

## Civil Liability Arises from Attachment of Properties

Mohsen Ghods\*

Universiti Teknologi Malaysia, Malaysia

### Abstract

The main area of this writing is assigned to the civil liability of Judge in enforcement of judgments and of executive officer in attachment of properties' process in internal law, also, the extent of this research is civil liability arises from attachment of properties; means that the aim of this research is representation of losses which the nature of attachment is forced to the addressee of attachment and the losses which arise from intentional destruction or force majeure are not the subject of this research. In this research in the title of "civil liability arises from attachment of properties" which divided in two chapters, in first chapter in the title of "civil liability of attachment judge arises from attachment of properties", we consider to 3 discussions "the forms of judge's involvement in attachment", "the resources of judge's liability arises from attachment of properties" and "the pillars of this liability", then following it in second chapter in title of "civil liability of executive officer arises from attachment of properties", we will consider, in 3 discussions, to introducing of executive officer and his/her differentiate from same positions, resources of executive officer's liability, and pillars of this liability.

**Keywords:** Civil liability; Judge; Attachment executor; Properties; Liability resource; Fault

### Introduction

From many years ago, liability and its instruments of creation in laws and civil law area are discussed by lawyers. In new perspectives, liability divides in two major type "contractual liabilities" and "liabilities outside of contract" or civil liability which in our internal civil law is called "obligations outside of contracts". Contractual liabilities are created by parties' agreement based on general rules of contracts and judgments relevant to certain contracts and uncertain contracts which are enforced based on Article 10 of civil law of influence and power but civil liability includes a more widespread area of liabilities. Civil liability has a wide area and anywhere that entering damage or its compensating is the matter, the civil liability is the matter, too. Among them attachment of properties is the case among the cases where entering loss and damage and the necessity for its compensating is the matter. If Attachment of properties be the result of judgment by court and is done accordance with civil rules for enforcement of judgments by executive officers and judicial executors is legal and doesn't oblige anyone except in following cases:

- 1) If the judge issues mistake judgment.
- 2) If executive officer and/or judicial executors committing any extravagance or failure in executing judgment. If attachment makes a loss for a person that according to rule, the injured party doesn't deserve it, the subject should be accounted as a civil liability and the hidden corners should be analyzed. Attachment of properties may be legal and in effect of executing judgment or order of attachment that examination of civil liability arises from it demands special discussions according to governing rule and may be a legal attachment which enters to the discussion of usurpation. In both statuses the faulted committer is liable for compensating of damage. If attachment of properties is not legal and is not executed as the judicial judgment and executive office, in this case attachment of properties is illegal and beside several forms of penal description it, also, will have civil liability for committer.

If a person is committed a fault at first or during judgment executing or in keeping attached properties, he/she will be liable in it and is called judgment creditor or object of judgment.

So examining both cases, means civil liability arises from illegal attachment and civil liability arises from entered damage in effect of

legal attachment of properties, is necessary. The examination of this hypothesizes is the main subject of this paper.

### Liability of Judgments Executive Judge in Issuing the Order for Attachment of Properties

#### Civil liability of judge

About the concept of civil liability there are many definitions but the most known definition is "in any case that a person has to compensate other person's damage has a civil liability against him/her" [1] By this explanation the civil liability of judge is defined as follows:

"A judge has a civil liability if he/she is known as a person who has to compensate the entered damage resulted from judicial decisions such as judgment or order about a dispute"

We should consider that the judge doesn't intend to accept the liability against the injured party as deciding and issuing a judgment, so we should consider his/her decision a part of legal occurrences which if happened the results are not determined by judge but the Law will introduce the judge as its liable and burden the favorable effects on him/her.

