



Civil Liability of Municipalities Arising from Omission in Urban Services

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ABSTRACT

The municipality is a non-governmental public institution which, due to the powers and duties entrusted to it by law, is also accountable before the law. Therefore, the legal obligations that municipalities bear in line with their prescribed duties are subject to legal enforcement or judicial proceedings. The civil liability of municipalities is governed by the rules defined for other persons, but the omission of municipalities is specifically related to the organized nature of this non-governmental institution's activities. This research is theoretical in nature and was conducted using a descriptive-analytical method. The data collection method was library-based, involving the review of documents, books, and articles. The results of the research indicate that the liability of municipalities is subject to article 11 of the civil liability law; however, the determination of the type and assessment of the amount of damages, as well as the role of each organizational level within this institution in relation to omission, has not been properly defined and does not follow an established precedent. This issue becomes more complex when numerous contractors collaborating with municipalities are also brought within the scope of municipal civil liability. Ultimately, it appears that municipalities enjoy immunity against damages arising from their sovereign acts and are exempt from paying compensation. Another group of legal scholars believes that, in addition to the aspect of sovereign acts, the necessity of the omission must be proven to the judge; otherwise, they will not be absolved from the application of the law and compensation merely on the grounds of exercising sovereignty.

Introduction

Justice-seeking, as a fundamental governing element in human society, necessitates that all individuals be held accountable for their actions and dealings. This is essential for the establishment of social norms and the guarantee of order and security in society. In the discussion of legal persons and their categories, attention paid to the fact that the "State," as the complete example of a legal personality, possesses sovereignty. The formation of the foundational concepts of the "State" in sixteenth-century Europe is among these fundamental developments.

Following the formation of this concept, many thinkers engaged in examining the limits of the sovereign institution and determining its scope, the result of which in recent times has been the reduction of the supreme authority of states and the expansion of the application of the rule of law theory to all

aspects of human life. The origin of limiting the scope of state sovereignty is the acceptance of human rights theory as a competing theory to national sovereignty. Institutions that directly or indirectly affiliated with the sovereign authority seek to benefit from the authority of sovereignty in society, a matter that sometimes causes society to worry about the violation of its rights in the face of such institutions.

Accordingly, the legislator, by extending the scope of its laws to sovereignty and its affiliated institutions, has sought to balance the scales of justice and expand it. One of these institutions affiliated with sovereignty is municipalities, which, for various reasons, including having civil liability towards citizens, are required to be accountable and comply with the law. Given the title of the research, which is "Civil Liability of Municipalities Arising

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from Omission in Urban Services," this research requires the integration of some concepts from two branches of law, including private law and public law. It will also address concepts including civil liability, non-governmental public organizations, omission, and the scope of urban services.

Literature Review

In the 11th century AD, following 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, gave way with the expansion of democracy, the emergence of new ideas, the appearance of people's rights on the political scene, and also the expansion of compensation and liability in private relations due to the development of the insurance industry to the principle of acceptance of civil liability of public institutions. Research has been conducted on the civil liability of the state and public governmental and non-governmental institutions, including:

Mirnezami and Bahador [1] in a study examined the elements of civil liability of municipalities in judicial precedents. The examination of the elements of civil liability in urban management, the civil liability of urban management in compensating damages arising from legal obligations, and the examination of civil liability in the field of urban management in judicial precedent were among the other pillars of this research. A descriptive-analytical method was used in this study. The results indicated that civil liability in the field of urban management has gained significant importance in recent years; furthermore, issues such as contractor fault, force majeure, and property damage have received more attention than other cases.

Amanpour et al. [2] examined the performance analysis of councils in urban management. The research method was descriptive-survey, using a questionnaire distributed to 310 individuals selected from various areas. The results showed that 63% of participants rated the performance of the Islamic City Council as weak; furthermore, the legal liability of the city council towards citizens was also assessed as weak.

Emami et al. [3] in a study examined the exceptions to liability privileges for administrators. This research addressed the difficulties of administering a public affair and the necessity of establishing a balance between sovereignty and administrative efficiency. The results indicated that since examples of immunity from liability for public institutions are limited and case-specific, upon reflection, it appears that certain areas of governance can be considered domains of state immunity from civil liability.

