Journal of Novel Applied Sciences
Available online at www.jnasci.org
©2021 JNAS Journal-2021-10-1/1-9
ISSN 2322-5149 ©2021 JNAS

Civil liability of non-governmental public institutions in the mirror of the judicial procedure of the Administrative Court of Justice

Mostafa baziallari[1*], Misib baziallari[2] and Shahrbano Muradqali[3]

1- Master of Criminal Law and Criminology, legal expert in charge of tax affairs in the province
2- Master of Private Law, Islamic Azad University, Zahedan Branch, Zahedan, Iran
3- Bachelor of Laws, Islamic Azad University, Zahedan Branch, Zahedan, Iran

***Corresponding author*:** Mostafa baziallari

ABSTRACT: In the current societies, the units managing public affairs are responsible for providing the needs and providing services to the people of the society. The Constitution of the Islamic Republic of Iran provides for the Court of Administrative Justice to review administrative proceedings. However, there are problems with the functioning of the Court of Administrative Justice that necessitate a review of the law. For this reason, in the end, the General Assembly of the Court of Justice, considering the issuance of contradictory opinions in this field and in the position of creating a unified judicial procedure, in 1995, by accepting the theory of exclusive assignment of the plaintiff's position to the people, ended the disagreements and opinions. Article 4 of the Constitution of the Islamic Republic of Iran stipulates the establishment of the Court of Administrative Justice to deal with complaints, grievances and protests of the people against government officials or units, and according to the literal and customary meaning of the word ؛ people, government units are excluded from the people. "Natural or legal persons are referred to as private law, and the beneficiaries of paragraph 1 Article 11 of the Court are also natural and legal persons of private law.

***Keywords*:** Civil Liability, Public Non-Governmental Institutions, Court of Administrative Justice, Judicial Procedure.

INTRODUCTION

The government, as a senior legal entity, employs a variety of technical and technological tools and technologies in many social and economic fields to advance its goals in the public interest. Public institutions, in performing the tasks defined in various fields, have the possibility of committing mistakes and negligence, and sometimes cause damage to individuals through this. Therefore, it is possible that the government, in the direction of accelerating economic and political development, prefers economic and political issues to responding to the citizens and compensating the damages inflicted on them, and in practice prevents the emergence and expansion of civil liability. The requirement of fairness and the achievement of a society based on the rule of law is that citizens have the right to justice and oppression in various fields. For this reason, in Article 173 of the Constitution of the Islamic Republic of Iran, this social logic is explicitly defined in an efficient legal framework, and in order to deal with complaints and damages to individuals, and to examine the performance of specific organizations, The Court of Administrative Justice is foreseen. Article (10) of the Law on the Court of Administrative Justice approved by the Islamic Consultative Assembly (2011) states the limits of competence and powers of the Court of Administrative Justice as follows:
1. Investigating the complaints, grievances and objections of natural or legal persons from:
A- Decisions and actions of government units, including ministries, organizations, institutions, government companies, municipalities, the Social Security Organization, and revolutionary organizations and institutions and their affiliated institutions;
B- Decisions and actions of the officers of the mentioned units in matters related to their duties.

2. Consideration of objections and complaints against the final decisions of the Administrative Violations Boards and commissions such as tax commissions, labor and employer dispute resolution boards, commissions subject to Article (100) of the Municipal Law, exclusively in terms of violation of laws and regulations or opposition. with them.
3- Investigating the complaints of judges and those covered by the Civil Service Management Law and other employees of the units and institutions mentioned in paragraph (1) and the employees of the institutions to whom the inclusion of this law needs to be mentioned, both military and national in terms of squandering employment rights.

According to the principles of the Constitution, the courts of justice are considered the general authority for dealing with citizens' complaints and grievances. In addition to these authorities, the Court of Administrative Justice is the highest administrative authority in Iran and as a special court with inherent jurisdiction to hear some cases with the aim of "realizing the rights of the people against the government" and "establishing administrative justice." Has been created and its competence has been defined in line with the above objectives and in accordance with it. By referring to the relevant principles in the constitution, the jurisdiction of the courts of justice and the Court of Administrative Justice is somewhat recognizable. However, in the jurisprudence, where the issue of jurisdiction is examined in a more practical and accurate way and the limits of jurisdiction are technically explained, the issued verdicts indicate that there is no single procedure in the jurisdiction of the Court of Administrative Justice. This dispersion and heterogeneity is evident in both the rulings of the Court of Justice and the rulings of the general courts. The first question that arises in this regard is whether all claims concerning government civil liability can be brought before the Court of Administrative Justice.

