

INSOLVENCY OF LEGAL FEES AND EXEMPTION FOR STATE APPARATUSES

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ABSTRACT

Attention to the non-exemption of state and attorney general from the payment of legal fees and exemption of certain governmental agencies under specific rules are achievements of the Civil Procedure Act 2000 and specific laws later. However, legislator has changed some rules of legal fees at the adoption of the new Civil Procedure Code so that it allows lawyers and experts to propose different interpretations in this regard. The different perspectives provide grounds for the issuance of different sentences by the judiciary and the confusion of judges and even people referring to the judiciary, which is contrary to the legislative policy that tries to observe justice in legislation trends. This article tries to explain rules about insolvency and exemptions made for state apparatuses in the payment of legal fees and analyze comments expressed in relation to this subject.

Keywords: exemptions, certain rules, legal fees, state organizations, justice, different interpretations.

Introduction

For claims that arise from the people in the courts, Iranian legislator has predicted a series of fees that should be paid at the beginning of filing the case; the enforcement of non-payment is dismissal of petition. In some cases, a person does not have the ability to pay these costs; thus, the law had predicted 'insolvency verdict'. People who are subject to this verdict are called 'insolvent'. Insolvents are exempted from paying the proceedings costs temporarily and their cases run its particular proceeding; but if they the person gets out of insolvency state, he will be obliged to pay legal fees. It should be noted that this condition is met for ordinary people; in other words, the legislator has exempted some government agencies from paying legal fees under a series of certain rules adopted passing new Civil Procedure Code in 2000. The certain rules have risen some problems and differences of opinion among lawyers and judges. The opponents believe that certain rules of exemption are discriminatory laws. This paper investigates insolvency verdict and its conditions, the exemption of some organizations, and legal differences of opinion and approach in this regard.

Insolvency and its Formal Conditions

The term insolvency, which used in legislation and courts, has been defined as "Non-commercial character due to inadequate assets or lack of access to his own property that causes

inability to pay legal fees or liabilities" (Jafari Langroodi, 2008).

The person who is in the status of insolvency is called insolvent. According to Article 1 of insolvency law, insolvent is a person who cannot pay trial expenses or liabilities due to inadequate assets or lack of access to his own property (Insolvency law adopted in 1934). According to the subject in the insolvency proceedings, insolvency covers different types; (Soriano, Alférez, 2004; Tomasic, 2007) categorizes insolvency as:

- Insolvency of legal fees on the behalf of the defendant: it is described in Articles 504 and 511 of Civil Procedure Code.
- Insolvency of the accused: it should be noted that insolvency of the accused has to be filed on the favor of the plaintiff. Based on Article 20 of insolvency Law, the investigating authority is the same as main initial lawsuit. According to the precedent number 663 in 2003, insolvency case and the installment of debts is admissible before the defendant's detention.
- Insolvency of paying liabilities or fulfilling commitments: this type of insolvency has different instances in civil law; namely, the solvency of liability (Article 690 of the Civil Code) and insolvency in the draft (Article 729 of the Civil Code).
- Insolvency in the writ of execution: according to Article 20 of insolvency Law, "Insolvency proceedings about writ of execution

documents will be filed in courts near the plaintiff's place of residence.

Inspection of insolvency conditions and the ways to prove insolvency

Reception of insolvency and its expression have a series of features that should be examined by the judges; mere proposal of the subject is not a base for using its benefits.

Insolvency request is formally investigated under three petitions:

- First appeal: it is possible for the insolvency applicant to present his request at the time of first lawsuit, but the court investigates and makes decision on the case separately.
- Final appeal: If the defendant was sentenced without reconsideration request, he can appeal insolvency of final legal fees at the issuance of the sentence. In this situation, the case is filed by the court having jurisdiction in the main suit or investigated it at first by the virtue of Article 24 of the Civil Procedure Code 2000.
- Separate petition: a person who knows himself insolvent can submit a separate petition to the court because Article 505 of Civil Procedure Code has accepted claims under separate petition.

Testimony in insolvency of the proceedings costs

When a person who submits insolvency petition to the court, the judge investigates his insolvency before entering the type or investigating the complainant's case. The insolvent should prove this claim. Testimony is one of the most common ways of proving insolvency; Article 23 of Insolvency Law stipulates, "The claimant of insolvency should attach written testimony of at least four persons who are aware of his situation and livelihood to his petition."

In accordance with Article 506 of Civil Procedure Code, the claimant of insolvency should attach the written testimony of two witnesses to his file. The testimony should contain a series of items like profile, job, plaintiff's means of livelihood, insolvency plaintiff's lack of financial ability by determining the amount and source of witnesses'

information, and the witnesses's full profile and address.