Rahmani et al. [4] in their study provided a jurisprudential-legal explanation of the civil liability of the state towards citizens. Civil liability arising from causing damage to individuals is generally

accepted in all legal systems. The findings of this research indicated that the scope of this liability suggests that, according to Article 11 of Iran's Civil Liability Law and based on the "fault" rule, and by distinguishing "personal fault" of government employees from "administrative fault," sovereign acts are exempt from compensation. This is because such acts are performed out of necessity to secure social interests and in accordance with the law. Therefore, the state is held liable only for administrative fault and damages related to deficiencies in administrative means. If Article 11 of the Civil Liability Law concerning state liability is considered from the perspective of the jurisprudential rule of "Ihsan" (benevolence), then the rights defined regarding the sovereign acts of the state are based on jurisprudential principles. This is because the state's purpose in sovereign acts is solely to secure social interests, whereas in administrative acts, the state does not have such a purpose. However, with the belief that the state also seeks to secure social interests in administrative acts, the critique of Article 11 of the Civil Liability Law remains valid, and the legal ambiguity on this matter persists.

Jalali et al. [5] studied the separation of jurisdiction between the Administrative Justice Court and the Public Court in civil liability lawsuits against the state. By referring to the relevant principles in the Constitution, the jurisdictional boundary between the courts of justice and the Administrative Justice Court is somewhat discernible. However, in judicial practice, where jurisdiction is examined in a more practical and precise manner and the limits of jurisdiction are technically defined, the issued rulings indicate that there is no uniform practice regarding the jurisdiction of the Administrative Justice Court. This research, conducted by separating the cases and conditions of state civil liability and based on the study of judicial rulings, ultimately showed that the general jurisdiction of the public courts of justice in hearing all lawsuits, whether civil or criminal, requires that the jurisdiction of the Administrative Justice Court, as an administrative court with specific inherent jurisdiction, be interpreted based on existing laws and consistent with the philosophy behind its establishment.

Abouzari et al. [6] in a study examined the grounds for exempting municipalities from civil liability with a view to Iranian judicial practice. This research, which employed a descriptive-analytical method, referred to Article 11 of the Civil Liability Law and examined the liability of municipal employees in both their individual and official capacities. According to this research, municipal employees had civil liability from both perspectives; however, judicial practice has not consistently followed this article, as in some cases municipalities have been exempted from paying damages supported by these

very practices. The results indicated that the legislator, by not directly referring to municipalities and limiting civil liability in the text of the article to the "state," has created a basis for differences in judicial interpretation and the emergence of various practices for non-governmental public institutions particularly municipalities.

Mahmoudi Harandi [7] in his study examined the legal and jurisprudential foundations of municipal civil liability in paying compensation for the setback of properties. He stated in his research that municipal development activities, such as the implementation of urban facilities, construction of buildings, and the like, lead to limitations on individuals' proprietary rights, and the infliction of damage creates civil liability for the municipality. This research addressed the explanation of the legal and jurisprudential foundations of municipal liability, the reduction of judicial discrepancies in courts, the establishment of uniform practice, and the reflection of legal gaps. The results indicated that although, according to paragraph 1 of Article 55 of the Municipalities Law, the creation, development, and improvement of thoroughfares are among the legal duties of municipalities, there is disagreement regarding the civil liability of municipalities in confronting individuals' proprietary rights. Ultimately, due to rules such as the rule of "Lā Darar" (no harm), "Taslīf" (dominion), "Dāmān-e Yad" (liability of possession), unjust enrichment, and "Nafy-e Haraj" (negation of hardship), and based on Articles 44, 46, and 47 of the Constitution regarding ownership, as well as Article 96 and Paragraph 6 of Article 100 of the Municipalities Law and Articles 6 and 7 of the Bill on the Procedure for Purchasing and Acquiring Lands and Properties for the Implementation of Public Programs, the municipality is obliged to protect the rights of owners and has legal liability in case of deviation from the above provisions.

