

**Research Article**

## **CIVIL LIABILITY OF CITY MANAGERS AGAINST CITIZENS DUE TO ADVERSE DECISIONS**

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### **ABSTRACT**

The mayor is responsible for some duties as a municipal employee that can provide his responsibilities because of failure to follow them due to legal reasons. In this research, while studying the theory and examples of implementation of this liability in Britain and France law, which are the source of law in other countries in a way, we compare them, so that finally on the one hand we find a solution to prevent city managers to evasion of their responsibility arising from wrong decisions that led to harm civilians; and on the other hand in order to preserve the individual rights of citizens, their losses should not be remain without mentioning that, indulge in this field will disrupt the way of innovation and creativity of city managers for doing civil projects. So, in this regard it is important that imposition of liability arising out of decisions made by city managers to municipal or public agency be accepted. However, exceptions to this principle for which the manager will be personally responsible for the payment of compensation, is committing a grave error by him.

**Keywords:** City Managers, Illegal Decisions, Civil Liability, Abuse of Rights, common Law

### **INTRODUCTION**

As the city manager and employee, the mayor may be criminal, civil or administrative. These responsibilities sometimes realized concurrently, and sometimes they are not so. Therefore, these responsibilities are not necessarily the introduction of other responsibilities. For example, although non-observance of Islamic affairs or taking some funds as bribe are criminal and among administrative violations, but they are discussed less as civil liability. But sometimes violations can be occurred by the mayor that may provide damages for people in addition to being a violation. And thus lead to civil liability for Mayer. For example, if hypothyroidism or nonchalance in performing assigned duties cause to attributable damage, we can speak about all three municipal responsibilities. Mayor's fault can be construed in two places. Mayor's civil liability as the head of unlawful job, and someone who the crime is imputed to him wisely. And civil liability of mayor in respect of negligence in managing municipal.

#### ***Part I: The City Manager as the Head of Illegal Job***

City manager as a public and decision-making authority sometimes causes to damage the people because of illegal order to municipality officers. In the cases the crime is imputed to someone wisely in a way that a loss has been caused by a reason, the foreman will not be responsible. So, if civil manager order the officials to destroy a building against the law, and the officers do so, in this case civil manager is responsible (Zadeh, 1387).

Among the examples for the cases the crime imputed to someone wisely, we can name reluctance, price, leaving the property to the non-pointed minor and insane, and head order. With regard to responsibilities of municipal managers, what the head order has the most extensionality. Orders of the competent authority obliged the employee to implement what the head ordered as a law. Employee shall obey the laws and regulations of his superiors in administrative affairs according to terms and conditions. If the employee recognizes the order of his superior against the rules and regulations, he shall inform inconsistency of the order with laws and regulations to superior officer. And if after such notice, the superior officer confirms the execution of order written, the officer will be obliged to execution of orders. Therefore, it should be assumed that if the municipal officer cause to a damage according to the order of city manager, and he has reminded about its illegality to the city manager previously, city managers are responsible for the crime and they are responsible to main problem is in the accuracy of the claim about

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the fault, that in this regards the officer position in his occupation and administrative hierarchy and level of knowledge is a suitable solution for identification. However, the illegal order of an official might be because of lack of component in illegal issuing authority or due to the fact that the head has Ordered to an officer who is not basically among his subordinates (Golduzian, 1387). Of course, according to law, the employee is required to perform the action. When the officer attempt to implement something that he has no duty to do it, he will be found guilty. However, this would be considered legitimate.

Finally, the point that can be mentioned is related to the illegal job. Several reasons can make the order and decision of city managers illegal. The main factor can be lack of law prescription, for example municipal orders the officers to take some possessions in river bed. However, with the approval of the equitable distribution of water, the last will of the legislator was that river basin located in the city become outside the jurisdiction of municipality, and actually clause 6 of article 96 of the municipal law in this regard has been implicitly abrogated.

