive here and the scale of mistake is influential on the determination of the share of the officials. Of course, it might be effective in determination of the spiritual damage. Secondly, money should be as much as can cover the whole damage and restore the past conditions.

## **D. Destroying the Root of Harm**

In damage compensation the decree should be issued in a way that would cover the harms of past, future and present and it might be consisted of a combination of the above methods for uprooting the harm through which the executive official could compensate the damage. To state the matter differently, in damage compensation by the executive officials the roots of the harm should be destroyed completely so that the civil liability of the executive officials to be terminated.

In the article 3 of Iranian Civil Code it is stipulated that: "the court will decide the scale, way and quality of compensation in view of the conditions..." Therefore, judge is free to choose the way through which the damage must be compensated in view of the content of the case. In other words, there is no prohibition in some cases in the selection of the method of giving the similar or its value. On the other hand, as we mentioned earlier, judiciary procedure is inclined towards the use of the method of damage compensation via the equal (compensation via paying money).

### **Execution of Conviction Decrees against the Executive Officials**

In this stage the injured party possesses a decree which like all other judiciary decrees can be executed in the unit of the decree execution and is executed in the way that the other decrees are executed. In other words, after the finalization of the issued decree the officials and agents in charge of the execution of decrees are required to perform them. If the convict refuses to let the decree to be executed his properties will be confiscated and put up at the auction because all individuals are equal before the constitution and law.

Executive officials are equal with other individuals in decree execution even if they are themselves part of the execution unit. In other words, if the convict allows the decree to be executed there will be no problem otherwise since he is a governmental employee and is paid monthly there is a source of compensation. The article 96 of the law of execution of civil decrees states: a quarter or a third of the stipened of the employees of the governmental organizations or institutions affiliated to the government and governmental companies and municipalities, banks and private businesses will be reduced if they are convicts and married with children. Then, some points are required to be noted in this context as regards the stipened distraint and the legal office of the judiciary has offered some theories in this regard:

- 1) Theory no. 71/7/11-7/3231: deduction of one third or a quarter of the stipened of the employees from their major salary and benefits not from its remaining.
- 2) Theory no. 82/7/14-5936 announces that the deduction of a third or a quarter as stipulated in the article 96 of the law of execution of the civil decrees also includes the allowances and benefits. It also includes the overtime like tuition, royalties and so on and so forth.
- 3) Theory no. 82/8/6-7/6505 suggests that the deduction of a quarter or a third of the salaries of the employees as stipulated in the article 96 of the law of execution of decrees should be done from the wages and benefits that are paid to him in continuous form and before the deduction of installments.
- 4) Theory no. 82/8/28-7/6949 suggests that occasional benefits including the overtime and mission lie outside the article 96 of the law of execution of decrees.

Therefore, if executive officials face a conviction as the governmental employees and the conviction is performed through the access to their salaries only a third or a quarter of their salaries can be deducted.

Theory no. 83/3/28-7/2110 of the legal office of the judiciary suggests: there is no need for any petition for deduction of salary and benefits of the convict employee. After the request of the injured party for the execution of the article 97 of the law of execution of civil law the execution manager asks the chancellor of the intended organization to deduct the amount from the salary of convict and sent it to the execution unit.

Article 98 of the law of execution of civil decrees suggests: distraint of salary and benefits of employee does not render the seizure of new identified property for further compensation of the damage of injured party.

The goal of the article 98 is focused on the avoidance of the distraint of the salary of governmental employees because the injured party is not interested in identification of other properties of the executive official.

But the convicted executive official would hide his properties and only acknowledges his salary. The legal office of the judiciary in the theory no. 82/6/22-7/5266 writes in this regard: given the regulations stipulated in the articles 96 and 97 of the law of execution of the civil decrees the deduction of a third or a quarter of the salary and benefits of the employee by the organization is a legal obligation. Then the aforementioned regulations are necessary to be observed.

As a result, if it becomes revealed that the governmental employee does not have any other property but his salary and benefits and is not able to pay the compensation immediately and he will be considered insolvent

and due this insolvency he will be immune to arrest otherwise if he has other properties and hides them upon their revelation he will be treated according to the article 2 of the law of financial convictions.

Moreover, there might be two or more decrees against the executive official and he would refuse to allow them to be executed and finally his salary and benefits would be distrained. In such a case the date of issuance of the decrees should be taken into consideration and according this date a third and a quarter of the salary of convict can be distributed among the injured parties. If the date of a decree is earlier than the date of the other decrees the execution of the latter decrees would be suspended until the total compensation of the damage incurred to the first injured party because there is only access to a third or a quarter of the salary and no one should think that besides this amount another portion of the salary can be deducted for other decrees.