Government civil liability

Until the approval of the Law on the Organization and Procedure of the Court of Administrative Justice in 2014, cases of government civil liability are considered in the Court of Administrative Justice. This issue has been explicitly addressed in the legal documents, judicial opinions and opinions of lawyers as follows:

Legal documents; Explicitly, Note 1 of Article 11 of the Administrative Justice Court Law of 1981, which stipulated: "The determination of the amount of damages ... after the approval of the Court is the responsibility of the General Court", review of government civil liability cases and certification of damages to the branches of the Court have been. The mentioned remark was reaffirmed in Note 1 of Article 13 of the Administrative Justice Court Law approved in 2006.

- Unanimous votes of judicial procedure; Judicial Procedure and Unity Votes Judicial procedure indicated that the Court of Administrative Justice, based on the above legal provisions, was the competent authority to hear civil liability cases of the government. One of the most important relevant votes is the decision No. 1427 dated 5/12/2007 of the General Assembly of the Court of Administrative Justice. In the mentioned verdict, the necessity of fulfilling the elements of civil responsibility was specified and determined by the branches of the court in order to issue the verdict. Confirmation of damages by the institutions and persons mentioned in paragraphs 1 and 2 of Article 12 of the Administrative Justice Court Law, subject to Note 1 of that Article, requires the realization and community of positive principles and elements of civil liability, including committing an act or omission of an act contrary to law. And the existence of a direct and causal relationship is between the mentioned elements, in other words ... acknowledging the damage and paying the resulting civil liability to the above-mentioned persons is subject to decisions or actions or final decisions or government regulations within the jurisdiction of the Court "Due to its illegality or the incompetence of the relevant authority, or the violation or abuse of authority or violation of the implementation of laws and regulations, or refusal to perform legal duties, has caused the loss of rights or caused direct and indirect damages ....". Since the members of the General Assembly had not met the mentioned elements, they concluded at the end: "Therefore, the filing of the Fourth Branch of the Court of Appeals rejecting the claim for confirmation of damages ... is considered correct and in accordance with the law." It can be seen that in the view of the judges of the Court, in order to obtain damages, the four elements of "committing an act or omission", "acting against the law", "inflicting damages" and "having a direct and direct causal relationship" had to be considered. It was time to "acknowledge the damages." Therefore, the Court testified in a "affirmative action" regarding the claims of "entry and claim for damages, which can be called so-called resignation claims" due to the negligence and negligence of the organization or ministry or government agent in matters related to the performance of duty. Damages have been inflicted on the plaintiff. Determining the amount and extent of the damages after the court's confirmation with the general court ... "(Najabatkhah, 2012: 145; Zarrinqalam, 1997: 62-63).

Legal doctrine; Until 2012, the dominant approach in Iranian legal doctrine has been to confirm the above views. Therefore, the prevailing view in this regard has been that the Court of Administrative Justice has been responsible for handling government civil liability cases. For example, an article reads: "One of the examples and issues raised in the Court of Administrative Justice was the issue of acknowledgment of damages, which is provided by ... the Law of the Court of Administrative Justice of 1991 and ... the law of ... 1994 And ... the plaintiff ... should have ... first ...

complained to the Court of Justice ... and if the Court of Administrative Justice accepted the principle of acknowledgment of damages, then he should have referred to the courts of justice to determine the amount. The Court of Justice also had to establish three pillars in order to determine the receipt of damages and issue a verdict on the recognition of damages. Occurrence of a harmful act from the executive body of the plaintiff 2. Injury 3. Causal relationship or causal relationship between the damage and the harmful act "(Molabigi, 2016, 51).

The court

Recognition of the responsibility of the government for its administrative and executive actions is appropriate for the invalidity of administrative actions contrary to its law. Undoubtedly, if the citizens are harmed in these cases, they must be compensated. In France, special courts have been set up to resolve disputes between the people and the government, headed by the "Council of State" as the supreme authority for resolving administrative disputes. In Iran, after the adoption of the law on the State Council in 1987, Article 173 of the Constitution was given to form a body called the Court of Administrative Justice. Following this order, the law of the Court of Administrative Justice was first approved on 4/11/1994. Finally, in 2006, the current law was approved by the System Recognition Assembly and replaced the previous law. The procedure of the Court of Administrative Justice, which is still practiced in the Court of Administrative Justice, was approved by the Head of the Judiciary on 2/19/2001. Prior to that, in 1983, a text was approved as a civil procedure of the Court in the Supreme Judicial Council, but after the approval of the Court Law in 2006, Article 48 of this law required the judiciary to submit the bill of the Court procedure within six months. And submit it to the Islamic Consultative Assembly through the government. This bill, despite the passage of several years, has not yet been approved (Emami, 2009).