In different legal systems the civil liability of judge has been considered and recognized officially, principally in the countries with a constitutional law book like France Law the judges are not in absolute security but have a civil liability against their fault and incorrect actions and even refusal from judicial trial to claims which leads to damage the claimer and parties to the dispute under special conditions benefit from this right which in an effect way demand and fulfill loss and damage arise from judicial crimes. So, each of these countries select an especial method for demanding damages arise from judges operations by injured party which in this case the dispute on loss and damage can

\*Corresponding author: Mohsen Ghods, PhD Student, Faculty of Management, Universiti Teknologi Malaysia, UTM 81310, Skudai, Johor Bahru, Johor Darul T'azim, Malaysia, Tel: +6010-822 7576; E-mail: [Ghods.moh@gmail.com](mailto:Ghods.moh@gmail.com)

Received March 02, 2015; Accepted April 28, 2015; Published May 10, 2015

Citation: Ghods M (2015) Civil Liability Arises from Attachment of Properties. J Pol Sci Pub Aff 3: 153. doi:10.4172/2332-0761.1000153

Copyright: © 2015 Ghods M. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

be considered against judge and/or government, which in the recent case government in its turn in some cases can bring to action a counter claim against judge [2].

Unlike in common law and the countries as England and America in law system perspective, the judges, in civil perspective, is not warrantor or liable for the actions which do because of their judicial job and court's judge benefits from judicial security against any liability claims for his/her incorrect actions. This judicial security in America is observed in an extravagant extent so that it is impossible to have any claim against judicial decisions even if the judge has a bad intention or make a judicial decision on his purpose [3].

But in Islamic Law and subsequently in written law of Iran considering to the current legal principles of judges, they will have a civil liability in the case of faulting.

### Legal principles of judge's civil liability

Constitutional Law doesn't accept the principle of judicial security absolutely and predicts a civil liability for judges in the case of faulting against injured parties. It is clearly inferred from 2<sup>nd</sup>, 3<sup>rd</sup> and 22<sup>nd</sup> principles of constitutional law of I.R.I that life, property and prestige of people should be honored and law doesn't authorize any extravagance to them under any conditions without a legal authorization and outrage from these principles based on the case cause to a penal or civil liability for intruder and based on it the civil liability of government and people who their fault cause to a damage for others have to be heard which in principle bear 171 statutory: whenever in the effect of fault or mistake from judge in a subject or in a judgment or in comparison of judgment about a special case physical or moral losses are occurred for a person, in the case of faulting, the culpable is judge according to Special Islamic Rules and otherwise that damage has been compensated by government, and finally culprit is rehabilitated.

Article 534 of Islamic Punishment Law approves that: any of governmental administrative employees and judicial institutes and executors of general services who are committed to a fiction and falsification in writing texts or contracts about their tasks such as changing the subject or concept or garbling the words and writings of one of official officers, stamp or writings of one of parties or showing a null affair as a correct affair and vice versa or showing a thing confessed while is not confessed to it beside administrative punishments and entered damage compensation are sentenced to 1-5 year(s) prison or 6-30 million Rials cash judgment. And in the case of civil liability arises from refusal of judicial trial to claims of Article 597 of Islamic Punishments Law approves that: any one of judicial authorities who received any complaint and plaint in accordance with legal conditions and hearing to it be his/her task legally, but he/she refuses from accepting the compliance and hearing to it under any excuse even for silence, brief or law repugnance or delay in issuing the judgment, illegally or behaves against clear law, in first time is convicted to 6 months to 1 year and in the case of repeating to permanent dismissal from judicial job and in any case is obliged to compensate the entered damages.

Article 30 of supervision law on judges' behavior regulates that: hearing to the claims of compensating damage arises from mistake or fault of judge is the subject for 171<sup>st</sup> principle of I.R.I constitutional law in capability of Tehran General Court. Hearing to the mentioned claim in general court is based on fault or mistake establishing of judge in higher court. Suspension or abatement in pursuit of disciplinary or lack of making a file are not an obstacle for hearing to the occurrence principle of fault or mistake from judge by higher court.