If the governmental organizations are involved in the damage due to a quantitative or qualitative deficiency they are required according to the law adopted in 1986 to provide the compensation from the annual budget sources. If this is not possible to be deducted from the current budget as approved by the parliament the government is required to provide the compensation from the previous budget sources and other possible legal places.

The execution offices of the judiciary and registration offices are not allowed to distrain none of the movable or immovable property of ministries and governmental organizations which do not have the required financial resources for compensation of the damage. They should wait for one and half year after the issuance of decree when the new budget is operationalized. Moreover, government is exempted from providing any guarantee during the aforementioned time. If it is proven that the intended ministries and institutions refuse to pay the compensation despite the availability of the sources the refusing official or officials will be banned from governmental services for one year and if this refusal causes any extra damage the convict will be accountable for the compensation. The convicted organization is required to provide a bank guarantee for the court that could be used as a means for the compensation.

It needs to be noted that this article does not address the public and private institutions whose expenditures and incomes are not included in the general budget of the country (Ansari, 2001). Municipality is an exception because municipalities according to the law of prohibition of the distraint of the movable and immovable properties of the municipalities adopted in 1982 are not forced to pay their compensations in the way that the public organizations do (Ghamaei, 1997).

#### **Final Distribution of the Liability of the Executive Officials**

In various countries different procedures are adopted for final distribution of the liability.

- 1) A group of countries like Finland and Mexico believe that the liability of the employee is of a major aspect and the liability of government is secondary to it. If the legislator has considered the government to be responsible for the wrong action it is only because of facilitation of the compensation of the damage of the injured party. Of course, this does not make the connivant employee free from the guarantee. He is certainly the one who has caused the harm and should compensate it (Ansari, 2001).
- 2) Employee is liable before the injured one regardless of the liability of the government. If the government is not liable it can refer to the connivant employee for the damage compensation. The common law is a proponent of this theory .
- 3) Third theory is that the employee is not liable before the damage but in some special cases the government has the right to refer to him. Germany, Japan and Australia have followed this theory.
- 4) Each one of the government and employee can be liable but if the conflict is resulted from the deficiency in the official responsibility of the employee the government has the right to refer to the employee.
- 5) Employee is only liable in certain exceptional cases (Ansari, 2001).

In our law the content of article 11 of Civil Liability Act is consistent with none of the aforementioned theories and if the damage is resulted from the action of the employee he should personally compensate it. Against all the aforementioned theories the liability resulted from the action of some other one has not been accepted for the government. Only we can interpret the article 11 in a way in which the mistake of the ones in charge of

decree execution has its origin in administrative shortcomings and in this event the government is liable (Katoozian, 1995). In this case no one can refer to the executive official rather it is government that should be accountable for the damage according to the article 11 of the civil liability act.

Moreover, according to the article 171 of Constitution, whenever due to the administrative mistake of a judge someone sustains damage the government will be accountable for the compensation and it does not have any right to refer to the judge after compensation (Jalilvand, 1994).

### **Influence of Insurance in Civil Liability of Executive Officials**

#### **1. Content**

Liability insurance with its deep interconnection with the civil liability has caused extensive changes in the civil liability system insofar as in an indirect way it has been followed by the collectivity of the dangers and division of obligations resulted from the civil liability among numerous people of the society (Babaei, 2001).

Moreover, civil liability insurance has changed the structure of civil liability as a whole because before the emergence of the liability insurance the civil liability conflict had only two sides and the expenses should have been imposed to one of the sides but liability insurance with structural change has added a third side to the previous sides and this has put the insured in a position where the scope of liability is determined without his involvement and the damage source that has been chosen to cover the liability insurance upon its power is not but a mediatory agent (Babaei, 2001).

Then, courts have also set the tough measures aside as regards the conditions of fulfillment of civil liability and widened the concept and scope of restorable damage and they always struggle to refer to the principle of veracity as regards the liability insurance contracts (Badini, 2005). The aforementioned factors have caused today in most developed countries the total or parts of the civil liability to be transferred to the insurance companies.

Furthermore, in some cases this method is mandatory and the institutions are required to refer to one of the insurance companies. Such a change in the field of civil liability has caused the civil liability to come closer to its final objective which is the whole compensation of the damage and free the injured party from the problems that have emerged in the path of demonstration of the liability of government (Ghamaei, 1997).

For the insurance company in those cases where the conditions of civil liability have not been fulfilled solve the problems in peace for preservation of its fame and cover the incurred damage. According to the existing statistics the insurance companies accept 99% of the complaints against themselves without objection (Babaei, 2001).

