

Civil Liability of Government for Lack of Regulation in the Iranian Legal System

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Abstract: Governments need legislation in various areas, including proper regulation to facilitate people's livelihoods and businesses, carry out their duties and govern society properly. Therefore, if the government causes damage to individuals in any way by legislation, it should compensate based on civil liability. It should be noted that the civil liability of the government concerning regulation includes both inappropriate regulation and lack of regulation in areas that require law. This article addresses the government's civil liability for lack of regulation in the Iranian legal system.

Keywords: *government, civil liability, inappropriate regulation, lack of regulation*

1. Introduction

Sometimes the government faces various responsibilities [1, 2]. One of the responsibilities of the government is legislation. The government sometimes causes damage to people by making inappropriate laws and sometimes by not making the necessary laws [3, 4]. This is because the government's mistakes in the legislation are different. Sometimes it may pass a law that benefits some and harms others. Therefore, the government will be responsible for those harmed by the law. Individuals who benefit the enacted laws must bear the harm in such cases. Sometimes laws may be passed that is fundamentally contrary to the upstream laws. Sometimes laws may be passed that have a disproportionate function, and sometimes the government may not perform its regulatory duties and has not done so where it should have done so, causing harm to individuals. This article addresses the government's civil liability for lack of regulation.

2. Section One: Civil Liability of the Government for Regulation

The government may make mistakes in the legislation, which may harm individuals. Government mistakes in the legislation can be divided into two main categories. The first is enacting regulations contrary to the upstream laws, and the second is the imposition of inappropriate regulations. Each of these two categories will be examined separately.

2.1 Part One: The Enactment of Regulations Contrary to the Upstream Laws

One of the challenges that the government may face in the legislation is enacting regulations contrary to the upstream laws. Generally, laws in legal systems have a hierarchy, and they are obliged to follow their superior laws according to the legal logic of sub-laws. In addition to its integrated system, the government has more detailed components and members that make up the government body. Regulations that contradict the law may be enacted, sometimes by an integrated system of government and sometimes by any component of government, such as a ministry or organization.

1. When the government makes the rules, the laws passed by the parliament are considered upstream, and the government is obliged to make the rules in line with these laws. When the components of the government make the rules, the rules of the integrated government system (Cabinet) are considered upstream. There are several reasons for this. There may be hasty legislation or legislation due to inadequate expertise and the like. The government and government agencies have the right to enact regulations within the framework of the law based

on special legal powers and competencies. However, as a result of the illegal legislation, a claim for damages may be made by the plaintiff. The question now, in this case, is, the civil liability lawsuit of the government resulting from the regulation can be analyzed based on what principles, rules and effects, and whether the lawsuit in question is subject to the general rules of civil liability in private law or follows different principles due to the characteristics of public law? To answer this question, an attempt is made to analyze the unanimous decision of the General Assembly of the Court of Administrative Justice in the face of lawsuits and decisions to certify damages resulting from the issuance of a directive against the law by a government agency. What can be analyzed and tested in this case is the legal logic of the branches and the General Assembly of the Administrative Court of Justice in dealing with claims for damages and civil liability of the government and the coordination of this logic with the nature and legal status of the government and the type of government's legal relationship with individuals on the one hand, and general laws on the other hand, as well as assessing the role of the court and the capacities of the judicial system in predicting useful and appropriate rules and laws in this regard.

2. 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 inappropriate regulation and finding and specifying existing laws and acts of the Administrative Court of Justice for deciding on the mentioned article based on existing laws can overcome doubts. Determining the useful scope for this responsibility using the limited but existing legal capacities and creating a coherent legal system that ensures 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 matter of responsibility arising from inappropriate 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 harms does not help to explain the rules and principles, judicial development and promotion of the court.

2.2 Part Two: The Enactment of Inappropriate Regulations

Sometimes, the passed laws are not contrary to the upstream laws but are passed in an inappropriate position, and this disproportion becomes a source of harm. Incompatibility can occur in different ways. Sometimes the law is disproportionate to its approval position, inconsistent with the approval authority, and inconsistent with its scope. In any case, it should be considered whether inappropriate legislation can also hold the government accountable.

