



Civil Liability of Municipalities, Resulting from Omission of Action in Urban Services

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ABSTRACT

A municipality is a public non-governmental institution that has also become responsible before the law due to the powers and duties entrusted to it by law; Therefore, the legal duties that municipalities undertake in line with their duties will have the ability to apply the law or judicial action. The civil liability of municipalities is subject to the rules that are defined for other persons, but the omission of actions by municipalities is specifically related to the type of organized activity of this non-governmental institution. This research was conducted in a theoretical manner and with a descriptive-analytical method. The research data collection method was library-based and was compiled by referring to documents; books and articles. The results of the research showed that the liability of municipalities is subject to article 11 of the civil liability law; However, determining the type and estimating the amount of damage, as well as the role of each organizational level of this institution against omission of action, has not been properly specified and is not subject to a reliable procedure. This issue becomes more complicated when multiple contractors cooperating with the municipality also join the scope of civil liability of municipalities. Ultimately, it seems that the municipality is immune from damages resulting from the exercise of its sovereignty and is exempt from paying damages. Other lawyers believe that in addition to the aspect of exercising sovereignty, the necessity of omission of action must be proven to the judge, otherwise, they will not be exempt from applying the law and compensating for damages simply by exercising sovereignty.

Introduction

The pursuit of justice as a fundamental element in human society requires that all individuals be accountable for their performance and relationships. This is essential for establishing social norms and ensuring order and security in society. In discussing legal entities and their types, it should be noted that the "State" is a complete example of a legal entity with sovereignty. The formation of the initial foundations of the concept of "State" in the sixteenth century in Europe is one of these fundamental developments. After the formation of this concept, many thinkers began to discuss the limits of the institution of sovereignty and determine its scope, which resulted in the reduction of the supreme authority of states in the recent period and the expansion of the application of the theory of the rule of law in all aspects of human life.

The origin of limiting the scope of the state's sovereign authority is the acceptance of the theory of human rights as a competing theory of the national sovereignty of states. Institutions that are directly or indirectly dependent on the government seek to benefit from the authority of the government in society, which sometimes makes society concerned about the violation of its rights in dealing with such institutions. Accordingly, the legislator has tried to balance and expand its justice by accelerating the scope of its laws to the government and its affiliated institutions. One of these institutions affiliated with the government is the municipalities, which are required to respond and comply with the law under various titles, including having civil liability towards citizens.

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Considering the title of the research, which is "civil liability of municipalities resulting from omission of action in urban services", this research requires the integration of some concepts from two branches of law, including private law and public law.

Research background

In the 11th century, after the criticism of the theory of sovereign immunity, the principle of non-liability of public institutions, which was inspired by the belief in the absolute sovereignty of public institutions, was replaced by the principle of accepting civil liability of public institutions with the spread of democracy and the emergence of new ideas and the emergence of people's rights in the political arena, as well as the expansion of compensation for damage and liability in private relations due to the development of the insurance industry. Research has been conducted on the civil liability of the government and public institutions, both governmental and non-governmental, including: Mir-Nezami and Bahador [1] in a study examining the elements of civil liability of municipalities in judicial procedures. Other elements of the research included examining the elements of civil liability in urban management, the civil liability of urban management in compensating for damages resulting from legal obligations, and examining civil liability in the field of urban management in judicial procedures. The descriptive-analytical method was used in this study. The results of the study showed that civil liability in the field of urban management has gained an important position in recent years; It has also been given more attention than other cases, such as the fault of contractors, unforeseen events, and damage to property. Amanpour et al. [2] studied the analysis of the performance of councils in urban management. The research method of this descriptive-survey study was conducted using a questionnaire tool for 310 randomly selected individuals. The results showed that 63 percent of the participants assessed the performance of the Islamic city council as weak; The legal responsibility of the city council towards citizens was also assessed as weak. Emami et al. [3] referred to the study of exceptions to the privilege of responsibility for the administrator of this matter in a study. In this study, the difficulties of administering a public matter and the need for the existence of a balance between the appropriateness of governance were shown in the results of the study. Since the examples of immunity from liability for public institutions are limited and ad hoc, as a result of pondering the issue, it seems that some areas of governance can be considered areas of government immunity from civil liability. Rahmani et al. [4] in their study explained the jurisprudential-legal responsibility of the government towards citizens. Civil liability arising from causing damage to individuals is generally a given in all legal systems.