Jurisdiction of the Court

According to the last part of Article 173 of the Constitution, the limits of powers and the manner of operation of this court are determined by law. Article 13 of the Law of the Court sets out the powers and powers of the Court in implementing this principle. Notes 1 and 2 of this article also exclude cases from the jurisdiction of the court (Ansari, 2011).

Government units and all public non-governmental organizations and institutions can not file a lawsuit in the court and can only read. In addition to the above-mentioned two paragraphs, in the first part of Article 13 of the Law, the Court refuses to make decisions and actions that the mentioned units, or their agents, according to their legal powers and duties, violate the law, or outside their jurisdiction, or by exceeding their powers. have given. Otherwise, the matter will not be within the jurisdiction of the Court. Also, according to the ruling on the unity of procedure: "The litigation of contracts arising from contracts, which are legal issues and must be heard interchangeably in the competent courts, is outside the scope of Article 11 of the Administrative Justice Court Law and can not be filed in the said court." (Dalvand, 2005).

Third party appeals to the Court of Administrative Justice

There was no provision in the 1981 law that made it possible for a third party to file a lawsuit. However, Article 29 of the 2006 Law stipulates the possibility of filing this lawsuit in the Court. According to this article: "The regulations related to the entry of a third party, the arrest of a third party, the objection of a third party and the hearing of the testimony of witnesses in the Court of Administrative Justice are in accordance with the Code of Civil Procedure and the Revolution in Civil Matters." As some have rightly pointed out, the way this article is organized can be criticized; Because the interference of third parties in the proceedings is an independent category that cannot be combined with the issue of hearing the testimony of witnesses. Therefore, if the legislator's opinion is on separation and classification, they should have been mentioned in two separate articles, and if he did not intend to do so, he should have included the rules of representation in civil procedure in the same article, according to the rules of civil procedure; Without assigning special materials to it (Delavari, 2012, p. 158). In the organizational and procedural bill of the Administrative Justice Court, which is being considered for approval, this problem has been partially resolved and separate items have been allocated to each of the issues of third party entry, third party recruitment and third party objection (Zargoosh, 2013).

Third party attraction and local jurisdiction

It should be noted that the inclusion of a third party in the Court is no exception to the principle of local jurisdiction; Because according to Article 2 of the Court Law, the Court of Administrative Justice is located only in Tehran. Therefore, if the lawsuit brought before the court under the heading of third party does not meet the conditions for filing a lawsuit, for example, it is not settled within the time limit, or is not related to the main lawsuit or has no origin

(Article 17 of the Code of Civil Procedure), if Which is within the inherent jurisdiction of the Court, deals with it separately from the main dispute, so the issue of local incompetence is not raised on the merits.

Scope of third-party litigation

As mentioned, the jurisdiction of the Court is set out in Article 13 of the Law of the Court. It remains to be seen whether it is possible to attract a third party in all the cases mentioned in this article. There is no doubt about paragraphs 1 and 3, but about paragraph 2: "Consideration of objections and complaints against the final decisions of administrative courts, inspection boards and commissions such as: tax commissions, workshop council, labor and employer dispute resolution board, subject commission Article 100 of the Law on Municipalities places the Commission subject to Article 56 of the Law on the Protection and Utilization of Forests and Natural Resources and its subsequent amendments "in terms of violating or opposing laws and regulations". In other words, the jurisdiction of the court regarding this clause is left to the Supreme Court, which cannot consider the merits. The Court's case is exclusively for violating and opposing laws and regulations. As stated in the unanimous decision of the General Assembly of the Court of Administrative Justice (Shams, 2006).

Therefore, since the Court's examination of this paragraph is absolutely formal, the impossibility of bringing a third party in this case must be accepted.

Competent persons for third party litigation

In civil procedure, the plaintiff and the defendant can be interesting separately or together; But the question is whether in the Court, given the scope of jurisdiction of the Court and the purpose of its establishment, the defendant can be an interesting third party or not?

There are two general views on who can sue in court: The first group believes that only the people have the right to sue the government for the following reasons:

1- Article 173 of the Constitution, which states that the purpose of establishing the institution of the Court of Administrative Justice is to investigate the complaints and grievances of the people against government officials or units and regulations (Tabatabai, 2004).

2- The unanimous decision of the Court of Administrative Justice No. 37, 38 and 39 dated 10/7/68, according to which the complaints and protests of government units in any case can not be raised in the branches of the Court of Administrative Justice and only to natural persons and Legal is private law.

3- The unanimous decision of the Supreme Court, No. 602 dated 10/26/2004, which was issued to resolve the dispute within the jurisdiction of the general courts and the Court of Administrative Justice, in which the complaint of the National Bank of Iran was cited as The bank is a state-owned company and has an independent legal personality, considered outside the jurisdiction of the court (Emami and Ostvar Sangari, 2008, pp. 180-181).