The conditions temporary exemption from legal fees

- Submission of insolvency petition
- Person should not be a businessman
- He should be a natural person
- Proofs of insolvency in the payment of legal fees
- Claimant should be Iranian

The difference between insolvency sentence and exemption for state apparatuses in Civil Procedure Code

There is a temporary exemption in insolvency so that the person who is not financially able to afford costs will be exempted temporarily to pay costs; he pays the costs after access to his assets or earning ability to pay legal fees. If he wins the case, the other party should pay the fees. In insolvency sentence, the insolvent is exempted generally from paying the costs even the costs of announcements in the newspapers (Shams, 2009). Nevertheless, in the 'exemption for state apparatuses,' the exemption is permanent. If the governmental body wins the case, the other party should pay the costs; in this regard, the sentenced persons cannot refuse to pay the fees on the grounds that the government did not pay the cost for proceedings. However, insolvency allows the winner of case to refuse paying costs.

History of government's exemption or non-exemption from legal costs

Government's exemption or non-exemption from legal costs has risen many discussions as the Article 690 Civil Procedure Code (1929) stipulated, "The government and prosecutors are exempt from payment of legal fees." Apparently, the Article is clear; but the problem is when the legislator of procedure in the Public and Revolutionary Courts predicted no exemption for government. It has led to presentation of different interpretations. Some argue that not to mention this subject cannot impair the fact that government is exempted; others believe that the government's exemption is cancelled because the old Article (690) has been terminated and no new article has been replaced. The problem was

so pervasive that urged the General Assembly of the Supreme Court to issue a precedent for conclusion of the debates. The decision obliged the government to pay the legal fees (Rafiei and Yazdan Shenasi, 2011). According to Note 3 of Article 28 of the Procedure for Public and Revolutionary Courts, the applicant of an appeal has to pay 10,000 Rials for legal fees. Since the government's exemption of legal fees has been cancelled based on Article 529 of the Procedure for Public and Revolutionary Courts as well as Article 690 of Civil Procedure Code, Bank Melli Iran is obliged to pay the legal fees. In addition, Legal Department of the Judiciary, states in a consultation:

"From the date of the entry of the Procedure for Public and Revolutionary Courts (adopted in 2000) into force in civil affairs, paying the predicted money in Article 3 is a condition for dealing with claims according to Article 503 of the same law; Article 3 is about the receipt of some government revenues and their consumption in certain cases (adopted in 1994). As this law has not predicted any exemption, no agency is exempted from the payment of legal fees unless an agency has acquired exemption after entry into force the Law of Procedure according to the later rules. Precedent No. 652 (2001) confirms this idea. Legal Department of the Judiciary emphasizes on the same meaning.

"According to Article 503 of the Procedure for Public and Revolutionary Courts in civil affairs, costs of the proceedings and submitted petitions to court have been determined in Article 3 of the Receipt of Government Revenues and their Consumption (1994). As each petition requires stamps and related costs and as no public or governmental reference has been exempted from payments (Article 503), contrary rules are obsolete based on Article 529 of the Code. Therefore, none of the governmental institutions is exempted from payment of legal fees unless it has been exempted under a later rule; hence, the Relief Committee should pay the fees based on the rule."

However, the Precedent and consultative ideas had not solve the problem because the legislator had passed a series of specific rules that exempt some non-governmental public companies and public institutions from paying for legal fees. While the Precedent is true for only the state, some lawyers and judges still believe that

specific rules have remained strong. Indeed, they consider these rules as exceptions to the general principle of "obligation to pay legal fees." This idea was verified as the legislator adopted some other rules.

It should be noted that non-payment of legal fees in this case is an exception; they should be used as a sign for certainty (Shams, 2012).

Proponents of the exemption propose the following reasons:

- Amounts paid as the cost of proceedings by people who refer to the judiciary and the courts are deposited in the State Treasury. They are indeed sources of income for the judiciary. This justified proponents of the exemption from the payment of legal fees; they claim that receiving legal fees from the state has no effect in public income because the amount is not added to the income.

The reason is always met with objections. The idea that receiving legal fees from the state has no effect in public income is not a valid reason for not accepting the government exemptions. As the judiciary is facing a budget deficit every year and receiving legal fees from the state will reduce budget deficit and financial problems to some extent because the state claims make up a large volume of the cases and amounts of funds are spent on investigating the cases.