### Attachment of property and judge's role

It is clear that attachment of a property is not possible without judges' involvement. Judge's involvement in attachment of properties according to the attachment process has different faces which will be considered:

Sometimes a judge issues a judgment and in the effect of issued judgment personal properties have been attached.

Sometimes a court issues an order which causes to attachment of properties.

Sometimes court involvement is via issuing executive order for person's attachment of properties for executing a judgment which is issued previously against him/her.

### Issuing judgment leading to attachment of properties

Hearing to a claim by judge is a legal task and the judgment issued by judge in the case of certainty and establishing executive conditions should be reinforced according to its importance in judicial and legal system [4]. When a claim brings in court, the court obliges to originate the judgment or settle the dispute in the case of that claim. This is a certain legal rule which is cleared in 137<sup>th</sup> principle of Islamic Rule and also in Article 3 of Civil Procedure Rule.

167<sup>th</sup> principle of power appoints that: the judge cannot in excuse of silence or defect or brief or law repugnance refuses from hearing to the claim and issuing judgment. Like this judgment is in Article 3 of civil procedures rules, as it states in bottom of article that: "the judges cannot in excuse of silence or defect or brief or law repugnance refuse from hearing to the claim and issuing the judgment otherwise are known as refused of doing justice and will be convicted to its punishment" which Article 45 of Criminal Procedures Law approved in 1377 emphasizes to this principle. These two texts cause the judges to be obliged in appointing the judgment and settling the dispute of all received claims and the executive bail of mentioned judgment for judicial officers is appointed in 597<sup>th</sup> principle of Islamic Punishment Law and it will punish the judge for his/her refusal with dismissal from judging and also with compensating entered damages [5]. And in many cases executing the judgment is resulted to attachment of losing part properties.

In the case of adopted decision by court, it should be said that Article 299 of Civil Procedures Law appoints that: the decision by court if be about a nature of claim and be definitive partially or fully is called judgment and otherwise order. So, because the subject of this text is a judgment issuing by court, those decisions of court in litigants' disputes are considering that first, be about the nature of claim, and second be definitive in claim and in other words in the result of its executing an attachment of properties is occurred; so, Article 299 of Civil Procedures Law should be accounted as a standard for distinguishing judgment from order [6].

### Attachment of a property arises from judgment issuance in benefit of claimant

The subject of this paragraph is that in law claims, the court at the end of procedure issues a judgment in benefit of one of parties; court judgment, beside introduction, has two important and different sections: terms and results. The judgment in the concept of more peculiar or the section for judge's judgment which the disputed subject of parties based on it is settled and announced; justified reasons, causes or judgment reasons that include causes (subjective and legal) and the judge establishes them documented on evidence in substantiation of

claim (external evidence) and law (such as clear terms, provisions and spirit of law and also principle) and causes to announce result in the frame of terms of judgment in the mentioned quality in it [7].

### **Court's judgment directly requires attachment of properties**

Sometimes claimant demands a security order for the object of the action to be issued in order to secure the requirement of Article 108 of Civil Procedures Law during or before plea, the court considers that plea before entering in nature of claim and in the case existence of legal conditions, the order for securing demand is issued and it orders to attachment of defendant properties in the amount of demanded sum. This order is sent to civil judgment execution unit and that unit by introducing claimant attaches of defendant properties equal to demanded sum.

### **Court's judgment indirectly requires attachment of properties**

It is seen that in some cases court's judgment should attach the properties, but sometimes judgment issuance by court doesn't transfer this meaning directly that the properties of losing party shall be attached. For example, in such a dispute which holder of promissory note claims against the issuer of that promissory, the court judges in benefit of claimant legitimacy and convicts defendant to pay the mentioned sum in the promissory, in these cases, terms of judgment is certain payment from defendant to claimant and if defendant pays that sum, it is not causing damage to defendant properties but if defendant refuses from paying his/her debt to claimant, this action causes to attachment of his/her properties in benefit of winning party [8].

