

Criminal liability of legal Entities In The Iranian legal system

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Abstract

The development of human relations and the progress of civilization form institutions to organize mentioned relation that are called legal entities, which has been recognized as true credit, today. These entities have their own purpose and special interests which such as real entities may endanger peace and security to achieve these goals. To punish a person for committing a crime, he or she must have criminal responsibility. There is no doubt that real entities, with some conditions, have criminal responsibility, but about the criminal responsibility of legal entities there is different opinion. The present article investigates the legal personality and its criminal responsibility in Iran.

Keywords: legal personality, criminal responsibility, legal entities, Iranian legal system

Introduction

By development of human relations in various aspects, including economic, political, social and cultural as well as the complexity of human communication network, institutions has been created to promote these relations in various fields. These institutions that are considered as a contemporary life accessories interpreted to be a legal person that legislator has consider for them a separate identity from its member and allow them to do the necessary actions to achieve their goals by competent representatives.

The issue of responsibility or non-responsibility of real entities is one of the most complicated legal issues, because criminal responsibility, in the first stage, is associated with real entities that have body, veins and skin. The question that its answer is not simple is that legal entities that had no body, vein or skin can be held responsible criminally. Character requires rights and obligations that specified for everyone. So, finding legal personality is needed. For example a group of people recognize that for sport development or support of authorities some actions are needed; a company created for this purpose which is includes the personality of founder people and like a natural person can do some actions that act to achieve the goals of founders and do works by itself that are not depend on no one of complex; and it also could have properties and make some deals.

Definition of legal entity

Legal entity is a group of people that have common interests and activities or some of the property that are dedicated to the special goals, they are put together, and they are considered as a right and duty by the law, and an independent personality is considered for them, such as government, university, financial companies and communities (Safaei & Ghasemzade 1375, p.125).

Legal entity is created when a group of people, that have common resources and activities, or part of a property, that are dedicated to special goals, and they are considered as a right and duty by the law, and an independent personality is considered for them such as government, municipality, Tehran university and Mofid university (Safaei, 1384:146).

Historical background of legal personality

If one wants to use the title of legal personality and its today's widespread meaning in the primitive communities, he or she should know that such a titles , with these properties, cannot find at that communities;

but we can say that there was the thoughts of legal personality in the primitive communities as a primary and semi-transparent. In the primitive communities, the family was considered as a social unit and the permanency of this institution was the main goal of family members. For this reason, at that time the most important crime was that have shaken the balance of family as a social unit (Browl, 1358:25). In these communities, properties including lands were belonging to the family rather than family members (Saleh, 1348:68). In addition to the thoughts of family's legal personality in the primitive communities, there were other issues that in some extent represent a vague and obscure existence of legal personality.

Of the issues were the temples, the worship places and religious places that from the first days, human beings had been thought about creating and establishment of such places; because the primitive people also have a God for themselves that worship him according to their own beliefs. The existence of these temples that have very old history, dedicated some properties to these places to first, from their income, development and modernization of temples, performing the ceremonies and administering the temple was considered, and second, savants and guards of the temple feed from these incomes. Dedicating the properties to the mentioned temples under any title, is not anything other than considering the temple as an owner, and this meaning is itself is shallow and primitive conception of the legal personality of the temples (Safar, 1372:114).

Theories related to the nature of the legal entity

The most important theories about the nature of legal entity can be summarized as follow: (Sanei, 1372: 114).

A. Virtual theory : Real personality is just belongs to the human being and using the term 'person' about other creatures is virtual. Proponents of this theory are Savini from Germany and Slamond from the U.K.

B. Rating theory: Based on this theory, legal entities that are doing some activities in a community have personality just because the government or the law gave personality to them. Salmond and Savin and Daisy are in favor of this theory.

C. Credit ownership theory: suggests that although the property of legal entities may be entitled to certain expenses; But this property has no owner and the emphasis stems that only humans can be the owner of these rights. Advocates of this view are Beker and Britz.

D. The fourth theory: According to this theory the property of legal entities belong to the individuals who form it. This theory was presented by Irling and is similar to the virtual theory.