Inappropriate legislation can have a variety of reasons. Sometimes, some legislation or regulations are accompanied by intent. In addition to civil liability, criminal responsibility is also raised in this regard. Of course, the difference is that in mistakes that are not accompanied by intent, the government or the relevant legislative body may be responsible. Still, in cases where there is intent, it is possible to imagine a situation where the responsibility falls on both the person and the body, in a way that a person makes a wrong decision or makes a wrong regulation with the intention which causes certain people to benefit and others to suffer. In this case, the person is criminally responsible. The relevant body that gives the person powers¹ (Golden Signatures) to make inappropriate regulations is also held responsible for the lack of adequate supervision.

3. Section Two: Civil Liability of the Government for Administration

In addition to legislative areas, the main function of the government is administrative functions. Certainly, the administrative area has high delicacy and precision concerning various responsibilities, including civil, criminal and disciplinary, due to mixing with various tensions and managerial challenges. The civil liability of the government for administration occurs in two main ways. First, the lack of regulation in the required field and second, the non-implementation of the existing law in the related field. Each of these two forms is examined and studied separately in the following.

¹ In slang, these powers are called Golden Signatures.

3.1 Lack of Regulation

One of the theories that have been proposed for the civil liability of the government is the right guarantee. This theory is based on the belief that the theory of fault and risk evaluates the perpetrator's behavior and neglects the main purpose of civil liability, which is to compensate the harmed party [5]. Therefore, in the right guarantee, the theory it has been tried and evaluating the behavior of the harm factor, the non-behavior of the harm factor should also be evaluated. In other words, sometimes the person who makes the harm engages in a behavior that causes damage to the other person, and sometimes, by not behaving, that is leaving their responsibility, causes the damage. The Islamic Penal Code 2013 refers to this issue in the second article in the definition of crime. In addition to committing an act contrary to the law, the code also criminalizes leaving the law. Therefore, the right guarantee theory is tried to guarantee the right of the harmed person, whether the harm is from the action or the not doing the action. Now, in measuring the behavior of the government according to the right guarantee, it should be acknowledged that proper legislation in the areas that need to be regulated is one of the duties of the government. According to the right guarantee theory, if the government neglects this duty, it will be responsible.

The right guarantee theory states that everyone has the right to live in a healthy and secure society and use their property. Others must respect these rights. The law will also protect it, and as a result, if a right is lost, it must be compensated by the agent who destroys it [6]. According to the right guarantee theory principles, every individual has the right to live in a completely safe environment. All aspects of their rights, including economic, social, political, etc., are provided. The important point in the components of this theory is that the law should protect these rights. This point is important in two ways. The first is that the law must be correct and proportionate to the right guarantee to be able to fulfill its mission concerning this guarantee; Thus, the responsibility of the government for making inappropriate regulations is also discussed here, which was discussed in the previous section. The second is that in the absence of a law, the right guarantee lacks legal protection, and this is not doing the action referred to in Article 2 of the Islamic Penal Code 2013. Given this, it can be argued that a person who has been harmed by the government's failure to legislate in a field that requires it can file a lawsuit against the government, and their lawsuit is legal based on the right guarantee theory.

One clear example of this is cyber social networking activities. Today, with the growing and rapid expansion of the use of the Internet in everyday life, the urgent need for this phenomenon in proper legislation is quite evident. Today, the Internet has an important role in securing the freedom of speech. Removing restrictions on the dissemination, search, and receipt of information has provided the ground for exercising this fundamental right. This new means of communication, like any other social matter, needs to be systematized through the enactment of applicable laws and regulations. Undoubtedly, this process can be useful and effective for the Internet when it is formulated and implemented with a correct understanding of the characteristics of this media and new communication tools and the conditions of society [7]. Now, given that the government regulates the use of cyberspace and social networks, people who suffer from this issue can file a lawsuit against the government for negligence in this regard. Of course, it can be argued that this is a social issue, and in addition to the individuals affected, all people can be exposed to government inaction in this regard.