Therefore, as said before, the decision which is issued by court is not out of two statuses, generally; sometimes the court appoints the attachment of a property in its decision and the attachment of that property is the only way for executing the decision and sometimes the attachment of property is not the only way for executing the judgment, but it is the cause for lack of executing the judgment by losing party. Sometimes executing the provisions of judgment by the court doesn't need to attachment of properties but it is the cause for lack of executing the judgment by losing party.

### **Examining the concept of attachment of properties by court**

Attachment of properties subject is considered in criminal law, Article 107 of Criminal Procedures Law in this case appoints that: "articles used in crime such as weapon, fabricated documents, false coin, and all things which are obtained during inspection should be attached when lead to a crime detection or the culprit pleads the guilty and the mentioned things shall be defined and described in process-verbal". This article obliges the court to attach the property which is used as articles of crime; so, sometimes lead to government ownership on a part of properties that sometime is the subject of crime, sometimes is the product of crime, sometime is the articles of crime [9].

The other article which clearly points to attachment of properties is Article 10 of Islamic Punishment Law; the second part of mentioned article appoints that: "...In all criminal affairs of court during or before or after issuing judgment or order such as those which are based on conviction with acquittal or stopping the pursuit of culprit, it is necessary an especial judgment to be issued and appointed for the things or properties which are the articles of crime or obtained in the effect of crime or used during committing to crime or assigned for using in crime that they should be returned to their owners or attached or expunged".

The first note bottom of the mentioned article introduces the judgment by court in attachment of properties even in the case of certainty can be complained [10]. So, this point should be considered that if attachment of properties by court is against the reality and in this case a loss enters to its owner, it should be deserved to a claim for compensating the entered damages [11].

### **Attachment of properties extensions in statutes**

The most important legal text that is addressed to attachment of properties is 49<sup>th</sup> principle of constitutional law. The mentioned principle appoints that: "government is obliged to take the assets arise from riba, usurpation, bribery, peculate, larceny, gamble, abuse from contracts and governmental contracts, selling the uncultivated lands and main properties which are not belonged to any particular person, establishing corruption places and other illegitimate cases and transfer them to right holder and if its holder is unknown they should be delivered to public treasury, this judgment should be executed with considering, researching and religious proof by government".

In this principle, the government is obliged to attach the assets result from mentioned ways. Legislator statement is stated in this principle generally and the rule for the quality of executing 49<sup>th</sup> principle of constitutional law approved in 1363 is enacted for its description.

Along this case we can point at 595<sup>th</sup> Article of Islamic Punishment Law on Riba. Also, about the faces arises from bribery, 592<sup>nd</sup> Article of Islamic Punishment Law predicts the attachment of properties results from bribery, means that the property which is delivered to bribee as bribery by briber shall be attached and it should be mentioned that in the case of restarting bribery the mentioned property is attached, too [9].

By researching more other extensions about attachment of properties will be visible.

### **Attachment of properties arise from issuing the judgment to confiscation of properties in benefit of government**

One of other cases in which issuing the judgment can be source of attaching the properties, is issuing the judgment to confiscation of properties in benefit of government; so, in this paragraph in two section the concept of confiscation of properties is described and then in the next paragraph its extensions in statute are pointed.

**The concept of confiscation of properties by court:** In the previous section we consider to the subject of attachment of properties and see that attachment of properties is supervising the special properties which this properties are the subject of crime or the product of crime and or the instrument for committing to crime, however in many cases such as the rule for quality of executing 49<sup>th</sup> principle of constitutional law the concept of attachment and confiscation is not segregated sufficiently, the concept of attachment and confiscation should be supposed different in perspective of definition and extension.

The concept of confiscation in law is as "taking property by government in illegal methods and/or common methods, like confiscation of one thing or other" [12] some lawyers who have introduced the concepts of confiscation and attachment in unit meaning, but have considered to their difference between these concepts and said that the meaning of confiscation in the mentioned intention is general confiscation and confiscation in the meaning of attachment is special confiscation and the meaning of general confiscation is attachment of all existence properties belonged to losing party (in-cash or non-cash), movable or immovable [9].