Yousefi Taharm et al. [8] examined the civil liability of municipalities arising from failure to perform legal duties and obligations. The data collection method was library-based, involving the review of documents, books, and articles. The results indicated that regarding damages arising from sovereign acts, public legal persons are exempt from compensating losses and damages if two conditions are met: first, that the public legal person is acting in its sovereign capacity, and second, that the act is performed out of necessity and in accordance with the law to secure social interests.

Nasiran, Davood, and Nasiran, Nahid [9] examined the civil liability of municipalities arising from contractor error. They stated in this research that municipalities carry out a significant portion of their executive duties through contractors. Therefore, in the event of damage to a third party due to the fault of the contractor, does the municipality have civil liability, and can the third party also refer to the

municipality? The results indicated that there are three perspectives in judicial practice towards the injured third party: some courts, relying on the contract, have not held the municipality liable; other courts have held the municipality liable only to the extent that it contributed to the damage; and finally, some courts have held the municipality liable for all damages inflicted on the third party, granting the municipality the right to refer to the contractor after compensating the third party.

Zarei and Jafari [10] in a study examined the civil liability of municipalities regarding dilapidated and inefficient urban fabrics. This research attempted to examine the civil liability of municipalities for damages arising from dilapidated buildings and to provide solutions for identifying this liability. Accordingly, warnings and notices sent by the municipality and reliance on them do not absolve the municipality of its responsibility as the custodian of protecting citizens' rights in the city, and undoubtedly, that authority, alongside the municipality, will be considered one of the causes of the aforementioned damages. The results indicated that in the execution of its general and specific duties, the municipality may have general and specific types of liability; actions in areas such as the enforcement of laws and regulations, liabilities arising from ownership of thoroughfares, buildings, and legal acquisition of lands and structures may create liability for the municipality.

Nikvari and Khajipour Kondoroud [11] examined the legal liability of municipalities towards third parties in outsourcing contracts with an emphasis on judicial practice. A descriptive-analytical method was used for this research. They stated that the municipality is responsible for performing its legal duties at the city level, and entrusting executive operations to contracting companies does not absolve the municipality of its civil liability towards citizens. Therefore, despite outsourcing their services to contractors and performing their inherent duties through them, municipalities are often liable for compensating damages to third parties in service outsourcing contracts. The findings of this research indicated that in Iranian judicial practice, the inherent liability of the municipality for damages inflicted on third parties is accepted; although some rulings have also been issued absolving the municipality of liability for damages to third parties. Another part of the issued rulings indicated the joint and several liability of the municipality with the contractor in compensating damages to third parties. Jafari and Alipour [12] in a study examined the criminal liability of municipalities for physical injuries caused by air pollution. The status of the municipality as a responsible and punishable offender for crimes arising from air pollution depends on establishing a causal link between the criminal conduct, criminal liability, and ultimately the bearing of criminal sanctions. The municipality

manifests its conduct, both actively and through omission, in the form of direct perpetration and causation in creating air pollution, both as a representative and through its activities, and in this respect, there is no difference between the conduct of the municipality as a legal person and the conduct of a natural person. However, for holding the municipality criminally liable, two conditions are necessary: first, establishing a causal relationship between the crime and air pollution, and then between air pollution and municipal action; second, the existence of the elements of criminal liability of legal persons. In the absence of either of these two conditions, the conduct of the municipality entails no liability. A descriptive-analytical method with the use of library resources was employed for this research. The results indicated that the criminal liability of the municipality for crimes arising from air pollution is possible in Iran's criminal system with the fulfillment of the aforementioned two conditions, and judicial practice should adopt a fundamental and modern approach in holding the municipality liable for its actions within the scope of its authority and duties.

Sharifi [13] in a study examined civil liability arising from negligence and fault of municipal managers with an emphasis on jurisprudence. A descriptive-analytical method was used in this research. The findings indicated that the mayor can be held liable for damages only when his fault has caused the loss. The damage inflicted on the people by the manager may be due to the personal negligence of the mayor; the damage may also arise from a weakness in the law. Therefore, in the absence of fault on the part of the manager, the state is liable. Thus, if a municipal manager commits an error or fault in administrative affairs, the state is obliged to compensate the damage; however, if the administrative conduct of the manager does not stem from official duty, it is considered personal negligence and entails liability.