According to Article 173 of the Constitution and the unanimous votes of the above procedure, it can be said: "In the court, only the plaintiffs and, more precisely, the" people "can be interested in the third party. If they sue, there is no inequality so that we can prescribe a court hearing in support of them ... The philosophy of the court is to deal with citizens' complaints against the government ... (Mahmoudi, 2012, p. 54).

Another group believes that, according to Article 170 of the Constitution, according to which "anyone" can overturn the annulment of government bylaws and decrees by the Court, and according to the application of the phrase "natural and legal persons" in paragraph 1 of Article 13 of the Court Administrative justice, both natural and legal persons (legal persons of private law and public law) have the right to sue. The application of the latter theory is legally flawed in view of the unanimous views of the procedure mentioned; Nevertheless, the branches of the court, even after issuing the unanimous votes of the above procedure, have accepted the complaints of government officials in several cases [12] (Emami and Ostvar Sangari, 2008, p. 183).

As mentioned, the reasons for the first theory are more in line with the legal facts and the philosophy of the establishment of the Court of Administrative Justice. The application of the provisions of the Code of Civil Procedure in the Court should be considered in the light of the jurisdiction of the Court, its founding philosophy and its special nature, and the mere possibility of filing this lawsuit by the plaintiff should not cause the plaintiff to file a lawsuit in Accept the Court of Administrative Justice. On the other hand, the jurisdiction of the Administrative Court of Justice is absolutely limited to the cases authorized in the law of the Administrative Court of Justice, and that litigation can only lead to deviation of the judicial authority from its local jurisdiction, otherwise, in matters within its inherent jurisdiction. It is not a reference, it has no right to investigate. In view of the above, one can comment on the non-acceptance of the third-party lawsuit from the defendant in the lawsuit filed in the Court of Administrative Justice.

Attracting a third party in the retrial phase

Retrial, which was not provided for in the old law. In the new law, Article 17 provides for the possibility of retrial. Therefore, Article "If one of the litigants obtains new documents that are effective in the vote after the issuance of new documents, he can request a retrial by presenting new documents from the branch issuing the verdict."

Retrial is one of the most extraordinary ways to appeal against a sentence and a reversal. In this regard, it can be said: at this stage, it is not possible to attract a third party. In fact, in the extraordinary way of filing a complaint, only those litigants can participate in the trial and the reviewing authority only hears in the same direction and within the same scope. As it follows from Article 441 of the Code of Civil Procedure (Zafari, 2005).

In the bill on the organization and procedure of the Administrative Justice Court, the legislator has dealt in detail with the rules of retrial in the Court. Article 97 of the bill mentions the grounds on which a retrial can be requested. Article 105 also adds: "In the resumption of the trial, other than the parties to the dispute, their lawyer or deputy or their legal representative, no other person may enter the dispute in any way." As is clear from the recent article, it will not be possible to bring in a third party after the bill enters into force at the retrial stage.

The effect of incarceration cases in the main lawsuits and appeals

The question that may arise is that if after the filing of a third party lawsuit in the court, one of the cases of suspension of proceedings occurs, what effect can it have on each of the main lawsuits and summons? There is no provision in the Code of Judicial Procedure for this purpose, but Article 29 of the Rules of Procedure of the Court states: "If the plaintiff or co-defendant dies or is dismissed, the proceedings shall be suspended until the appointment of a legal representative, unless The case is ready for a vote. " The provisions of Article 105 of the Code of Civil Procedure also mention this with a slight difference. Of course, the last clause of Article 29 is not seen in Article 105. However, some jurists (Shams, 2007, p. 60), despite the stipulation of the Code of Civil Procedure, consider the implementation of this clause to be obvious, especially for civil lawsuits.

Another difference between Article 29 and Article 105 is that Article 105 considers the demotion of one of the litigants as a case of suspension of proceedings. Another case which, according to the rules of procedure of the Court, may lead to the suspension of the proceedings, is provided for in Article 32 of the Rules of Procedure. Therefore, Article "If the proceedings in the Court are subject to the confirmation of a matter in another competent authority, the proceedings of the Court shall be suspended until the announcement of the final result of the proceedings by the said authority and the parties shall be notified." The interested party must refer to the notification authority within one month from the date of notification of the notification of the court and submit the certificate of the said authority to the court, otherwise the petition will be annulled in the case of the plaintiff and his claim in that part. "It is considered ineffective."