According to the article 12 of the Civil Liability Act in those cases where the government is considered to be the employer it is required to insure the damaging actions of its employees (Ghamaei, 1997). According to the article 13 of the same act: "employers addressed in the article 12 are required to buy third party insurance for their workers and employees in order to cover the damage incurred by them.

#### **2. Criticism of the Theory**

Although insurance is considered as one of the key changes in civil liability and has caused the civil liability to come nearer to its final goal, i.e. full compensation of the damage, there are still some criticisms of this theory.

Firstly, development of insurance as regards the civil liability of the government has caused the executive officials to be less worried of the compensation of the damage that would be suffered by someone due to their negligence. This is why John Flemming announced almost half century ago that the deterrence of civil liability has been considerably and maybe dangerously weakened by the insurance (Badini, 2005).

Secondly, distribution of damage may be associated with undesirable economic effects (Badini, nd.). But here we are speaking of an executive official who has acted within the framework of the law and if he does not intend to commit any fraud or crime while some damage is sustained due to his action in this case the civil liability is attributed to the government. Now with this law if it is just to consider the executive official liable for the compensation of damage? Then, though some criticisms have been leveled against the liability

insurance it is still the best solution for damage compensation worldwide. Unfortunately, it is rarely used in Iran as regards the actions of the government.

### **Study of the Cases of Exemption of Executive Officials from Civil Liability**

If the executive officials are directly involved in the damage this involvement should be substantiated according to the law of civil liability and in this case whatever that cuts this direct relationship is excluded from the civil liability of the executive officials. In other words, in such cases the basis of civil liability has not been endorsed and no responsibility is deemed for the executive official.

#### **1. Principle of Warning**

Although in statutes warning has not been discussed as one of the factors that eliminate the civil liability its influence on the elimination of civil liability should be sought for in cutting the causal relation between the actions or leaving the damaging action. Warning can be audio or visual. Then if in the time of execution of a decree and before the intended actions cause damage to the people who may suffer damage from the activity some warning is given but the warned one despite warning does not adopt the required measures and suffers damage both in financial and life related terms in this case the executive officials will be free from all civil liability.

#### **2. Emergency**

Emergency in the context of civil liability debate refers to one's escape from a damaging accident caused by some other one. It should be noted that firstly, damage causing one should not be involved in the creation of the emergency conditions, and secondly, there is no other possibility but the damaging accident for him. The difference of emergency with the force majeure lies in the fact that in the latter the damaging agent is not free but in the emergency the damaging agent is free to choose between the two options and for avoiding the greater damage he can choose the lesser damage.

#### **3. Acceptance of Danger by the Injured Party**

Action principle is the equivalent of the latter title in Iranian law and it is considered to be one of the sources of cancellation of guarantee. Action in this context means that whenever the owner trespasses the respect of his own property and insists on no substitute in this case the guarantee of the property is cancelled. Although the legislator has not spoken of such a principle in legal regulations the article 1215 of Civil Code reads: "If anyone hands certain property to the possession of a non discriminating minor child or a lunatic, the minor child or the lunatic shall not be held responsible for damage or loss to the property." (Cf. Jafari Langeroodi, 2007) Then the damaging agent will have no liability before it.

#### **4. Action of Third Party**

Sometimes the action of a third party turns the damaging accident unavoidable for the executive officials. As to the influence of the action of the other one needs to distinguish between two cases: first, independence of error of third party and the plaintiff from each other; second, hypothesis of their common error in creation of the damage. In the first hypothesis the error of each one would include the error of the other and if the error of defendant includes the error of the other in this case the liability of the latter is complete and if the error of the other includes the error of the defendant in this case the liability of the other is complete and the error of defendant has no effect on this liability.

It needs to be noted that the action of the third party is considered to be involved in damaging accident as an independent factor it will be associated with the other agent of the accident in the responsibility but if it is involved in sharing manner the liability will be divided between it and the other agent though the liability can be imposed to a third party.

#### **5. Shared Fault of Injured Party**

Whenever the error and fault of the injured party is intentional while the faults of executive official is unintentional and has taken place within the framework of the legal regulations the error of injured party includes the error of the executive official and due to the disappearance of causal relation the liability of executive official becomes nullified. In Iranian law the shared fault of the injured party in damaging accident



is deemed in two alternative direct and indirect forms and division or imposition of the liability to one of them is done based on the scale of influence on the accident.

### **Cases where the quality of the damaging action causes the exemption**

Here we discuss the cases of civil liability of the executive officials as well as the cases where they are exempted from the compensation of the damage sustained by the injured party though we do not discuss all causes of damage and the one who is responsible for the compensation.