3.2 Iranian Administrative Court of Justice Approach to Lack of Regulation

Paragraph 1 of Article 12 of the Court Law 2013 states that the General Committee of Administrative Court of Justice should deal with complaints of natural or legal persons of bylaws and other regulations of municipalities and public, non-governmental organizations in cases where the mentioned regulations are against the law and related authority is not reliable. This paragraph is almost identical to Article 19 of the Law on the Court of Administrative Justice adopted in 2006, which stated Administrative Court of Justice should deal with complaints of natural or legal persons of bylaws and other regulations of municipalities and public, non-governmental organizations in cases where the mentioned regulations are against the law and related authority is not reliable.

Both paragraphs mentioned are similar to part c of paragraph one of article 11 of Administrative Court of Justice Law 1981, which stated Administrative Court of Justice should deal with complaints of natural or legal persons of bylaws and other regulations of municipalities and public, non-governmental organizations in cases where the mentioned regulations are against the law and related authority is not reliable, which in turn was almost a repetition

of paragraph A of Article 2 of the Law on the State Council approved in 1960. The difference between the two laws passed in 2013 and 2006 and the laws passed in 1981 and 1960 is that in the two older laws, the powers of the branches and the general board of the court are consolidated in one article. The Administrative Court of Justice procedure showed that branches are always dealing with lawsuits related to the refusal of the administration to take care of the duties that cause the violation of the rights of individuals. However, in 2006 and 2013, the legislator separated the competencies of the branches and the general board of the court into two separate articles, mentioning the refusal of the administration in the article related to the competencies of the general board of the court. This action of the legislator has created ambiguity within the competencies of the General Assembly of the Court.

What is expected of an effective administrative justice system is to prevent the administration from violating the law in all its forms and be able to protect individuals in cases where their rights and freedom are violated. This violation of the law can sometimes be the result of a decision, approval of a decree or administrative action, and sometimes it can be due to the administration's inaction in the matter of regulation. Iran's administrative justice system leaves the administration free to enforce regulations. The General Board of the Administrative Court of Justice, which has been made responsible for reviewing the approvals of the administration by the legislator in 1981, 2006 and 2013, does not have the tools to review the lack of regulation.

3.3 Government Responsibility for not Implementing Existing Laws

The civil liability of the government for non-implementation of existing laws also has an identical basis to its responsibility for lack of regulation; because there is no difference between these two categories that do not exist in the field of law or that there is a law, but it is not implemented by the trustee, which is the government. However, according to the right guarantee theory, the rights of individuals in society do not have legal protection. The only difference between the two is that proving the government's civil liability for lack of regulation is more difficult than proving its responsibility for lack of implementation. Because the responsibility for lack of regulation is broader and more general, and since the type of responsibility is interpretable, theorists can have multiple and different interpretations of it, making it difficult to hold the government accountable. But in terms of responsibility for not implementing the existing laws, it is not very interpretable because it is quite tangible and cannot be presented from different and sometimes contradictory interpretations.

Article 113 of the Constitution Law of the Islamic Republic of Iran assigns the task of enforcing the law to the presidency. It is clear that, firstly, the constitution law is the set of laws of a country and secondly, the president is the head of the government, so when the highest law is the responsibility of the highest government official, so the responsibility of implementing other laws is the responsibility of the government. From the concept contrary to Article 113, it can be understood that the non-implementation of the law by the government is against the constitutional law, and the government should be held responsible for the act against the constitutional law.

Therefore, two grounds can be considered for the non-implementation of existing laws by the government. The first is the theoretical basis which is the right guarantee theory, and the second is the legal basis based on Article 113 of the Constitution Law. Even in the author's opinion, the civil liability of the government can be realized based on the principle of legitimate expectation, and the government can be made responsible for compensation. This principle, which is one of the modern and advanced principles in administrative law, refers to the reasonable demands and expectations that have been created in the interaction between individuals and public government agents as a result of administrative decisions, announcements, policies and procedures, in such a way that was not paying attention to them and not implementing them, while violating the former reasonable intentions, causes harm to or deprivation of citizens' benefit. Therefore, the mentioned expectations will require some legal protection [8].