In all cases where the main action, or the action for attorney, is adjourned for one of the above reasons, the proceedings will continue and will not be adjourned if there is no exclusion in the other action. This is clear in the case of non-seizure of the main lawsuit, and in the case of the summons lawsuit, it should be said: because the plaintiff has filed a lawsuit, his lawsuit cannot be considered dependent on the main lawsuit. From this point of view, one case should be excluded, and that is where the litigation is to strengthen the interesting position.

Also, when there is a request for arrest in both cases, for example, when the plaintiff dies, the proceedings in both cases must be stopped; Unless the case is ready for a vote on one or both of them.

In this section, it is necessary to mention in court about the effect of returning the petition, or dismissing the plaintiff from the lawsuit, in which case the above-mentioned arguments also apply. Explain that the return of the lawsuit or the mere consideration of the third-party lawsuit by the interested third party has no effect on the original lawsuit, and vice versa. The return of the petition and the dismissal of the lawsuit are provided for in Articles 30 and 31 of the Rules of Procedure of the Court.

Logic and rules governing civil liability arising from illegal regulations

Despite the specific concepts of public law, civil liability of the state, such as the theory of state immunity, the diagnostic competence of government agencies, public interests and public order, and the nature of fault in government agencies, the context and provisions of the opinions of the branches and the General Assembly of the Court do not reflect any of these features. . Although the decision of Branch 17 of the Court contains brief references to some provisions of the annual budget laws of the whole country related to the gas-burning policy of cars, nevertheless, the arguments contained in the votes, especially the decision of the General Assembly to the three elements of civil liability and not referring to concepts and rules. Public law leads to the application of the logic of civil liability to private law in relation to government civil liability and indicates a lack of development of specific and proportionate legal concepts. The existence of effective features in the field of civil liability of the government makes this uniformity in rules and logic unjustifiable. The legal nature of government personality, the existence of signs of

the theory of immunity in Iranian law (which does not agree with the principle of the need for compensation in private law), the legal characteristics of the relationship between government and people and the existence of special laws shaping government duties and people's rights and its effect on the concept The fault of the government (which is one of the conditions of civil liability based on causation) justifies this dichotomy in at least part of the area of civil liability. The ruling of the Court of Justice, which places "certification" on the Court as a special authority, is evident from these characteristics. This practice, which analyzes the issues of public liability only in the realm of the principles and concepts of private law, in addition to not helping to develop the literature on government liability and establishing a special relationship between government and people, due to lack of effective facts about public and state law. The foundations of reasoning and conclusion will be flawed. It is not far-fetched that the decision of the General Assembly to dismiss a claim for damages under the guise of "lack of causality between the directive and loss" is in fact the result of the hidden tendency of the General Assembly to the theory of immunity, because basically one of the foundations of immunity theory The damage is due to the generality of the provisions of the regulations. The civil liability of the government, especially in terms of the principles of responsibility and the concept of fault, should be subject to special rules, and regarding the elements of "harm" and "causal relationship", although according to the customary and logical criteria of these elements that are less dependent on the personality and status of the parties. The lack of specificity of government agencies in this regard is reflected in the Court's rulings on the application of the general rules of civil liability on the latter elements of government liability to some extent justified, but the involvement of effective factors such as assessing the role of the agency in causing damage and causation. , The general nature of the regulation and its effect on the realization of damages and causal relationship, the criterion of predictability of damage caused by illegal regulation and evaluation of customary or legal effect of illegal regulation on harmful actions, analysis of damage elements and causal relationship under special effects (Katozian, 2006).

Explain the concept of government responsibility and its types

Civil liability in its broadest sense includes both contractual and non-contractual liability. Although there is a lot of discussion about contractual liability and non-contractual liability, it should include in a general statement any compensation. Coercive guarantee refers to cases in which a person, intentionally and unintentionally committing an act other than the effect or omission of his act, intentionally or unintentionally (negligence and fault), causes a person to be cited as an example. If another person intentionally causes his / her loss or fault and responsibility, his / her financial defect is of the criminal type, and if he / she causes another loss due to negligence, his / her liability is of the civil type. A quasi-crime is generally the government's civil liability for the government to pay compensation to the injured party for damages resulting from an illegal act attributed to the government or an illegal act of the government, or a duty of the government. According to the law, considering such a responsibility for the government is a logical consequence of the rule of law, and justice dictates that no violation of the law, whether material or spiritual, is left without compensation. The purpose of civil liability rules is to compensate for losses. In other words, there must be a loss in order to compensate. Therefore, the existence of damage should be considered the main pillar of civil liability. The pillars of civil liability are harm, harmful act, causal relationship (between harmful act and harm). These three conditions can be called fixed conditions of responsibility because their existence is necessary for the realization of responsibility in any case. The responsibility of the variable element is also to blame. In most legal systems, liability is primarily based on fault. But whenever the interests of society so require, the legislature can establish without fault liability to compensate for the unlawful harm or danger posed to others. However, since the principle is based on liability based on fault, wherever there is doubt about the type of liability, liability based on fault can be invoked and in order to realize liability, the existence and proof of the fault of the perpetrator is considered necessary. The issue of fault is doubly important among the general principles of civil liability, because it is both the basis of liability and plays a key role in proving the causal relationship. Civil liability can be imposed and attributed only if the person who caused the damage has committed a fault in performing the damaging act. The owner in this responsibility is the moral measure of the behavior of the person in charge of the damage, and if it is from the society's point of view, deviation and violation of the behavior that is necessary to protect the rights of others, compensation is required for the perpetrator and the damage. According to the theory of fault, the only reason that can justify someone's responsibility for compensation is the existence of a causal relationship between fault and damage (Pournouri, 2009).