The findings of this study showed that the scope of this responsibility indicates that, based on Article 11 of the Iranian civil liability law and based on the rule of "Fault" and by distinguishing "Personal fault" of government employees from "Administrative fault", governmental behaviors are exempt from compensation for damages; Because these actions are carried out as necessary, to secure social interests and in accordance with the law; Therefore, the government is considered solely responsible for administrative fault and damages related to the failure of administrative means. If article 11 of the civil liability law regarding government responsibility is considered from the perspective of the jurisprudential rule of "Benevolence", then the rights defined regarding the government's sovereign acts are based on jurisprudential principles; Because the government's goal in sovereign acts is only to secure social interests, and in acts of tenure, the government does not have such a goal; Of course, with the belief that the government also seeks to secure social interests in acts of tenure, then criticism of article 11 of civil liability will be introduced and legal ambiguity in this regard will remain. Jalali et al. [5] studied the separation of jurisdiction between the administrative court of Justice and the general court in civil liability claims against the government. By referring to the relevant principles in the constitution, the boundary between the jurisdiction of the courts of justice and the administrative court of Justice can be distinguished to some extent. However, in judicial practice, where the issue of jurisdiction is examined in a more practical and precise manner and the limits of jurisdiction are explained in a technical manner, the issued decisions indicate that there is no single procedure in the courts regarding the jurisdiction of the administrative court of Justice. In this study, which was conducted by separating the cases and conditions of the civil liability of the state and based on the study of judicial decisions, the results ultimately showed that the general jurisdiction of the general courts of justice in handling all claims, both legal and criminal, requires that the jurisdiction of the administrative court of Justice be interpreted as an administrative court with specific inherent jurisdiction, based on existing laws and also in accordance with the philosophy of the court's formation. Abu Zari et al. [6] conducted a study to examine the reasons for the exemption of municipalities from civil liability with a view to Iranian judicial practice. In this study, which used a descriptive-analytical method, article 11 of the civil liability law was used and the liability of municipal employees was examined in both a real and legal position. According to this study, municipal employees had civil responsibilities from both a real and legal perspective; However, the judicial procedures have not always followed this article; in such a way that in some cases the municipality has

been exempted from paying damages caused by these procedures. The results of the research showed that by not directly referring to the municipality and limiting civil liability in the text of the article to the "government", the legislator has created a basis for disagreement in the analysis of judges and created different procedures for non-governmental public institutions especially municipalities. Mahmoudi Harandi [7] in his research addressed the legal and jurisprudential foundations of the municipality's civil liability in paying compensation for the withdrawal of property. In his research, he stated that the municipality's development measures, such as the implementation of urban facilities; The construction of buildings and the like, lead to restrictions on the property rights of individuals and, if damage occurs, will give rise to civil liability for the municipality. In this research, the legal and jurisprudential foundations of the municipality's liability were explained and the dispersion of judicial opinions in the courts was reduced and the uniformity of the procedure was created and legal gaps were reflected. The results of the research showed that although according to article 55, paragraph 1 of the Municipalities Law, the creation of roads and their development and improvement are considered legal duties of municipalities; However, there is disagreement regarding the civil liability of municipalities in dealing with the property rights of individuals; In such a way that ultimately, due to rules such as the rule of no harm; Collateral; Guarantee of hand; Unjust possession and denial of hardship and based on principles 44; 46 and 47 of the constitution on ownership and Article 96 and paragraph 6 of article 100 of the municipalities law and articles 6 and 7 of the Bill on the Purchase and acquisition of Land and Real Estate for the Implementation of Public Programs, the municipality is required to protect the rights of the owner and is legally liable in the event of failure to fulfill the above-mentioned cases. Yousefi Taharam et al. [8] studied the civil liability of the municipality resulting from the failure to perform legal duties and obligations. The method of collecting information is library-based and was carried out by referring to documents, books and articles. The results of the research showed that in the case of damage caused by the exercise of sovereignty, public law persons will be exempt from compensation for losses and damages if two conditions are met. First, the public law person is in a position to exercise sovereignty, and second, that the act is performed as necessary and in accordance with the law to ensure public benefits. Nasiran, Davud and Nasiran, Nahid [9] examined the civil liability of the municipality resulting from the contractor's error. In this research, they stated that the municipality carries out a significant part of its executive duties through contractors. Therefore, in the event of damage to a third party due to the contractor's fault, does the