**The extensions of confiscation of properties:** Confiscation of properties like attachment of properties has not various extensions, but generally the confiscations divided in two categories:

First category; arises from confiscated property's special status and the second category; arises from the owner of confiscated property's special status. The clear extension of 1<sup>st</sup> category is nationalization; nationalization usually results from revolutions in the viewpoint of government to one category of properties which governments determine those properties public-utility, of course the nationalization is usually occurred by legislative assemblies but the role of courts is where if there is any dispute in the extensions of nationalization, it considers to that subject in the position of dispute settlement that whether the mentioned property is of nationalization extensions or not, at the end of investigation the court may decide to confiscate the mentioned property.

Second category, confiscation of properties in special status of owner the property who belongs or correlates to a governmental regime or a group and or a sectarian which in government and law perspective this correlation is a cause for confiscating all his/her properties by court and in the benefit of government. The law for anti-narcotic campaign approved in 1367 is in this category and 5<sup>th</sup> article for the quality of executing 49<sup>th</sup> principle of constitutional law which imposes the confiscation of properties to some people for their positions.

### **The resource of judge liability arise from attachment of properties**

Judicial security need to guarantee the judge's independence. The judge in adopting a decision should have such a sense that doesn't fear of anything and governs only rule and conscience. Independence affirms that the conditions and the liability of claim design against him/her should be difference with the general rules of liability and pursuit [6]. So for investigating the judges' liability on executing their tasks institutes separate from the mentioned institute should be considered.

For understanding the role of justice and judge in Islamic Society, saying this subject which has been cleared by jurisconsults is useful. "Justice, Imam's task, or his deputy, and in absent time the jurisconsults judge is acceptable" [5].

So, the proficient which occupation in it needs to such specific conditions, naturally, these specific features also exists in the quality of liability for judge.

Lawyers believe that "in codification of relevant regulations to liability conditions and judges' pursuit, it is necessary to be tried to observe in one hand honoring to judge's independence and his/her prestige and in another hand honoring to law of claimant/defendant and any parties don't be victim toward another one" [6].

Of course it should be noted that it is tried in different systems of civil procedures to decrease the damages and losses arise from procedures by arrangements such as renewable decisions and or existence of various judges in any branch, but entered losses arise from judicial mistakes of judges are not avoidable [13].

### **The pillars of judge's liability arises from attachment of properties**

For examining the pillars of liability in all extensions we should consider to a set of common elements.

In examining the liabilities based on fault which the known lawyers believe that they are, as liabilities rules in our law, based on our fault,

unless in except cases, we should address 3 common pillars as follows:

1. Harmful act
2. Entering damage
3. Causality relation between convicted act and entered damage act

In this discussion through 3 separate articles we first consider to judge's harmful act, then to the damages entered to losing party in the effect of judge's judgment and third to causality relation between issued judgment by judge and entered damage to losing party.

The general principle in our law is that for generating a liability for defendant of claim should, the fault or harmful act by him, entering damage to claimant and the relation of causality between convicted act and entered damages act should be proved.

### **Demandable physical damages from judge arises from attachment of properties**

Any property has benefits that this benefits during attachment duration is dispossessed and the judge based on his/her judgment enters this damage to the addressee of attachment, so, this damage should be compensated, because improving benefits has occurred necessarily [14].

Sometimes it is possible that judge with his/her judgment and order and or order provides the attachment of a property which with its attaching, the holder of property loses the position and special opportunity which a property loss has been occurred. For example, the judge by issuing a security order for the object of the action causes defendant horse to be attached and defendant who is an agility horseman and probability can win in a horse race but attaching the horse is an obstacle for doing it and finally causes losing this position [15].

Therefore; in the above mentioned cases it is possible that judge be liable for compensating damage and be obliged to compensate these losses.