Considering similar research, the focus of existing studies is on the institution of municipal liability in general and based on positive acts; however, in the present study, the main focus is on municipal liability in relation to the omission of legal duties in urban services. It appears that this research can contribute to the advancement of citizenship rights in addressing the problems arising from municipal omissions, which have in some cases led to numerous issues.

Materials and Methods

This research is theoretical in nature and employs a descriptive-analytical method. Data collection was conducted through library research and scientific databases, involving the review of documents, books, and articles.

Statement of the Problem

Currently, in most developed countries, with the acceptance of civil liability of public institutions to protect the rights of the injured party, the scope of civil liability of public institutions has been expanded based on the aforementioned theories, and in a sense, public institutions are held to a liability beyond the rules of civil liability in private law. However, in Iranian law, according to Article 11 of the Civil Liability Law, public institutions are granted a kind of immunity, and employees of public institutions are held personally liable for their acts that cause damage during the performance of their duties, without considering whether the harmful act was unintentional or committed with malice. Public institutions are only held liable for defects in equipment and systems, which appears to be a general and vague concept that is difficult to prove against public institutions. Despite the evolution of civil liability of public institutions in other countries, the doctrine of civil liability in Iran still follows the traditional concept of distinguishing between the administrative and sovereign acts of public institutions.

Discussion

Civil Liability:

Civil liability refers to the compensation for damage inflicted by an individual on others outside of contractual obligations or criminal acts. In fact, it is the obligation and duty of a person to compensate for the loss inflicted on another, whether the loss arises from their own act or from the acts of persons dependent on them [3]. According to Article 1 of the Civil Liability Law: "Any person who, without legal authorization, intentionally or due to negligence, causes harm to the life, health, property, liberty, dignity, commercial reputation, or any other right legally established for individuals, resulting in material or moral damage to another, shall be liable to compensate for the damage caused by their act."

The expansion of compensation for damage whether "intentionally or due to negligence" in the text of Article 1 of this law distinguishes civil liability into two meanings: general and specific. In the general sense: it is the legislator's requirement that a person compensate for the damage caused to another, whether or not it has a contractual basis. In the specific sense: it is the obligation of a person to compensate for damages caused to another intentionally or through fault. It appears that the majority of legal scholars refer to the specific meaning of civil liability. Civil liability includes contractual liability and non-contractual liability (tort liability). Tort liability exists when damage is caused to someone due to the violation of a legal duty, and there is no need for a pre-existing contract or obligation. Absolute civil liability is exclusively limited to non-contractual liability; as the Civil Liability Law of 1960 has used this term in the aforementioned meanings. Regarding the

foundations of civil liability, initially the basis of civil liability of persons was fault; that is, fault-based liability is founded on the principle that in any liability claim, the plaintiff or the injured party must prove that the person causing the damage has inflicted harm through the commission of a fault (causal relationship). With the expansion of societies, fault-based liability could not adequately encompass many damages; consequently, some scholars established the basis of liability on theories independent of fault, stating that whenever damage is inflicted on individuals through the acts of persons, the person shall be liable to compensate for the damage [14].

Civil Liability of Municipalities:

The municipality, as a non-governmental public organization, is responsible for administering city affairs and, in the course of performing its duties, may cause damage to others, which has been addressed in the domain of civil liability. The rules and principles governing the civil liability of municipalities are shared with other natural or legal persons; however, the nature of their acts or omissions derives from the type of activities defined for this legal personality [6]. Municipalities, in the field of urban services, have numerous and extensive duties under Article 55 of the Municipalities Law. Due to the extensive duties they bear, municipalities are connected to most governmental organizations, partly due to the overlap or proximity of functions. Given the breadth of municipal duties and their extensive connections with other sovereign institutions, it is necessary to clarify their liability status regarding legal duties and obligations. What is universally accepted in law is that if a person, whether natural or legal, causes harm to citizens through their actions and conduct, this harm must be remedied in some way to restore the violated rights of the injured party [12]. This legal consensus is embodied in Article 171 of the Constitution, which explicitly accepts the civil liability of the state and stipulates: "If, due to the fault or error of a judge in the subject matter, the ruling, or the application of the ruling to a particular case, material or moral damage is incurred by a person, in the case of fault, the wrongdoer shall be liable according to Islamic standards; otherwise, the damage shall be compensated by the state, and in any case, the accused shall be rehabilitated." It is clear that the term "state" in the aforementioned article does not refer to its specific meaning of the executive branch or its narrower sense of the cabinet; rather, it refers to its general meaning, which encompasses the three branches of government executive, legislative, and judicial and, in fact, all official and public institutions of the country, including the municipality as a non-governmental public institution. Article 173 of the Constitution also accepts the possibility of citizens filing complaints

against the state, and the authority for handling such complaints is clearly designated, which obviously implies the acceptance of the principle of state civil liability. The aforementioned article stipulates: "In order to examine complaints, grievances, and objections of the people against government officials, units, or regulations, and to secure their rights, a court shall be established under the supervision of the Head of the Judiciary, to be called the Administrative Justice Court..." Based on such perspectives, Article 11 of the Civil Liability Law, as the basis for the civil liability of public legal persons, states: "Government employees and municipal employees and employees of institutions affiliated with them, who, in the course of performing their duties, intentionally or through negligence, cause damage to individuals, shall be personally liable for compensating the damage; however, if the damage is not attributable to their act but is related to defects in the equipment of the administration or institution, then compensation shall be the responsibility of the relevant administration or institution. However, regarding the sovereign acts of the state, if actions taken out of necessity and in accordance with the law to secure social interests cause damage to another, the state shall not be obliged to pay compensation." According to Article 11 of the Civil Liability Law, "Government employees, municipal employees, and employees of affiliated institutions, who, in the course of performing their duties, intentionally or through negligence, cause damage to individuals, shall be personally liable for compensating the damage..." Therefore, the sovereign and administrative acts of the state are distinguished, and the state is exempt from compensating damages arising from sovereign acts. In our legal system, the realization of civil liability generally requires the existence of elements such as damage, harmful act, causal relationship, and fault. Regarding damage, the infliction of collective damage on a large number of individuals appears to complicate the conception of civil liability for the municipality. In the execution of its general and specific duties, the municipality may have general and specific types of liability. Actions in areas such as the enforcement of laws and regulations, liabilities arising from ownership of thoroughfares, buildings, and legal acquisition of lands and structures may create liability for the municipality. On the other hand, if civil liability is attributed to a natural person within the municipality, Article 11 lacks the necessary capacity to protect the injured party, as the substantial damage caused by the employee's act may remain uncompensated due to the employee's insolvency. Proving the employee's fault, as indicated by the phrase "intentionally or through negligence," is essential; therefore, in cases where municipal personnel, in the course of performing their duties, cause physical or financial damage to

citizens, they shall generally be liable to compensate the damage, except in cases where, according to the second part of Article 11 of the Civil Liability Law, it stipulates: "...however, if the damage is not attributable to their act but is related to defects in the equipment of the administration or institution, then compensation shall be the responsibility of the relevant administration or institution..." This exception actually refers to the condition of the existence of a causal relationship in the general rules of civil liability, which establishes the attribution of the damage to the causing agent and accepts administrative fault as its basis. Although Article 11 of the Civil Liability Law specifies the conditions for the realization of liability of municipal employees and affiliated institutions and clarifies the limits of their liability, the main concern is to determine the manner and extent of municipal liability arising from the omission of duties and obligations that cause damage to individuals, whether intentionally or inadvertently. Regarding damages arising from sovereign acts, public legal persons shall be exempt from compensating losses and damages if two conditions are met: first, that the public legal person is acting in its sovereign capacity; and second, that the act is performed out of necessity and in accordance with the law to secure social interests. This type of analysis of municipal civil liability, due to the difficulty of proving fault, generally endangers the rights of the injured party and affects the principle of full compensation. In the discussion of municipal civil liability, proving fault becomes more complex when the municipality's administrative functions are carried out through contractors. The scope of persons and acts for which public institutions are held liable is a question to which various theories have been proposed. Some argue that public institutions are only liable for the acts of official employees, while others extend the scope of public institution liability to all public servants, including all official employees, contractual employees, voluntary and compulsory volunteers, as well as legislative and judicial acts, and even the sovereign acts of the executive branch.