E. The actual theory: the existence of a real legal entities that constitute the basis of their legal personality Discussion about the political nature of most of the aspects of being legal persons and not legal. For example, if the government wants to limit the social activities of political parties and associations to virtual theories (hypotheses) or other theories which are legal entities or the government may consider only the credibility of legal decisions, appeals. A picture in societies that legal entities such as commercial and industrial enterprises and parties and community groups, the importance and influence have grown, their existence is real (actual) is assumed. In Iranian law, in accordance with Article 588 of the Commercial Code legal person can have all the rights and duties that the law gives to individuals, unless the rights and duties that only humans can be it has. Such rights and obligations, brothers, sisters and so on. So the theory is the existence of a legal person has been accepted.

Conditions and factors of making legal personality

Review the meaning of the question in the mind creates legal personality that to achieve this title and would like to create a legal entity to the conditions and factors need? "It is necessary to provide legal personality following factors." (Jafari Langroodi, 123: 1361).

1. Individuals;
2. The special advantage is that it requires people as a group are the rights and obligations;
3. The validity of the law to these two factors means that under the collective factor could be the subject of rights and obligations.

Of course, this division than in all instances, and general legal person cannot be true. Others (Abu-Hamad, 1355: 79) the constituent elements of the legal entities are two categories:

1. -There Is an external reality that must be supported and social interests and specific targets;

2. There is a set of rules to protect the interests of protectionist legal person shall be imposed. This is what French lawyers have pointed to it. (Jafari Langroodi, 1372: 591)
The fact is that according to various examples and there are a variety of legal personality, we cannot express the element simply stating a general rule; for the realization of each of the legal entities that may need other elements of the elements we need.

Liability of legal persons

Before addressing the issue of liability of legal persons, we want to offer a definition of responsibility. Responsibility, accountability for violations of an individual committed to their duties and obligations and who is responsible "if it does not fulfill the duty Bzmm that he wanted to be." (Moein. Farhang, Volume 3, the word responsible and responsibility). But the main issue is the need to compensate for the losses that were imported, contrary to the right to and this is one of the principles of legal certainty is of concern to each lawyers. Based on Dooma, The famous French lawyer, "any loss of any losses realized by the other actions, whether its origin carelessness, negligence or lack of information knowing that it is necessary or a similar error; Albeit, very light-the need to be compensated by someone else negligence or error; For this act of injustice, which applied even though the subject is not going to harm." (Safar, 1373: 448 and 449)

Civic responsibility of legal entities

Whenever, legal person brings harm to others or legal -actual because that can be the real commitment of civil liability. For this reason, there is no differences among lawyers (Ardebili, 1383:21) of course civil responsibility has some conditions, which are as follows:
1. Despite the loss, -that should not be taken for granted and direct compensation;
2-Committing harmful acts;
3. Causal link between the harmful act and the harm that has been created. (Safai, 1384: 171)

Criminal responsibility of legal entities

One of the controversial issues in criminal law countries is the issue of criminal liability of legal persons. The lack of unit and effective doctrine in the field, has made the law and therefore courts different and sometimes controversial procedures in dealing with this issue, adopt and therefore make excess or wastage, so that some countries, such as the "Cuban penal law" to all types of criminal cases (both financial and non-financial) in the case of legal entities and the liquidation and closure possible and allow a legal personality death and imprisonment as an alternative punishment to speak. "Doctor Ali Abadi" writes about criminal law of Cuban , "among criminal law of countries, the Cuban Penal Code provisions on criminal liability of legal persons has the unique distinction. Law penalties foreseen in case of natural persons and legal entities comply with penalties and causes it also noted. For example, instead of the death penalty has set its dissolution. "(Ali Abadi, 1369: 139) The other groups of countries even run financial penalties such as fines and a ban on obtaining a virgin; if they are looking French Supreme Court in the case of a company that continuous crime charged usurious, voted "partners who have been involved in this crime, should be sentenced to a fine." the same Supreme Court of France to vote No. "420-1-84.d" announced " fines, penalties and punishment in cases of it results that the law has exceptions, personal aspects. Therefore the sentence to a fine against a company that is a legal person and only civil responsibility, not be issued. "(Garo, 1389: 460)