Another factor can be the lack of due process. For example municipality as doing street widening project, have to consider due process of law in purchasing land. Failure to observe these rituals can create liability for both manager and executive. Sometimes, the mayor as a manager does not have authority to issue the order. This means that service period is over. Therefore, the mayor's orders is illegal out of his management in municipality, and if any damaged cause this way, according to case, the mayor or municipal officer are responsible according to their interference. In the case of Motorcyclist who was died because of collisions with a hole in one of the streets. The expert declared the cause of the accident lack of on time leveling street by the municipality, and not attributed to the description or order of the mayor. In common law, for example, if the police implement the written order of judicial authorities in good faith, but later determined that the command is incomplete or invalid, it does not cause liability for the officer. But if a government official be aware that the order is incorrect or removed, or he does not care to the provisions of the order or authentication sentenced, or the subject of the command, and later it turns out that it is wrong, and cause some damages, the officer will be responsible, not decision making superior (Abbaslou, 1386). This rule can be extended to other common law local and public authorities and employees. Because there is not any exceptional character of the police and judicial authorities in this respect. In English law, going out of jurisdiction is one of the most prominent symbols of the causal action at one of personal guilt. Of course according to Dr. Katuzian, if the interference of foreman and the cause be the same custom, it seems that they should both consider responsible, particularly where they are both intent to waste. Of course if the foreman of waste (employee) be a means, his involved is in emergency decree, and the injured party must refer to the cause of incident, which is the mayor (Katuzian, 1387).

#### ***Part II: City Manager Responsibilities Arising From the Adverse Decision***

As the highest authority of the municipality, the mayor is responsible for management. In fact on the one hand the mayor is representative of municipality, and on the other hand, he is elected by city council. He is responsible for implementing general policies and proposals of the city council to promote legal obligations of municipality. Negligence and failure to manage the municipality which could cause damage to persons makes the mayor responsible for compensation. In Article 11 of civil liability law, the legislature has expressly accepted that if «municipal employees enter any damage to persons on duty intentionally or as a result of carelessness, they are personally liable to compensate the damage.

Thus, if the mayor uses his authorities, and for example he does not give sufficient permissions to applicant for building homes, and this would put someone to loss, and the mayor does not have justifying reasons for that, typically, he will be responsible. Thus, extensive power of the mayor should not give him the right to abuse this power. Forty principles of Iran's constitutional law says in this regard "No one can exercise his rights a way to injurious to others or detrimental to public rights." Therefore, in relation to the personal decisions of the mayor this should be considered that if his decisions aim certain individuals that are often so, he is personally responsible for damages caused by his decisions.

In France, they believe that, as the man should act responsible and cautious in his relations, in implementing the rights, he also should not lose cautious. So, sometimes also the one has authority but, he

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may have some faults. Identification of this wrong behavior is normal human behavior in a particular situation (Ahmadi, 1377).

In France & Germany, they distinguish between egregious and simple errors of the employee, and they know public officials responsible for egregious fault and municipality responsible for simple fault. In Iran law, in hundred and seventy-one principal. The judge's fault and mistake have been mentioned and a similar approach to the French law has been adopted. So that, they consider the mistake as simple fault and consider guilt as large fault. In this way, the government is responsible for mistake and the judge is responsible for guilt (Zargush, 1389).

In England approach, in order to recognize the mayor's fault in decision making, standards and circumstances of each case should be studied specifically.

In United States, wisely commit, and with insidious intent, and also public official departure from his jurisdiction, only cause a liability in making decisions (Zargush, 1389). With regard to wisely commit and with insidious intent, most countries, consider the case as personal guilt, and the loss caused by insidious intent, they consider the insidious intent person responsible. Because in crush cases, causality relation between the fault and loss will be formed easily.

In England, and in Gavarnieh trial on 1963 A.D, the mayor took some decisions regard people crossing some streets that as a result the owners of commercial stores sued against the municipality due to losing their customers. Although the court recognizes mayor's illegal decisions, but since the mayor had no bad intention by his decisions, and a simple fault occurred by him, in this case the municipality was recognized guilty for compensating the loss. Thus with regard to the mayor in administrative jobs, if he has committed a great fault, in decision making, he is responsible. This trend is also seen in French law.

In England & US law, if one's fault is together with unethical and abusive use of power and it is due to measure of duty and egregious fault, it will lead to civil liability of public officials. One criteria of egregious fault can be repeating the fault which causes responsibility, in which recognized judicial procedure of "limone" case (Brown and Bell, 1998).