- Some lawyers believe that the government is considered as representative of the people and the claims arisen from them are for the public interest; therefore, the government should not have concerns about paying legal fees for its claims.

Objection to this theory

There is no doubt that the government is regarded as the representative of the people; but it should be noted that all claims of the government is not to fulfill public interests because the other party are mostly the people. In this manner, the government can present its claim without any concern; this leads to waste of time in courts and pressure on the other party. Thus, the other party is obliged to bear abundant litigation costs for his right.

The opponents have also expressed their ideas; the followings are the reasons for the ineffectiveness of the exemptions.

- The principle of equality of the parties in the proceedings is one of the main principles of Civil Procedure Code. In other words, when the parties do not enjoy the same conditions, one cannot ensure the fairness of a trial. Considering that the members of society are in different classes in terms of income and wealth, the government may have better conditions during lawsuits (for example the advantages of having experienced lawyers) and win the case. Therefore, the state exception is true when they are in conflict with this principle because it provides grounds for an unfair judgment.
- The philosophy behind state exception from legal fees was the rule that depositing all costs of the proceedings to the Treasury account has no significant impact on the reception of legal fees from the government; but a rule allows the Judiciary to occupy half of the costs of the proceedings by government agencies in favor of the Judiciary. Thus, exemption is considered the loss of the apparatus (Mohajeri, 2013).
- Another reason for opposition to the exemption based on the grounds that non-exemption of governmental organizations prevents false claims by the legal representatives of the organizations.
- Regional Water Company (Article 32 of the Law for equitable distribution of water, adopted 1982).
- An act on exemption of legal fees for claims against the heirs and relatives of the Shah approved 1984
- Ministry of Hajj, Awqaf and Charity (Article 9 of the structure and authority of Ministry of Hajj, Awqaf and Charity adopted 1984)
- Claims filed in mobile courts (Article 10 of the mobile courts, 1987)
- Iran Post (Article 10 of Iran Post adopted in 1987)
- Islamic Revolution Housing Foundation (Article 17 of the Statute of the Islamic Revolution Housing Foundation, adopted 1987)
- Red Crescent Society of the Islamic Republic of Iran (Article 20 of the Statute and the Red Crescent Society of the Islamic Republic of Iran, adopted 1988)
- New Town Development corporations (Article 19 of the Statute of the New Towns Development Corporation, approved 1988)
- Medicaid Organization of Armed Forces of the Islamic Republic of Iran (Article 13 the Statute of Medicaid Organization of Armed Forces of the Islamic Republic of Iran, adopted 1993)
- Foundation of Islamic Revolution Martyr and Imam Khomeini Relief Committee, adopted 1995.

Certain rules for exemption

According to the Precedent and consultative ideas, the ambiguities have removed to some extent. Nevertheless, there are still some unclear points about certain rules stipulated along with Article 690 of Civil Procedure Code (1929) in which some state apparatuses had been exempted from the payment of legal fees.

The names of these organizations are:

- Funds supporting Employees Protection Act from the Effects of Aging and Disability (Article 4 of supporting Employees Protection Act from the Effects of Aging, Disability and Death, 1970).
- Social Security Organization (Article 5 of the Law amending the Law on the Social Security Act, 1979).
- Article 110 of the Social Security Act adopted on 1975
- Mostazafan Foundation of Islamic Revolution

Different approaches to retention and abrogation of certain rules

There are two different groups of ideas about retention and abrogation of certain rules.

- The first group believes that certain rules are still firm. They used some fiqhi principle to justify their opinion. They argue that Procedure for Public and Revolutionary Courts in civil affairs passed in 2000 is a subsequent law and certain rules are exceptions the former law; therefore, a subsequent law cannot abrogate a former law. Hence, exemption of mentioned organizations and institutions will remain strong.
- The second group, which consists of majority of lawyers, believes that certain rules have been abrogated. As said, the philosophy of legal fees is income to government and it is

not good for the Judiciary to exempt institutions that have an independent budget and the ability to pay their legal fees.

The latter idea was welcomed by many scholars and led to the abrogation of certain rules. It should be noted that the legislator disregarded this point at the approval of new law. While the budget of the judiciary has many financial problems, the legislator has not abrogated the certain rules clearly because, maybe, he intended to accept implicitly the survival of certain rules.

Exclusions of abrogating certain rules for exemption

With the rule of the Procedures of Public and Revolutionary Courts in civil matters (2000) and despite various disagreements on exemptions and retention of certain rules, the meeting concluded to the exemption of other organizations. After the implementation of the Procedure, new legal materials were issued for some organizations; thus, some believed that the old law may have still been kept.