This procedure is different in Iranian criminal law was evident. If the legal person responsibility was criminal and when individuals were related to the legal person responsibility. In this case two theories about the criminal responsibility of legal entities were expressed:

1. The theory of criminal liability of legal persons
2. The theory of criminal liability of legal persons.

1. The theory of criminal liability of legal persons

According to the theory of criminal liability of legal persons, legal entities cannot be blamed;

First: to establish criminal culpability only the existence of a material factors positively or negatively - the act or omission - that the law criminalizing it is not enough. It means the offender is mentally intent – intended crime- or that an error be done –non-intended crime- Which is subject to criminal liability. The realization of all crimes, the mental element of criminal intent is necessary. It is clear that this element will depend directly and determination, it's only human that we mature and autonomous Thus, only individuals can bear the burden of criminal And legal persons because they are lacking these characteristics cannot be the intention of forming their own independent, so the crime cannot be attributed to them. "(Ardabili, 1383: 22)

Second: "These penalties are foreseen in the Penal Code Mandadam and imprisonment for individuals and legal entities ... and most of them cannot be played on." (Ali Abadi, 1369: 137)

Third: "accept the principle of personal criminal liability for legal persons Penalties hurt them." (Rastin, 1382: 233) This explains that if people who have committed a crime within a legal entity, they should not be prosecuted as they imagined community. In case if the penalty is a legal entity, company or institution in any way in which all those involved are punished.

Fourth, although in terms of the obligations and rights, human is called person, but the man who placed across the criminal law is a man not a person. So wherever in the penal code says, "Anyone or any person" means a person is not a legal person, even when stripped of some of the characters are human beings, even the man who punished behalf. He therefore clear legal text on the punishment of legal persons does not exist, so the punishment of the persons dealing with the principle of legality also finds punishments. "(Garo, 453: 1389).

Fifth: "One of the most important goals of punishment, warn the offender and had corrected him. In addition, legal entities and have no understanding of the suffering and pain of penalties that may not feel the impact of the correction. "(Ibid., 455).

3. The theory of criminal liability of legal persons

According to the theory of criminal liability of legal persons, the legal entity can be blamed;

First, in contrast, attributes considers the criminal liability of legal persons said that according to the collective will that is about legal persons, about the intention of the parties are like individuals; "This means that when a legal person is a decision that the criminal aspect, In fact, his departure has shown criminal intent and determination and therefore a crime has the mental element. "(Safar, 1373: 504)

Second, in response to the theory of criminal penalties foreseen in the law for individuals it has been forecasted that the spectrum of these crimes is expanded. "It is true that in the case of a legal entity can be implemented is about real people; But instead can be executed to liquidate the institution instead of imprisonment Institute voted to adjourn"(Ardabili, ex: 22).

Third, the opposition, the acceptance of the principle of personal criminal liability for legal persons Penalties hurt does true that the execution of punishments and sentences are always innocent people suffered injuries and losses; But the penalty would violate the principle of personal legal entities is not permitted; But the penalty would violate the principle of personal legal entities is not permitted; because this is also true in the case of natural persons and legal entities swiped There are many cases that works punish innocent people . For example, when the perpetrator punished his wife and children are also deprived of some rights.

Forth: The fact that in terms of the obligations and rights of the human person that is to say, the man who placed the criminal law is not static; So wherever in criminal law is said to be in front, criminal liability of legal persons supporters have said that despite the fact that the social purpose of such reform, it is for individuals and impose civil sanctions such as compensation order against the legal entities cannot provide; But the implementation of security measures that feature semi-criminal, semi-civil, criminal errors and ignorance that could damage society as a legal entity maintain and can also be a barrier to commit this crime.