Responsibility or immunity of a government agency from enacting an illegal regulation

The branches and the general board of the court have no reference to the rulings issued and the possibility of not fulfilling civil liability is not lawful. Based on the provisions of the laws in this regard, which are considered final and presumed for the effective system in the legal system of the country, civil liability is facing serious doubts regarding the enactment of illegal regulations;

Jurisdiction of the Court before 2012; Duality in government civil liability proceedings

With the approval of the Constitution on the 14th of Dhi Qada 1981 AH by the Constituent Assembly and the approval of its amendment on the 29th of Sha'ban 1982 AH, for the first time, the three powers inspired by the principle of separation of powers of philosophers such as Montesquieu were identified. In different principles, it was the same as Article 26 onwards. (Matin Daftari, 1989-15). Examination in these principles, the category of unity of the judiciary and the generality of the jurisdiction of this power is observed, which indicates the formation of modern justice based on the model of ": monopoly". In principle, 27 powers of the judiciary were defined in the phrase "distinction of rights". "In principle, the Supreme Court and the courts of justice are the official source of public grievances." ".... In principle 75, it was also decided in line with the monolithic view:" In the whole country, there will be only one clean court for customary affairs; It is also in the capital city and this court does not try in any court at first; "Except in trials involving ministers." With this generality in jurisdiction, it appeared that within the framework of the "principle of unity of jurisdiction and unity of courts", the courts of justice also had the general jurisdiction to hear cases related to "damages"; Whether public or private; But it did not take long for this general situation to be assigned by the ordinary legislature (Langroudi, 1999).

Procrastination in the issuance of a unanimous vote

Regardless of the vote itself, the point that is very important is why an issue of this importance has been raised for many years (ie, about sixteen years ago) but has now led to the issuance of a unanimous vote. During these sixteen years, thousands of cases have been processed, but perhaps several million cases have been filed in hundreds of jurisdictions in the country on the issue of trafficking, and at the end of the votes, many of them have stated "this is a final verdict."

Many branches of the appellate courts similarly rejected these appeals without considering the merits of the appeal and returned the case to the primary authority, and some did the opposite, and the disagreement was so great that in The Disciplinary Tribunal of Judges issued a disciplinary indictment for the parties to the dispute.

In general, it seems that the current process of how to collect and raise controversial issues in the General Assembly is incomplete or at least inefficient, and there are still examples of these that are facing a long delay.

How to handle a lawsuit

Proceedings before the court require the submission of a petition, which is written in Persian and on special printed sheets. The petition and a certified copy of all the attached documents must be the number of litigants plus one copy (Article 21 of the Law of the Court and Article 1 of the Rules of Procedure of the Court). There is disagreement as to whether in civil procedure, in a third-party lawsuit, the petition must be filed in several copies. This dispute arises from the manner in which Article 137 of the Code of Civil Procedure is regulated. According to the article, "The petition for the summons of a third party and the copy of the documents and appendices must be in the number of litigants plus one copy." It is more correct to say: "The petition for the summons of a third party must be equal to the number of the original and third party litigants, but the appearance of Article 137 does not convey this matter and it has been neglected, and even based on the appearance of this article, The version should be adjusted "(Agriculture, 2006, p. 505). The petition and the copy of the documents and bills must be in the number of around the lawsuit, plus one copy, and that redundant copy will be archived in the court file and the rest will be notified around the lawsuit (Matin Daftari, 2002, p. 329).