The criticisms on this issue are as follows:

Note to Article 9 of the law for organization and powers of Ministry of Hajj, Awqaf and Charity

Article 9 of the law for organization and powers of Ministry of Hajj, Awqaf and Charity stipulates:

“Ministry of Hajj, Awqaf and Charity has the authority to demand registration, necessary actions, protests, and lawsuit for the responsibilities it has based on law in the absence of the trustee or trustees. In addition, it can enter the cases and protests the sentences when it is necessary and endowment expediency.

Note: In all instances of the Article, Ministry of Hajj, Awqaf and Charity, Islamic religious buildings and holy shrines, seminaries, and charity foundation are exempt from paying administrative, proceedings and registration expenses.”

Two interpretations were provided by Iranian Parliament for the Note on this law in 2000. Ideas about abrogation of the old rule was changed after

Issuance of the interpretations. In 2003, Legal Department of the Judiciary released its

consulting idea in this regard while it was contrary to the interpretations. However, the consulting idea could not disprove the validity of interpretations.

The interpretations are:

Parliament released an interpretation in 2000 (28.02.1379 solar year)

“With respect to the Note below Article 9 of the law for organization and powers of Ministry of Hajj, Awqaf and Charity, is holy shrine of Imam Reza (AS), as noted holy shrines, benefits the advantages of exemption from paying administrative, proceedings and registration expenses?”

The Parliament answered:

“The Single Article of holy shrines and endowments of Imam Reza are included in Article 9 of the law for organization and powers of Ministry of Hajj, Awqaf and Charity and they can take the advantages of exemption from paying administrative, proceedings and registration expenses.”

The Second interpretation released in 2000 (13.06.1379 solar year)

“With respect to the Note below Article 9 of the law for organization and powers of Ministry of Hajj, Awqaf and Charity, are the holy shrines of Shah-Abdol-Azim (AS), Fatima al-Sughra (AS) and their endowments, the same as Imam Reza (AS), as noted holy shrines, benefits the advantages of exemption from paying administrative, proceedings and registration expenses?”

The Parliament answered:

“The Single Article of holy shrines and endowments, the same as Imam Reza (AS), are included in Article 9 of the law for organization and powers of Ministry of Hajj, Awqaf and Charity and they can take the advantages of exemption from paying administrative, proceedings and registration expenses.”

These two answers prove that the legislator confirms non-abrogation of the Note by Civil Procedure Code

The consulting opinion of Legal Department of the Judiciary in 2003 is very different from these two answers. It says, “The exemption of Ministry of Hajj, Awqaf and Charity with

respect to the Note below Article 9 has been abrogated according to Article 529 of the Procedure for General and Revolutionary Courts in 2000. If another law has been regulated after this date, it should be observed.”

As reminded before, the consulting idea could not disprove the validity of interpretations. It should be noted that public endowment differs from specific endowment. Finally, according to consulting idea No. 7.2483-1378.04.02 by Legal Department of the Judiciary and Note 3 of Article 10 of the law for organization and powers of Ministry of Hajj, Awqaf and Charity (1987), the exemption from legal fees is for public endowment, and specific endowment is excluded. Followings are the reasons for non-exemption of specific endowments (Fathi, 2012):

1. The base of exemption from legal fees is public utility and non-profit aspects of claimant institutions; thus, specific endowments are not public and there are some beneficiaries. Hence, they will not be exempted.
2. Exemption from legal fees is an exception and needs text of law; but there is no reference for specific endowments.

Ministry of Agriculture

The legislator stipulates the exemption of Ministry of Agriculture in Note 3 of Article 33 of the amendment to the law on protection and utilization of forests and pastures. Although this Article has some ambiguities, claims subjected to this Article belongs to lawsuits about transfers took place after 1986 and the deadline for lawsuit is end of September 2008. In this regard, this Note is currently not relevant. The Note stipulates, “All lawsuits about documented transfers after 1986 where the Ministers has transferred the lands without consideration of relates transferring commissions in provinces will be investigated without legal fees by the claim and request of Ministry of Agriculture when the transfers has been contrary to an approved project, or non-implementation of an approved project, or when the implementation has been less than 40 percent as well as when unauthorized and non-congruent change has occurred in utility.”

After a while in 2010, the legislator included many affiliated organizations to the Ministry of Agriculture in this Note by adoption of Article 9

of “increasing the productivity of agriculture and natural resources.” This article provides, “Ministry of Agriculture shall take an action in establishing state ownership of national resources and public lands and materials as well as protecting and exploitation of national and public lands and resources without paying legal fees in the proceedings.”