municipality have civil liability for it and can the third party also refer to the municipality? The results of the research showed that there are three perspectives in the legal procedure against the injured third party: Some courts have not held the municipality liable, citing the contract of employment, some other courts have held the municipality liable only to the extent that it was involved in causing the loss, and finally some others have held the municipality liable for all damages incurred by the third party; But have given the municipality the right to refer to the contractor after compensating the third party for the loss.

Zarei and Jafari [10] conducted a study to examine the civil liability of municipalities for dilapidated urban structures and urban inefficiency. In this study, an attempt was made to examine the civil liability of municipalities for damages caused by dilapidated buildings and to provide solutions to identify this liability. Accordingly, warnings, cautions, and warnings sent by the municipality and their reliance and citation do not relieve the municipality of its responsibility as the guardian of citizens' rights in the city, and that authority will definitely be considered one of the causes of the above damages along with the municipality. The results of the study showed that the municipality may have general and specific types of liability in the implementation of its general and specific duties; Actions that may give rise to liability for the municipality in areas such as the implementation of laws and regulations on responsibilities arising from ownership of streets, buildings, and legal acquisition of lands and buildings. Nikvari and Khajipour-Kandroud [11] examined the legal liability of municipalities towards third parties in assignment contracts with emphasis on judicial practice. A descriptive-analytical method was used for this research. They stated that the municipality is responsible for carrying out its legal duties at the city level and that entrusting executive operations to contracting companies does not relieve the municipality of its civil liability towards citizens; Therefore, despite entrusting its services to contractors and performing its inherent duties through them, municipalities are often responsible for compensating third parties in the event of damage to them in service assignment contracts. The findings of this research showed that in Iranian judicial practice, the inherent liability of the municipality for damages caused to third parties has been accepted; However, there have also been rulings that the municipality is not liable for damages caused to third parties. Another part of the rulings also implied the municipality's solidarity with the contractor in compensating third parties. Jafari and Alipour [12] studied the criminal liability of the municipality for physical injuries caused by air pollution in a study. The position of the municipality as a responsible and punishable

perpetrator for crimes caused by air pollution depends on establishing a longitudinal link between committing a criminal behavior, criminal liability, and ultimately bearing the guarantee of criminal executions. The municipality, both by representation and by activity, shows its behavior in the form of actual and omission in the form of management and attribution in the creation of air pollution, and therefore there is no difference between the behavior of the municipality as a legal entity and the behavior of a natural person. However, two conditions are required for holding the municipality criminally liable: First, establishing a causal relationship between the crime and air pollution, and then air pollution by the municipality's action. Second, the existence of the elements of criminal liability of legal entities. In the absence of either of these two conditions, the municipality's behavior does not entail any liability. For this research, a descriptive-analytical method was used using library resources. The results showed that the criminal liability of the municipality for crimes caused by air pollution is possible in the Iranian criminal system with the sum of the two aforementioned conditions, and the judicial procedure should take a fundamental and new approach in order to hold the municipality responsible for its actions within the scope of the authority and duties of each municipality. Sharifi [13] examined civil liability arising from the negligence and fault of municipal managers in a study with emphasis on jurisprudence. In this study, a descriptive-analytical method was used. The findings of the study showed that the mayor can be held liable for damages in a case where his fault has caused a loss.