### **Demandable moral damages from judge arises from the attachment of properties**

The second type of damages is moral damages which in our law there are plenty disputes on the possibility of compensation.

But 171<sup>st</sup> principle of constitutional law points to physical and moral damages as the main resource of judge liability in the position of announcing types of damages which are demandable from judge. This text is main basis of demandable moral damages in our law because appoints that: whenever in the effect of fault or mistake from judge in the subject or in the judgment or in the adjustment of judgment on a specific case a damage enters to someone, in the case of fault, the culprit according to Islamic rules is guarantor and otherwise damage should be compensated by government and in any case is rehabilitated.

In this principle there is not a clear judgment about converting moral damage to money, but judge liability includes criminal and civil liabilities, and which is compensable by government is money giving or financial law which whenever the mistake of judge be compensable, they can execute in the first way for compensating moral damages arises from fault [15].

### **Entering damage to the addressee arises from attachment of properties**

As mentioned before "the need for existence of damage in realizing



civil liability is important because the existence of damage is specific for civil liability and this element which separate it from criminal and ethical liability, if any damage act is not occurred by the actor, it is not follow any civil liability” [16] so, if executive officer commits any fault, for only doing this commitment we cannot introduce him/her as a culprit or liable but when a damage enters to others, judge is liable for compensating that entered damage.

### Instruments for exempting executive officer from liability arises from attachment of properties

When an executive officer with committing to a harmful act and entering damage faces with this risk which makes him/her liable against his/her occupational and professional task, by proving a series of factors can release him/her from that liability. Releasing from liability by proving other factors’ involvement in entering damage, the causality relation between executive officer act and entered damage will be cut [16].

The factors which can be considered as the instruments for exempting executive officer are such as the fault of losing part, wining part involvement, third person’s involvement, fault or mistake of judge, governing actions and rules defect which separately we will consider them.

If there are factors which cut the causality relation between the act of executive officer and entered damages, he/she (executive officer) introduces innocent.

**The fault of losing part:** As mentioned before if the losing party has a role in occurring or intensifying damages, this judge can cause to discount by releasing the committer from the liability of harmful act, so, the fault of losing party has the ability to be accounted as partly or fully exemption cause for defendant in the claim of civil liability [14].

The fault of losing part on the amount of damage with the principle of entering damage can cause to partly or fully exemption of executive officer.

**Wining party involvement:** Wining party usually accompanying executive officer in attachment and attaching properties from winning party usually introduce to executive officer.

**Third person involvement:** In the time of attaching properties which provide liability instruments for executive officer, different persons may effect on attachment of properties and these effects based on its type and degree can have a role in creating persons’ liability.

Of course, as mentioned in the previous chapters, the aim of third persons is those who have not any benefit and loss in executing and in other hand based on their task are not obliged to present in executing process. In the field of civil procedures “one of other cases which change the liabilities is third person fault” [14]. So, if third person involves in executing which cut the causality relation between the act of executive officer and entered damages, he/she should be introduced liable for compensating, executive officer in the time of attaching the properties based on third persons evidence who be presented in the executing scene, attaches the properties belonged to a person other than losing party and what causes the executive officer to make mistake in attachment of properties is unreality statements of third persons and that third person should be accounted as a reason to entered damage, in the case of third person involvement two hypothesis are imaginable; one that the involvement of third person is not the extent that can be accounted as the unique reason for entering damage but it is in the extent that is accounted as one of several reasons for occurring damages, here

regarding to the amount of his/her involvement will be the liable of compensating damage. [15].