Others, according to the appearance of this article, have concluded that "in the case of a third party petition, it is not necessary to notify the original case to the third party, because the third party has no position in the main case, so that the case is notified to him ..." (Mohajeri , 2009, p. 137), he adds that if we mean the litigants in this article, the main litigants, the result will be that if the main litigants are two, the third party petition must be three copies. It is archived in the case file. There is no way that the other two copies have their addressee, and these two addressees will be the parties to the original and third party litigation.If we interpret the litigants in Article 137 as the third party litigants; Because first we need to know who the litigants are, and this is about stopping the lawsuit, and the lawsuit is about stopping the identification of third-party litigants, on the other hand, if the third-party lawsuit is based on the number of third-party litigants plus one copy The result is that two copies are archived in the file while no two copies are needed; One of the plaintiffs is the same as the main litigants (Mohajeri, 2009, pp. 134 and 135; Mohajeri, 2008, p. 320). The petition must be signed or fingerprinted by the plaintiff or his or her legal representative. The signature or fingerprint of the plaintiff or his / her legal representative shall be certified by the consular officers of the Islamic Republic of Iran by the branch office of the court or the office of one of the courts or the notary public office or the local council or one of the government offices or revolutionary institutions. Rules of Procedure of the Court).

Pursuant to Note 3 of Article 21 of the Administrative Justice Court Law, "If the petition submitted to the Court is unsigned, or one of the conditions stipulated in the Code of Civil and Revolutionary Courts (in civil matters), the branch office manager shall act in accordance with that law." This article was in accordance with Articles 3 and 10 of the Rules of Procedure of the Court. According to Article 3 of the Law of the Court and in accordance with the

provisions of the Code of Civil Procedure, if the conditions that were not observed deprive the petition of being a petition, for example, the plaintiff In principle, the petition should not be considered and registered in the office of the Court, unless the name of the petitioner is mentioned in the petition, the petition will be rejected within two days from the date of receipt of the petition according to the decision issued by the Court. If the petition does not meet other conditions, such as the name and residence of the defendant, the Office of the Court shall issue a notice of remediation within two days.The deadline for remediation under paragraph 21 of Article 21 of the Law of the Court and Article 54 of the Code of Civil Procedure is ten days. It should be noted that according to the Rules of Procedure of the Court, this deadline has expired in the past five days. Was. The question that may arise is that "if a petition for third party is filed on behalf of one of the main litigants, is it a case of defects or not? The answer should be: the cases of elimination of defects are specified in Article 53 of the law and no personal mention. Which should have been the defendant of the lawsuit and not introduced as the defendant is one of the reasons for issuing the non-hearing order, because the third party summons petition was prepared contrary to Article 137 and according to Article 2 of the law, the court is not allowed to hear it. It must issue a decision not to hear the lawsuit of the third party "(Mohajeri, 2009, p. 134). It is also assumed that the lawsuit of the third party is only to the third party. The reason is that, firstly, according to Article 137 of the petition, the third party must be on the side of the main litigants. Secondly, according to Article 2 of the Code of Civil Procedure, the court is not allowed to hear a lawsuit that is not filed in accordance with the law. 2009, p. 135). It should be added that if the third party summons petition is submitted incompletely, the main lawsuit will not be stopped until the third party summons petition is eliminated (Zeraat, 2006, p. 506).

Another noteworthy point is that the legislator's reference to the necessity of stating the directions and reasons for the summons in the first hearing is only for the court to be aware of the intention to summon, not to file a summons to stop the third party from agreeing to the summons. It should be (Mohajeri, 2009, p. 127).

Conclusion

The existence of inadequate, contradictory and unclear legal principles and provisions regarding civil liability due to illegal regulation and lack of legal development of related concepts, has made the country's legal system inefficient in regulating the rules of this type of liability. In such an environment, the Court of Justice, and especially the General Assembly, as the authority guaranteeing the correct implementation of laws and regulations, can equip itself with up-to-date legal concepts, the unique role of the judiciary in achieving justice Article 156 of the Constitution on the effects of government decisions on people's rights. Strengthen the establishment of sound rules. The vote does not help to strengthen such a role. Lack of explanation of the relationship between the aspects of private law and public law in terms of principles, logic and documentation on the issue of government civil liability, which has both aspects, lack of a comprehensive and detailed legal system on government civil liability, lack of invention or lack of special legal concepts For liability arising from the provision of illegal regulations, the enactment of new laws on the subject of civil liability of institutions without assigning the task of the preceding judgments, the passivity of judicial procedure in organizing this situation and the fragmentation of judicial procedures are among the reasons or signs of this assessment. Failure to clarify the legal status and meaning of Article 11 of the Civil Liability Law is one of the legal obstacles to identifying government responsibility for the regulation. he does. Determining the useful territory for this responsibility by using the limited but existing legal capacities and creating a coherent legal system ensuring the determination of the nature, limits and criteria of regulation based on the balance of public and individual rights is necessary to achieve comprehensive justice on the issue. What should be considered as the main mission of the Court of Administrative Justice and especially the General Assembly in the issue of liability arising from illegal regulation is to plan and respond to these fundamental needs and limit votes to non-fundamental issues such as the causal relationship between regulation and damages. The allegation does not help to explain the rules and principles, judicial development and promotion of the Court.