In view of similar research, the focus of existing research on the institution of municipal responsibility is generally based on action; However, in the present study, the main focus is on municipal responsibility in relation to the omission of legal duties in urban services. It seems that this research can be effective in promoting the status of citizen rights in the problems caused by the omission of municipalities, which in some cases has led to the emergence of numerous problems.

Materials and Methods

This research is theoretical and the research method is descriptive-analytical. The method of collecting information is library and scientific databases and was carried out by referring to documents, books and articles.

Statement of the problem

Currently, in most advanced countries, by accepting the civil liability of public institutions in order to protect the rights of the injured, they have expanded the scope of civil liability of public institutions based on the above theories and in a way, they grant public institutions a liability beyond the rules of civil

liability in private law. Meanwhile, in Iranian law, according to article 11 of the civil liability law, they grant immunity to public institutions and hold public institution employees personally liable for their actions that cause damage while performing their duties, regardless of whether the harmful act was unintentional or carried out with malicious intent, and only public institutions are liable for defects in equipment and organization, which also seems to be a general and vague concept that is difficult to prove against public institutions. The doctrine of civil liability in Iran, despite the evolution of the civil liability of public institutions in other countries, still follows the traditional concept of separating the actions of public institutions into tenure and sovereignty.

Discussion

Civil Liability: Civil liability refers to compensation for damage caused to others by an individual outside of contractual obligations or criminal acts. In fact, it is an obligation and obligation that a person has to compensate for damage caused to another, whether the damage in question is caused by a personal act or by the acts of persons related to him [3]. According to article 1 of the civil liability Law, "Anyone who, without legal authorization, intentionally or recklessly causes damage to life, health, property, freedom, dignity, business reputation, or any other right created for individuals by law, which causes material or moral damage to another, is responsible for compensating for the damage caused by his act." The expansion of compensation for a person's damage, whether "Intentionally or due to recklessness" in the text of article 1 of this law, distinguishes civil liability into two general and specific meanings. In the general sense: It is the legislator's obligation that a person compensates for the damage caused to another, whether this damage has a contractual origin or not. In a specific sense: It is the obligation of a person to compensate for losses caused to another intentionally or by mistake. It seems that the opinion of most jurists indicates the specific meaning of civil liability. Civil liability includes contractual liability and non-contractual liability (forced liability). Forced liability exists when someone suffers damage as a result of violating a legal duty and it is not necessary that a contract or obligation exists in advance. Absolute civil liability is limited to non-contractual liability; As the civil liability Law approved in 1960 has used this term in the aforementioned meanings. Regarding the principles of civil liability, initially the basis of civil liability of individuals was based on fault; That is, liability based on fault is based on the principle that in any liability claim, the plaintiff or the injured party must prove that the cause of the damage caused the damage by committing a fault (causal relationship). As societies expanded, fault-based liability could

not adequately cover many damages. As a result, a group established the basis of liability based on fault-free theories, stating that whenever harm is caused to others as a result of the actions of individuals, the individual will be responsible for compensating for the damage [14].

Civil Liability of Municipalities as a non-governmental public organization, the municipality is responsible for managing the city's affairs and, in the course of performing its duties, may cause damage to others, which has been considered in the field of civil liability. The provisions and rules for establishing the civil liability of municipalities are common to other natural or legal persons, but the nature of its action or omission is derived from the type of activities defined for this legal entity [6]. Municipalities have numerous and extensive duties in the field of urban services, documented in article 55 of the Municipal law. Due to the extensive duties it is responsible for, the municipality is in contact with most government organizations, part of which is due to the sharing or proximity of duties. Given the breadth of the duties of municipalities and their extensive relationship with other governing institutions, it is necessary to determine the status of their responsibility for legal duties and obligations. What is accepted in the law by all is that; If a person, whether a natural or legal person, causes harm to citizens through his or her actions and behavior, this harm must be remedied in some way so that the violated rights of the injured person are redressed [12]. This legal consensus is crystallized in article 171 of the constitution; In a way that explicitly accepts the civil liability of the state and stipulates: "Whenever, as a result of the fault or error of the judge in the matter or in the ruling or in the implementation of the ruling on a specific case, material or moral harm is suffered by someone, in the case of fault, the guilty party is the guarantor according to Islamic standards, and otherwise the damage shall be compensated by the state, and in any case the defendant shall be restored to his or her dignity." It is clear that the meaning of the state in the aforementioned article is not its specific meaning, which means the executive branch and its specific meaning that refers to the government; Rather, it is its general meaning that includes the three branches of the executive, legislative, and judicial branches, and in fact, all official and public institutions of the country, which also includes the municipality as a non-governmental public institution. Article 173 of the constitution also accepts the possibility of people filing complaints against the government and clearly defines the authority to hear complaints, which obviously means accepting the principle of civil liability of the government. The aforementioned article stipulates: "In order to hear complaints, grievances, and objections of the people against government officials, units, or regulations and to ensure their