#### **1. Administrative Fault**

Government in its general sense and triple powers in this study is responsible before its actions and like other individuals in the society is equal before the law and if it causes damage to anyone in the course of implementation of its tasks either by the employees or via the major body it will be liable for the damage compensation.

In the article 11 of the law of civil liability the framework and limits of the liability of government have been determined and demarcated which might be considered to be resulted from the theory of governance exertion although some believe that according to the theory of governance exertion the government is not liable at all before the damage compensation and the intended article does not include the governance exertion rather it merely includes governmental enterprises. It needs to be mentioned right here that according to the author the article 11 of the Civil Liability Act is exactly related with the governance exertion by government because firstly it has not made any distinction and secondly, with the change of the vision of legal personality of the government it is also equally responsible before the law. The responsibility of the government in its official tasks is evident and in the civil liability act the legislator does not turn to the self-evident facts rather it just outlines the general points and it also includes even the governance exertion. However, under the influence of the same theory the limitedness of liability of government has merely been discussed within the framework of the administrative fault. In other words, in cases of quantitative and qualitative deficiencies if damage is incurred by the third party in which the executive official is not involved the latter is exempted from the civil liability and the government will compensate the damage as a legal personality.

#### **2. Execution of the Wrong Judiciary Orders**

If the executive official performs the judiciary decree with a good will but after its performance the decree turns out to be wrong while the executive official is unaware of it in this case the executive official will have no liability and civil liability will be for the one who has issued the order. If the executive official trusts the judiciary decree without knowing that it has been cancelled by the issuing source there will be no liability for him.

#### **3. Legitimate Defense**

One of the factors that eliminate the civil liability is the defense of the agent of damaging event before the injured party. The reason for elimination of this liability is that the convict takes an action that is normally expected from a man (Katoozian, 1999). Some others have considered the veracity of legitimate defense as the source of elimination of liability. It seems that the importance of the principle of ban on causing any harm to any other party is so that sometimes one can prevent the initial harm by the secondary harm and the cause of permissibility of the latter harm by the legislator is fighting against the initial intentional harm. In other words, legitimate defense in one of the states of denial of liability of the agent of damaging action because it defends a greater expediency (Al-Lahibi, 2004). Then, executive officials are allowed to defend themselves or others while they are doing their tasks in a legitimate way and in these cases they are exempted from civil liability.

### **Conclusion**

If the executive officials cause damage to anyone while they are not doing their tasks their damaging action can be distinguished from their administrative responsibilities. Accordingly, since this damage has nothing to

do with the government the fault regardless of its being heavy or light will be personal and the person who has caused the damage will cover it.

If the executive official commits a mortal fault while he is doing his task again in this case the damage will be expected to be covered with him as no one accepts such a mortal fault to be attributed to the government.

If the executive official has a bad will both in action and intention this also causes the damage to be considered personal.

If the executive officials take any action that lies outside the limits of their official responsibilities and would cause damage to a third party, they will be personally liable for the compensation of the damage.

In the event of the overlapping between the personal and administrative liabilities no intervention occurs in the civil liabilities of the executive officials and they are merely liable as much as their fault requires and the expert idea is the best measure for determination of the scale of fault.

Among the other principles of liability one can refer to the modern ideas like danger, right guarantee, insurer government in the event of reference to them one needs to bear it in his mind that firstly, since hereby the major part of the liability is transferred to the government this should not cause the officials to be negligent that would result in injustice and causing harm to the public sources; secondly, mortal fault and bad will should be excluded; thirdly, a legal framework should be defined for determination of the government's liability before the actions of its staff.

If the execution of a decree by the executive officials cause damage they are required to compensate it via such methods as restoring past conditions, restitution of property, giving the similar or the price and destroying the roots of harm. Although, theoretically speaking, observation of the latter order seems to be the best solution for damage compensation this would vary from one case to the other in view of the dominant conditions and the judge is free to choose between these methods. The article 3 of Civil Code serves as the permission for this choice and the current judiciary procedure is inclined more toward payment of the price.

As to the execution of decree against the executive officials one should refer to the articles 96, 97 and 98 of the law of execution of decree as regards the deduction of salary and benefits. One needs to state that for deduction of salary and benefits there is no need for any petition because the article 97 of the law of execution of civil decrees suggests that in this case the situation should be reported to the chancellor of the organization and he is required to provide the ground for deduction of the one third or a quarter of the salary or benefits. Of course, deduction of salary is just one way of the compensation and it is not in conflict with identification of other properties of the convict for full compensation.

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