It worth mentioning that with regard to deliberate act, most legal systems such as common law has a strict approach. For example, if the mayor order something related to demolition of a place, while he has bad thoughts to do so, and this bad will become clear, he is responsible to compensate the loss. Inure proposed an accepted rule. From his point of view "Intention results are never far."

As a conclusion it should be noted that in relation to mayor's civil liability, the legislature has used the theory of error.

This means that the injured party must prove that damages caused by personal decisions or illegal and bohemian orders of mayor. Although in our law. There are specific criteria such as the illegality for the illegal order issued by the mayor and cause damages to someone; but there is not any criterion yet, for the mayor's wrong decisions. So, in this regard, it is better that our legislator takes advantage of the criterion available in common law, rights and distinct between a plain and egregious faults. And consider taking decisions with obvious faults and with had indents or for attracting Individual benefit by mayor that cause damages for people enough for fulfillment of mayor's civil liability. The nature of obligation to compensate the losses is of two situations in the case of multiplicity.

- 1- Full liability against injured party; it means one of the tools is responsible for paying all damage.
- 2- Partial liability against injured party; it means every tool is responsible to compensate only according to its fault and intervention.

The damages to people might be caused by instrument community such as: municipality, mayor, employee, the injured person or third party. Sometimes the causes are responsible to leave the act due to their observing duty, and sometimes due to failure to observe the necessary precautions. However, it should be considered that responsibility of each tool will be determined according to the way of their intervention.

In England law, establishing causality relation between omission of job and the damage occurs difficult. In fact England courts accept hardly the cases related to civil liability which is related to omission by public authorities. Acceptance criteria of casualty relations in this country are the circumstances of the

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case according to jurisprudence in common law. An act that possible involvement of it in loss is more than 50% is known as result.

In «Huston» case the court reject the case because the probability of interfiling the act toward public authority was less than 25% in the loss claimant by applicant (Booth and squires, 2006).

Sometimes involved tools in causing such damage are integrated, so that we cannot determine a particular tool among them that causes the damage.

Assume that municipal officers start to drill an unauthorized pit, and this causes damage to a person who was riding a motor cycle. Municipal officers are the cause of damage, but it identity of those officers is not clear, who is responsible? Or assume that the bridge which was constructed by municipality and ministry of roads together, collapse after sometimes. This fault can be attributed to the municipality and the workers, or ministry of roads and its workers? Sometimes, the cause of an accident is the act of one person of a certain group. Some of the ideas in France believe that the liability of inconclusive tools is due to group liability of participants in a harmful activity. In England law, they issue the order to compensate the loses of injured party only when there is an obvious causality between the cause of loss, and the damaged party. Of course, if any damage occurs, and the reason is not clear, according to the complementary theory of financial participation, there will be the possibility to compensate all losses. In "Fichield" case in which several employers were involved in a way in injuring a worker, they were known as joint authorities (Mohseni and nezhad, 1389).

Article 830 of German civil law, article 719 of Japan civil law, and article 137 of Poland civil law have considered collective and joint responsibilities (katuzian, 1390). It seems that in Iran law, in the case of uncertainty of the main reason, in the accident, the fault must be attributed to the government (safari, 1372).

## **CONCLUSION**

### ***Conclusion and Recommendations***

With regard to civil liability of city managers due to wrong decisions made, among the theories expressed in this regard, "Leon Dugy" theory is closer to justice. It means if city manager takes decision directly in order to perform formal qualifications, (legal obligation) considering them, and the implementation of that decision affected someone accidentally, only the relevant department is responsible to compensate the loss. This is in a condition that no one does a non-permissive fault or error while acting according to taken decision. The theory also states that the fault caused by the decision of the director is not recognizable from handling fault. It seems that considering the fact that the manager is one component of a organization named municipality, actually his fault considered as the fault of organization and the injured party must refer to this organization for compensating the loss. Of course, this principle should not be accepted without exception, and where the public order is threatened, it is necessary to consider the mayor or city manager as final responsible person. Thus, if the mayor doesn't comply intentionally or due to an intentional act, and professionally is one of the axioms and primary principals related to city managing; He is responsible.

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