rights, a court called the court of administrative Justice shall be established under the supervision of the chief of the Judiciary." It is based on such views that article 11 of the civil liability law, as the basis for the civil liability of public law persons, states: "Employees of the government, municipalities, and institutions affiliated with them who intentionally or recklessly cause damage to individuals in the course of performing their duties are personally liable for compensation for the damage caused; However, if the damage caused is not due to their actions and is related to the defects of the means of the said departments or institutions, then the compensation for the damage is the responsibility of the relevant department or institution. However, in the case of exercising state sovereignty, if measures are taken as necessary to secure social interests in accordance with the law and cause another loss, the state will not be obliged to pay the damages." According to Article 11 of the civil liability law, "Employees of the government, municipalities, and institutions affiliated with them who intentionally or recklessly cause damage to individuals in the course of performing their duties are personally liable for compensation for the damage caused..."; Therefore, the exercise of sovereignty and the government's tenure are distinguished from each other, and the government is exempted from compensation for damage caused by the exercise of sovereignty. In our legal system, in order to realize civil liability, there are often elements such as loss; Harmful act; The relationship of causation and fault is necessary. Regarding the loss, the occurrence of collective losses to unincorporated individuals seems to make it difficult to conceive of civil liability for the municipality. The municipality may have general and specific types of liability in the performance of its general and specific duties. Actions that in areas such as the implementation of laws and regulations, responsibilities arising from ownership of roads, buildings, and taking legal possession of lands and buildings may give rise to liability for the municipality. On the other hand, if the civil liability is with a natural person in the municipality, this article does not have the necessary ability to protect the injured party; Because the huge loss resulting from the employee's action may remain irreparable due to his negligence. Proving the employee's fault is also necessary, as implied by the phrase "Intentionally or as a result of negligence"; Therefore, in cases where municipal personnel cause bodily harm and financial damage to citizens in the course of their duties, they will generally be liable for compensation, except in cases stipulated in Part 2 of article 11 of the civil liability law: "...But if the damage is not due to their actions and is related to the defects of the equipment of the said departments and institutions, then the compensation for the damage shall be the responsibility of the relevant department or institution..." The latter exception

actually refers to the condition of the existence of a causal relationship in the general rules of civil liability, which stipulates the attribution of the damage to the causer and accepts administrative fault as the basis.

Although article 11 of the civil liability law specifies the conditions for the realization of the liability of municipal employees and their affiliated institutions and the limits of their liability are somewhat known, the main concern is to determine the nature and extent of the municipality's liability resulting from the abandonment of duties and obligations that cause damage to individuals intentionally or inadvertently. Regarding damages resulting from the exercise of sovereignty, if two conditions are met, public law entities will be exempt from compensation for losses and payment of damages. First, that public law entities are in a position to exercise sovereignty, and second, that the act is performed as necessary and in accordance with the law to ensure social benefits. This type of analysis of the civil liability of municipalities, in terms of the difficulty of proving fault, generally puts the rights of the injured party at risk and affects the principle of compensation for all damages. In the discussion of the civil liability of municipalities, proving fault becomes more complicated when the municipality's acts of administration are carried out through contractors. The scope of persons and acts for which public institutions are held liable is a question for which different theories have been presented. Some groups believe that public institutions are only responsible for the actions of official employees, while others have extended the scope of public institutions' liability to all public employees, including all official employees, contractors, voluntary and compulsory volunteers, as well as legislative and judicial acts, and even executive acts.