Omission:

In Iran's legal system, Article 953 of the Civil Code stipulates: "Fault includes both negligence and transgression." Article 952 of the aforementioned Code defines negligence as follows: "Negligence is the omission of an act that, according to contract or custom, is necessary for the preservation of another's property." Therefore, it can be stated that fault consists of either committing an act that a person should not commit (transgression) or omitting an act that a person should perform (negligence). According to the legal provisions and the aforementioned theories, it appears that the defect in the equipment of administrations and institutions can be considered among the instances of fault, and

the legislator, in the second part of Article 11 of the Civil Liability Law of 1960, intended to express a clear example of the fault of government employees, municipal employees, and employees of affiliated institutions [11]. According to this theory, it can be said that Article 11 of the aforementioned law, both in its first and second parts, considers the basis of municipal liability to be founded on the theory of fault, with the difference that in the first part, the fault of the legal personality of employees and personnel is intended, while in the second part, the fault of the legal personality of the municipality itself is intended. The basis of liability of the person who commits an omission can be explained based on two criteria [1]:

✓ **Normative Criterion:** In this criterion, fault includes both excess and negligence in both positive acts and omissions. In simpler terms, the basis of fault returns to human behavior, not merely to the act. Consequently, excess and negligence in omission also constitute instances of fault or error. For example, if a physician, despite a patient's critical condition and the unavailability of another physician, refuses to treat the patient while being aware of their dangerous condition, they have liability based on fault.

✓ **Personal Criterion:** Based on this standard, we consider a person liable only when their omission alone causes harm to others. This omission is considered a kind of abuse of right, as the person has taken advantage of their position. It should be noted that this theory has more proponents in law. If the purpose of the person committing the omission is to harm others, they are considered at fault, because fault is established merely by the existence of this intent combined with the omission. Refraining from performing a specific legal duty is a separate category of omission and occurs when a person refuses to perform an act that they are obligated to perform according to regulations. The basis for the formation of liability for individuals in this type of omission is the law, regulations, directives, and sometimes specific custom [8]. Therefore, if a person is obliged by law or specific custom to perform an act, they are required to do so; because in case of non-performance, fault is realized, and they will be liable for the resulting damage. A mere omission without a specific legal obligation occurs when there is no connection between the omission and the performance of a specific act; also, according to law and custom, no responsibility is attributed to the person refraining from the act. Therefore, this type of omission is considered pure and independent. The liability established for this person is solely due to refraining from performing an act for which they had no obligation (such as a physician in a public setting not attending to a patient in need of help).

Conclusion

Numerous studies have been conducted on the civil liability of municipalities; however, due to the numerous problems that a large segment of society faces in dealing with municipalities, the examination and investigation of the legal challenges in this field still require more precise, specialized, and extensive research that can resolve some of these issues. The examination of the elements of civil liability in municipalities, the civil liability of municipalities in compensating damages arising from the omission of legal duties, constituted the general focus of this research. The results of the research indicated the general liability of municipalities before the law is subject to Article 11 of the Civil Liability Law; however, determination of the type, assessment of the amount of damages, as well as the role of each organizational level within this institution in relation to omission, has not properly defined follow an established precedent. This issue becomes more complex when numerous contractors collaborating with municipalities also brought within the scope of municipal civil liability. Ultimately, it appears that municipalities enjoy immunity against damages arising from their sovereign acts and are exempt from paying compensation. Another group of legal scholars believes that, in addition to the aspect of sovereign acts, the necessity of the omission proved to the judge; otherwise, they will not be absolved from the application of the law merely on the grounds of 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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