Firth: This is one of the most important goals of punishment and reform offenders had warned the opposition is also correct because they do not know; "because it is possible to impose financial penalties, possible legal entity from committing the crime in the future and this punishment may also have the effect of correcting and training about legal entities, "the intimidation and the public to prevent crime in the future realized" (Sanei, 1372: 118).

Criticisms of assuming criminal responsibility of legal persons

Criminal responsibility of legal persons in international law is controversial. Enter objections opponents have to punish legal persons.

First, as legal persons are hypothetical and real existence, cannot be accused of crimes.

Second: Penalty to punish legal persons ultimately means the legal entity is the creator of one member that are innocent of the crime, and it is contrary to the principle of personal punishment which the perpetrator deserves only to the penalty.

Three: Penalties prescribed by law (death, imprisonment, exile) certain natural persons and legal persons are not applicable to.

Fourth: Penalty is inconsistent legal entities with the aim of juvenile offenders (Ardabil, 1376, p. 21). From a legal perspective it is not possible to assign blame to legal entities. The realization of criminal responsibility entails assuming an objective existence and power fault and legal entities that do not understand and will not be able to commit crimes. (Goldooziyan, 1380, p. 226). In response to the criticisms, saying it is true that implementation of the crime should innocent people may have also suffered damage and losses, but the situation, and the punishment actual persons as well as legal persons specific be true. For example, women and children may suffer adverse consequences from the execution of the punishment of offenders are male family. Another is the wide range of penalties, including criminal penalties depriving liberty if the implementation of such legal persons is impossible, it could implement financial penalties such as fines and confiscation of their right not to. Such persons are independent property rights. In addition, it may be appropriate punishments in a manner consistent with due legal persons manufacturing, for example, instead of imprisonment instead of execution adjournment and ordered the dissolution of the legal entity that (especially at the present time that alternative punishments discussed) and the meaning of the educational purpose of punishment, is in accordance with the rules and principles of society to delinquent behavior (correction). In this regard, the court appoints a supervisor or guardian can be appointed who have the power to guide the behavior of the offending legal entities and the Board of Directors or the General Assembly, fixed decision is made to approve and regulate activities of legal entities. The lessons should not be forgotten that one of the objectives of punishment and prevention and punishment of legal persons for this purpose can be powered. (Goldooziyan, 1380, p. 22) on the other hand, is today listed entities that legal person has a will independent of the will of actual persons as a partner or responsible individuals who have created it. Thus, when in fact the legal person decides that the criminal aspects of criminal intent and will of his diversion, and this whole credit instruments and possible. (Sanei, 1382, p. 598). The logical answer to bugs opposition has caused "Today, most lawyers and legal persons accepted theory of criminal responsibility and that legal reality and the reality of persons can be considered a crime. Legal persons and legal reality we cannot ignore their existence within the criminal law. In addition, the importance of legal entities and state crimes dangerous to society is a fact of criminology." (Noorbaha, 1384, p. 336). So in many developed countries gradually criminal responsibility of legal persons in the law has been recognized. For example, in France, although the case law of the nineteenth century, criminal responsibility was not legal entities but now the Supreme Court, legal persons considered crimes attributable to purely material and the Court's reasoning is that, in this type of crime is an independent legal person from going culpability. "French legislator in a series of criminal laws and the Penal Code which have been validated since the beginning of March 1993, the criminal liability of legal entities is recognized in Article 2-121." (Noorbaha, 1384, p. 338).

Conclusion

Today, legal persons have actual existence. They have their special interest and pursue their special goals. Actual persons, as it true for the actual persons, sometimes considering their interests, endanger social peace and security. In such cases, based the reason that make punishment necessary for actual persons, it is also necessary for the legal persons. Social benefit, social justice and the defense require that legal persons be punished for violations of the society. (Baheri, 1380, p. 270). On the other hand if the person in charge of the criminal Nshnasym is necessary to crimes committed in their name and on behalf of their legal representatives is done such as fraud, breach of trust, breach of criminal law firms, issuing Czech delinquencies, etc., natural persons representing a legal person be prosecuted while Justice demands that the legal person in the name and on behalf of his criminal actions have taken place, is responsible.

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