### Proposition analyzing

The subjects that will be considered in this proposition are as follows:

Wining party involvement as the cause of executive officer’s exemption

The fault of judge who issued the order as the exemption reason of executive officer

**Wining party involvement as the cause of executive officer’s exemption:** In the considered proposition the person “C” as 1<sup>st</sup> claimant and holder of check acts to fiction in the text of check for increasing the sum of check and while he/she demand only 1 million Rials from person “A”, has increased the sum to 99 million Rials and this act has been accounted as fault, because he/she increases this sum illegally and the person “A” has not deserved for that and person “A” properties than to this amount through person “C” fault have been attached. So, in this case it can be said that damages arises from person A’s attachment of properties than to this sum is attributed to winning party, because this sum has been attached because of his/her fault and this damage is not attributed to executive officer and the fault of winning party will cut the causality relation between the executive officer’s act means attachment of properties and entered damages to person “C” in the amount of 99 million Rials from the attached properties.

**The fault of judge who issued order as exemption reason:** In the considered proposition regarding to the statements of person “B”, judges’ disciplinary court has sentenced the order issuer judge for lack of obtaining probable damage money; finally, judgewho issued a security order for the object of the action in sum of 100 million Rialsdoes a fault. The court is authorized to issue a security orderfor the object of the action without obtaining probable damages based on the judgment of paragraph “C” of Article No. 108 of Civil Procedures Law whenit occurs withlack of paying certificate during 15 days from issuing date according to the article 315 of business rule that in the considered proposition of this condition is not provided.

So, order issuance by investigating judge is accompanied with a heavy fault which arises from judge’s inattention to legal regulations and this fault causes to make liable the judge against compensating damages arises from attachment of properties in sum of 100 million Rials and this fault cuts the causality relation between the act of executive officer who is executor to attachment of properties and entered damages arise from attachment of properties in sum of 100 million Rials.

### Results and Conclusion

1. In many times, the attachment of properties arise from the demand of wining party and this demand conducts court towards attaching the properties and what is the cause of effecting this demand is the existence of benefit for him/her in attachment, however in some cases also the attachment of properties is based on general officers discretion and in benefit of government, such as attachment and confiscation of properties and is not based on common persons’ demand.

2. 171<sup>st</sup> principle of constitutional law as a resource of judges’ civil liability in the position of limiting the cases related to judge’s liability and in other hand it clears the compensating damage which judge in procedure is its source.

So, based on this principle, compensating damages arise from judge's fault is on judge but the damages arise from judicial mistake of judge should be compensate by government which 58<sup>th</sup> Islamic Punishment Law is close to this text.

3. The concept of fault inserted in 171<sup>st</sup> principle should be limiter than the common concept of fault and only witting and what is in its judgment shall be included in its concept because regarding to new legal theories the liability of compensating damages shall be accepted by government and improving mentioned principle in this case which losing party has right to refer to government for compensating entered damages in any cases assumed appropriate.

4. If executive officer expunges or occults, intentionally, the writings, documents and or sheets which have been given him/her based on his/her task in attachment of properties process and qualify proofing aspect will be liable for compensating damage based on article No. 604 of Islamic Punishment Law.

5. If executive officer does unreality and intentionally act in attachment of properties process which those acts cause holder of properties to loss, according to article no. 605 of Islamic Punishment Law the executive officer will be liable for them.

6. When executive officer in the position of attaching a property based on doing his/her task provides the reasons for entering loss to others based on article no. 11 of Civil Punishment Law will be liable for compensating damages.

7. Because article no. 11 of Civil Punishment Law in the cases that the defect of administrative instruments are cause of entering damages accounts government liable for compensating them so, if the defect in rules conducts executive officer towards ungracious interpretation of rule which leads to enter a damage to losing party, the government should be liable in compensating damage because the rule is only instrument and device in the hand of executive officer for doing his/her tasks, so, by an interpretation of Article No. 11 of Civil Punishment Law the cases for government liability should be extended.