REFERENCES

Ostvar Sangari, Kourosh, "On the Note of Article 13 of the Administrative Justice Court Law", Educational Chronicle of the Education Commission of the Fars Bar Association, No. 6, December 2012.

Emami, Mohammad; And Cyrus Ostvar Sangari, Administrative Law, Volume One, Sixth Edition, Mizan Publishing, 2009.

Ansari, Waliullah, General Law of Administrative Contracts, Lawyer Publishing, 2011.

Dalvand, Fazlollah, Division of Civil Liability, Isfahan, Dadiar Publications, 2007.

Zargoosh, Mushtaq, Administrative Law on Civil Liability of the Government and its Employees, Jangal Publications, 2013.

Shams, Abdullah, Civil Procedure, Volume One, Eleventh Edition, Drake Publications, 2006.

Tabatabai Motameni, Manouchehr, Administrative Law of Iran, Samat, 1994.

Zafari, Faramarz, The role of the Court of Administrative Justice in dealing with civil liability lawsuits against the government, Master Thesis, Faculty of Law, Islamic Azad University, Central Tehran Branch, 2005.
Qasemzadeh, Seyed Morteza, Obligations and Civil Liability without a Contract, Mizan Publishing, 2008.
Katozian, Nasser, General Rules of Contracts, Volume 4, Mizan Publishing, 2006.
Musayazadeh, Reza, Administrative Law: Generalities and Iran, Mizan Publishing, 1998.
Mr., Mohibollah, (2007), A Comparative Study of the Rules of Procedure of the Court of Administrative Justice of Iran and the French Government Council, Master Thesis in Public Law, Azad University of Tehran.
Abolhamad, Abdolhamid, (2000), Administrative Law of Iran, Volume 2, Sixth Edition, Toos Publications.
Emami, Mohammad and Ostvar Sangari, Kourosh, (2008) Administrative Law, Volume One, Second Edition, Mizan Publications.
Pour Nouri, Mansour, (2009), Complete Collection of Unanimous Opinions of the Supreme Court: Legal and Criminal, First Edition, Khorsandi Publications.
Jafari Langroudi, Mohammad Jafar, (1999), Extensive in Legal Terminology, Volume 2, First Edition, Ganj-e-Danesh Library Publications.
Jafari Langroudi, Mohammad Jafar, (2009), Legal Terminology, 22nd Edition, Ganj-e-Danesh Library Publications.
Delavari, Mohammad Reza, (2011), Description and Analysis of the Administrative Justice Court Law, First Edition, Jangal Publications.
Dehkhoda, Ali Akbar, (2006), Dehkhoda Medium Culture, under the supervision of Dr. Seyed Jafar Shahidi, Volume 1, University of Tehran Press.
Agriculture, Abbas, Fallahnejad Fatemeh and Mona, (2009), Civil Procedure, First Edition, Daneshpazar Publishing.
Agriculture, Abbas, (2006), Law on Civil Procedure in the Iranian Legal Order, Third Edition, Third Line Publications.
Shams, Abdullah, (2005), Civil Procedure: Advanced Volume, Volume One, Tenth Edition, Drake Publications.
Shams, Abdullah, (2007), Civil Procedure: Advanced Course, Volume 3, Ninth Edition, Drake Publications.
Sadrzadeh Afshar, Seyed Mohsen, (2011), Civil and Commercial Procedure, Eleventh Edition, Jihad Daneshgahi Publications.
Ghahramani, Nasrollah, (2007), Difficult Issues of Civil Procedure, Volume 1, First Edition, Khorsandi Publications.
Karimi, Abbas, (2010), Civil Procedure, Second Edition, Majd Publications.
Abbas Hayati, Ali, (2005), Description of the Code of Civil Procedure, First Edition, Sepehr Novin Printing.
Mahmoudi, Javad, (2011), An Analytical Study of Administrative Proceedings in Iranian Law, First Edition, Jangal Publications.
Maghsoudpour, Rasoul, (2010), Tari claims and its conditions, Majd Publications.
Moin, Mohammad, (1981), Farhang-e Farsi, 1981, Volume 2, Fourth Edition, Amirkabir Publications.
Mohajeri, Ali, (2008), The Rite of Civil Judgment in Iranian Courts, Fourth Edition, Fekrsazan Publications.
Mohajeri, Ali, (2010), Extended in Civil Procedure, Volume 2, Second Edition, Fekr Sazan Publications.
Matin Daftari, Ahmad, (2002), Civil and Commercial Procedure, two-volume period, second volume, first edition, Majd Publications.