Therefore, following the doctrine of legitimate expectation, government decisions and regulations for citizens create a reasonable expectation in its adherence to the decisions and the effects of these decisions. Based on these decisions, citizens plan and organize various aspects of their lives, and the government should support such a reasonable expectation that it has created. Otherwise, the judiciary can act to protect the rights of citizens. This judicial protection can present itself in two ways: revoking the new decision and not affecting the rights arising

from the previous decision or procedure and if these two aspects are not supportable, the government can be obliged to compensate based on the principle of legitimate expectation [9]. For example, in the Jacob Villa case in France and the Burmese Oil Company case in England, the sentence required the government to compensate (Soren 7-174). In Iran's law, Article 92 of the General Accounting Law can be mentioned as the most obvious symbol of the doctrine of legitimate expectation in the Iranian legal system. In sentence 223 of the General Board of Administrative Court of Justice on 7/16/2012, there was no explicit name for the legitimate expectation. Still, based on this principle, the plaintiff was considered rightful. One of the most obvious examples of non-implementation of existing laws by the government is the Law on Facilitating Youth Marriage 2005. Although more than a decade has passed since the law was passed, the government has refused to implement the law so far. At the same time, Article 12 of this law obliges the government to submit a report on implementing this law to the Parliamentary Cultural Commission once every six months.

Therefore, any person who suffers from the non-implementation of the mentioned law can file a lawsuit against the government, and the government will have civil liability based on its legal and theoretical basis concerning the non-implementation of existing laws. Moreover, there are other laws that the government refuses to implement or does not fully implement, all of which will be a source of civil liability for the government. And this lawsuit should be filed according to the ruling judicial system in Iran in the Court of Administrative Justice. According to Article 173 of the Constitution Law and Article 12 of the new law, the Administrative Court is in charge of dealing with violations of laws and regulations and refusing to perform legal duties. Still, the Court has taken a passive position to date, and this task has not been performed well. Therefore, according to those mentioned above, what is expected from an effective administrative justice system is to prevent the government from violating the law in all its manifestations and be able to protect individuals in cases where their rights and freedom are violated. The government also should be obliged to compensate in all cases due to the non-implementation of laws and regulations.

4. Conclusions

Based on the studies conducted in this article, it is concluded that the government has civil liability in several cases. Examples of government civil liability for legislation can be divided into two main categories. The first is the responsibility that arises from making inappropriate laws. In other words, the government causes harm to some people by enacting inappropriate and inefficient laws, and the government should compensate. The second category is civil liability for lack of regulation. As the executive and managerial arm of society, the government needs to make regulations in various fields to be able to run the country properly. Sometimes, the government does not legislate in the field that needs the law, and this failure to legislate causes harm to some people. In this regard, the government is responsible and should compensate.

Insufficient, contradictory and unclear legal principles and provisions regarding civil liability for inappropriate regulation, lack of regulation and lack of legal development of related concepts have made the legal system of the Islamic Republic of Iran inefficient in regulating the rules of this type of responsibility. In such an environment, the Administrative Court of Justice, and especially the General Board, as the authority to guarantee the proper implementation of laws and regulations, can equip itself with up-to-date legal concepts to improve the unique role of the judiciary in achieving justice for cases where government decisions affect rights of individuals.

The government has many reasons or delays for the lack of regulation in the Iranian legal system. The reports of the Deputy Supervisor of the Islamic Council always include a long list of such cases. Still, unfortunately, the administrative justice system in Iran has left the government free to regulate. Considering that according to Article 173 of the Constitution Law and Article 12 of the new law of the Administrative Court of Justice, the Administrative Court of Justice should deal with violations of the implementation of laws and regulations as well as refusal to perform legal duties, but in practice, the Court has taken a passive position to date. This task has not been performed well. Therefore, it is expected that in the future, the legal system of the Islamic Republic of Iran will take special measures to oblige the government to compensate the citizens for possible damages in both the regulation and lack of regulation.

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