Lawsuits under Article 10 of law on Organizing and Supporting the Production and Supply of Housing in 2008 (25.02.1387 solar year)

Article 10 of law on Organizing and Supporting the Production and Supply of Housing in 2008 states:

“Judicial review of the probable filed lawsuits and cases about the laws on urban lands including ‘the law on urban land’ and ‘urban land law’ will be investigated in specialized branches and out-of-bounds; the state is exempted from paying legal fees in this regard.”

Unfortunately, this Article has risen many questions for prosecutors and litigants. As this Article has not mentioned the name of exempted organizations directly, it is not clear, for instance, that whether Islamic Revolution Housing Foundation can take the advantages of this Article (Rafiei, Yazdan Shenasi, 2011).

Protection Fund for Physical Damage

Note 3 of Article 11 of the act amending the law on owners’ compulsory insurance of vehicle to third parties (2008) stipulates, “Fund is exempt from paying fees of proceedings, securities, and binding.”

It seems the legislator has accelerated in the exemption of the Fund; Article 11 of law for Protection Fund for Physical Damages has been disregarded. In other words, the legislator has predicted eight financial resources for this fund, which empowers the fund financially; therefore, exemption from legal fees seems not necessary in the lawsuits.

Ministry of Science, Research and Technology and Ministry of Health and Medical Education

Pursuant to Additional Note to Article 24 of the law on receipt of some government revenues and their consumption in certain cases (adopted in

1994), the ‘Ministry of Science, Research and Technology’ and ‘Ministry of Health and Medical Education’ are exempted from all legal fees related to the lawsuits of students for buying commitment, releasing documents and collaterals and students who refuse to meet their obligations; the ministries shall take an action for compensation of all liabilities with respect to the equivalent difference between monetary exchange rate of the day paying and receiving; it shall deposit all incomes to state general revenue account.

It is noteworthy about the Article that claims made by the ministries are very low and very important; thus, exemption is not very effective.

Red Crescent Society of the Islamic Republic of Iran

Article 20 of the Statute of Red Crescent Society of the Islamic Republic of Iran (2000) stipulates, “The Society, its affiliated institutions, and the companies whose at least 99% of shares are owned by the Society and their incomes are consumed in line with the aims and responsibilities of the Society are exempted from paying taxes and duties; the Society is also exempted from paying legal fees in all stages of investigation.”

The Article rises some ambiguities including whether the exemption is predicted for the

Society or its affiliated institutions and the companies whose at least 99% of shares are owned by the Society. If one accept that the exemption is for its affiliated institutions, and the companies whose at least 99% of shares are owned by the Society, a large number of affiliated institutions are included in the Article; thus it was better for the legislator to note “at least 51 percent” (Rafiei, Yazdan Shenan, 2011).

Conclusion

Undoubtedly, achieving a successful legislative policy requires adoption and development of new clear and evident laws to establish justice among all classes of the society. Iranian legislators have tried to take steps toward justice and removal of deficiencies of former Code of Civil Procedure along with changes in civil procedure. With passing a series of exemptions on legal fees, which resulted in different proposals, some believe that exemptions for some organizations is a discriminatory law that is contrary to the principle of equality of the parties in trials. Some believe that it is logical with respect to the importance of some state apparatuses. In any case, the legislators has presented a promising prospect for the legal system; but there are always ambiguities and questions in the Articles related to legal fees and exemption from it that requires more exact review by the legislators.

Reference

- Jafari Langroodi, M. J. (2008).** Law Terminology. Nineteenth edition, The Treasure of Knowledge.
- Shams, A. (2009).** Code of Civil Procedure: Basics. Volume II, Fifth Edition, Derak, Tehran.
- Shams, A. (2012).** Code of Civil Procedure. Volume II, Seventh Edition, Derak, Tehran.
- Mohajeri, A. (2013).** Details in the Code of Civil Procedure. Volume I, Idea-makers Publications, Tehran.
- Rafiei, A., Yazdan Shenan, A. (2011).** The mystery of exemption from payment of legal fees. Justice Law Journal, Vol.1, No. 73, pp. 12-24.
- Fathi, A. (2012).** Requested exemption from legal fees in endowment with specific rules.
- Soriano, M. V., Alférez, F. J. G. (2004).** The European Insolvency Regulation: Law and Practice. Kluwer Law International.
- Tomasic, R. (2007).** Insolvency Law in East Asia. Ashgate Publishing, Ltd.