8. The forms of judge involvement in attachment of properties process is as follows: issuing the judgment of attachment source along with issuing the order of attachment source and issuing the order of judgment executing which the judge in above mentioned forms can has a role in attachment of properties process. The judge may issue a judgment which regarding to the case can be attached a property in benefit of winning party directly or indirectly, and sometimes judgment issuance causes to attachment or confiscation of properties in benefit of government. Also, it is possible that a judge by issuing an order cause to attach a property and this order regarding the case can be a security order for object of the action, security order for unfounded action, security order for foreign nationals, and security order for temporary order. Issuing order of executing is other cases of judges' involvement in attachment of properties process.

9. The extensions of the fault of judge, the intention of losing because of lack of sufficient skill and sever defaulting in some extent is forgivable and judicial mistakes extensions are in the cases which the mistakes of judge arise from deluding behalf of both claim parties, incorrect evidence, unreality confession, incompetence of rule concept or its stranding and defecting in memory or in qualification power of judge.

10. The extensions for executive officer liability are as follows: lock of observing legal ceremonies, the mistake of executive officer

in executive operations and lack of paying attention to beneficial individuals in attachment of properties.

11. If the executer of attachment has not qualified for attaching and attached the property, the involvement of holder of property which is attached by unqualified position does not accounted as a crime and would not liable for Article No. 633.

12. It is necessary for compensating damages arise form procedure and attachment of properties the insurance companies establish a type of liability insurance under the name of liability insurance arises from procedure, means that the claimant should, before claiming any claim, present his/her reasons and documents to the expert of insurance so that the mentioned expert determines the degree of this claim risk and based on the risk and demand of claim appoints the premium and in the case of claimant conviction, the insurance company is liable for compensating damages in appointed sum inserted in contract and this judge in the case of occupational liability of judges and executive officers is applicable.

13. Exemption instrument of judge from liability can be the judicial mistake of judge, losing party fault, winning party involvement, the fault of attachment executors and the fault of third persons which these factors regarding to the case can cause to acquittal or discount in judge's liability.

14. The fault of losing party, winning party involvement, third persons involvement, the fault or mistake of judge in issuing judgment or order or decision for attachment source, governance actions and defects in rules can be the reasons for exonerating or discounting from responsibility of executive officer.

## References

- Katouzian, Naser (1389) Obligations outside of Contract, Civil Procedures. (3rdedn.) Tehran University, Publications, Tehran 1.
- Soltaninejad H (1388) (11thedn.) Mofid Journal.
- Cristian HM, Comparative Study of Judges' Civil Liability, translation of M. JavadMirfakhraei. Law Journal 14: 226.
- Abdollah S (1381) Civil Procedures. (1stedn.) Mizan publication, Tehran 2.
- Mohaghegh D, Mostafa (1379) Jurisprudence Rules, Criminal Section. (1stedn.) Islamic Sciences publication center, Tehran 4(2): 2.
- Abdollah S (1380) Civil Procedures. (1stedn.) Mizan publication, Tehran.
- Abdollah S (1384) Civil Procedures. (3rdedn.) Drak publication, Tehran.
- Bahrami B (1382) Civil Judgment Execution. Negah Publication, Tehran, 2.
- Ardebili, Ali M (1383) General Criminal Law. (7thedn.), Mizan Publication, Tehran 2: 172.
- Goldoozian, Iraj (1382) Islamic Punishment Law Mahsha, Majd Publication, Tehran 2: 20.
- Zeraat (1381) Islamic Punishment Law in regulating current Law. Ghoghnoos Publication, Tehran 2: 26.
- Jafari, Langroudi MJ (1376) Law Terminology. Ganj-e Danesh publication, Tehran 8: 653.
- Goldoozian, Iraj (1376) Iran General Criminal Law. (5thedn.), Tehran University Publication, Tehran 1: 132.
- Yazdaniyan, Alireza (1379) Civil Law of Civil Procedures Territory. (1stedn.), Adabestan publication, Tehran.
- Katoozian, Naser, Constitutional Law Governance, Strategies and Obstacles. Shargh Newspaper.
- Gholami, Majid (1376) Civil Liability of Government to its Employees Actions. Dadgostar Publication, Tehran.