Omission of action

In the Iranian legal system, article 953 of the civil code stipulates: "Fault includes negligence and trespass." article 952 of the aforementioned law also defines negligence as follows: "Omission is the omission of an action that is required by contract or custom to protect the property of another." Therefore, it can be said that negligence is the act of performing an act that a person should not perform (trespass) or the omission of an act that a person should perform (omission). According to the above-mentioned legal articles and theories, it seems that the deficiency of the means of departments and institutions can be considered as examples of fault, and the legislator has also stated in the second part of article 11 of the civil liability law of 1960 as a clear example of the fault of government employees and municipalities and institutions affiliated with them [11]. According to this theory, it can be said that Article 11 of the aforementioned law, both in the first and second parts, considers the basis of the

municipality's liability based on the theory of fault, with the difference that in the first part of the aforementioned article, the fault of the legal entity of employees and employees was considered, and in the second part, the fault of the legal entity of the municipality itself was considered. The basis of the liability of the one who omits the act can be explained based on two criteria [1]:

The typical criterion: In this criterion, the error includes both excess and excess in the act and omission of the act. In simpler terms, the basis of fault refers to the behavior of the person, not just to his act. As a result, excessiveness in omission is also considered an example of fault or error. For example, if a doctor refuses to treat a patient despite his critical condition and there is no access to another doctor, even though he is aware of the patient's dangerous condition, he is liable based on fault.

Personal criterion: Based on this criterion, we consider a person liable only when the mere omission of an act causes harm to others. This omission is considered a form of abuse of rights, because the person has abused the situation. It should be noted that this theory has more supporters in law. If the purpose of the omission of an act is to harm and harm others, he is considered guilty, because as soon as this intention and purpose exist together with the omission of the act, fault is created. Refusal to perform a specific legal duty is a type of independent omission of an act and occurs when a person refuses to perform an act that he is obliged to perform according to the regulations. The basis for the formation of liability for individuals in this type of omission of an act is the law; Regulations; Instructions and sometimes special custom [8]. Therefore, if a person is obliged to perform an act by law or a special custom, he is obliged to perform it, because if he does not perform it, fault is realized and he will be liable for the damage caused. A mere omission of an act without a specific legal obligation occurs when there is no connection between the omission of the act and the performance of a specific action; Also, according to law and custom, there is no responsibility on the person refraining from performing the act. Therefore, this type of omission is considered pure and independent. The responsibility created for this person is solely due to the omission of doing something that there is no obligation to do (such as a doctor in a public environment not paying attention to a patient who needs help).

Conclusion

Regarding the numerous studies that have been conducted in the field of civil liability of municipalities; However, due to the numerous problems that a large part of society is struggling with in dealing with municipalities, raising the issue and examining the existing legal challenges in this

field still requires more detailed, specialized and more studies that can solve some of its issues. Examining the pillars of civil liability in municipalities, the civil liability of municipalities in compensating for damage caused by the omission of legal obligations was the general focus of this research. The results of the research showed that the general liability of municipalities against the law is subject to article 11 of the civil liability law; However, determining the type and estimating the amount of damage, as well as the role of each organizational level of this institution against omission of action, has not been properly specified and is not subject to a reliable procedure. This issue becomes more complicated when multiple contractors cooperating with the municipality also join the scope of civil liability of municipalities. Ultimately, it seems that the municipality is immune from damages resulting from the exercise of its sovereignty and is exempt from paying damages. Some other lawyers believe that in addition to the aspect of exercising sovereignty, the necessity of omission of action must be proven to the judge, otherwise, they will not be exempt from the application of the law simply by exercising sovereignty.

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Authors' Contributions

All authors contributed to data analysis, drafting, and revising of the paper and agreed to be responsible for all the aspects of this work.

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