

**Third person arrested at the scene, according to the current laws of the Islamic Republic of Iran**Shokofeh Ahmadi 1, Parviz Bagheri <sup>2</sup>

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**Abstract:** The regulations on confiscation of properties in both form of movables and real states have been anticipated in the cases after 49<sup>th</sup> in the law of enforcement of civil judgments enacted in Aban, 1<sup>st</sup>, 1356. If the convicted person tends to perform voluntarily the judgment, he/she should act the contents of judgments in the period which is defined by the court or tries to prepare the steps and essentials of acting the contents base on the regulation. Regarding the present laws, accepting the confiscation demand is conditioned by; The first: they should not be in disturbance to the law third parties. The second: the property demanding for confiscation should not be in the excluded debt. The third: if the convicted person were the municipality or the government they accept of demand should be done regarding the special conditions. In addition, both being determinate or indeterminate about the object of judgment and if the object of judgment were obligated to do or prevented to do can be mentioned regarding that the officials and municipalities or third parties are really mentioned toward executing the judgment. The possibility of confiscating both movable and real states would be limited to some more extent up to the ratifying and notifying the budget for a next year and help, after the year in which the verdict is issued. This issue is right about the movable and real estate properties of municipalities which are based on the regulation of prohibition of confiscating the movable and real estate properties (ratified in 2, 14, 1361) The enforcement of civil judgment anticipated some solutions for both respecting the right of third parties and performing the arbiter duty, such as: article No 44, 26, 146, 147 and articles from 61 to 66, which all will be discussed in details in the body of the essay. It is wished/helped that the issues which are discussed in this essay can help to understand all articles of the enforcements of civil judgments.

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**1. Introduction**

According to article No 34 in the enforcement of civil judgment, as the writ of enforcement is announced to the convicted person, he/she is forced to perform the contents of verdict by ten days from the date of announcement; if they do not perform, the winning party documentary based on article 42 of this law demand the confiscation of convicted person's property as much as the amount to which he is convicted, therefore, based on article No 50 of mentioned law, the agent of enforcement should confiscate the convicted person's property.

The confiscation of properties is raised not only when the convicted issue is the cash or the properties in this sort, but in other cases when the performance of verdict needs cash to be demanded from convicted person and of course he/she refuses to pay, also the arbiter has no way but the attachment of convicted person. For example when the convicted person refuses to perform, if doing that action is possible by other person, the winning party can perform the action in other way under the arbiter supervision and take the cost of performance by the help of arbiter from convicted person. The recovery of mentioned

cost is done as the way that the cash convicted issue has been taken (article 47).

Therefore, the arbiter may be forced to attach the properties of movable or real state and attach cash from occupant and gives them to winning party (article 42) the attached properties may be considered as the movable or real states properties. Regarding the claim of third parties who are presenting at the scene of confiscatory and regarding the method of attachment of real states (article 99) which cancels the confiscation, this essay analyzes and discusses third claimers who face with arbiter and winning party at time of attaching movable properties. It is essential to mentioned that although financial is the issue with the economical value and it is changeable with money, specifying the meaning just to the money is impossible but the discussed judgments in this essay includes movable properties and cash money.

**Hypothesis: There are two hypotheses about the attendance of third claimers in the scene of confiscating the movable properties.**

First; the arbiter with the help of winning party wants to confiscate the movable properties which are

under possession of third party in the time of performing confiscation.

Second; the arbiter is going to confiscate the movable properties which are not under the possession of third party, he/she claims to have right about them at the time of confiscating, though.

The articles in the enforcement of civil judgment under some circumstances supports the right of third party as one who is clear from responsibility but assumes her/his right to be destroyed when the verdict is going to be enforced; therefore, the legs later anticipates the circumstances that third person can defend her/his right and safe her/his properties from illegal confiscating.

#### **Part one: Definition of third party**

The word third is a kind of words which has its special meaning in the world of law, this meaning sometimes is different in law (special custom) with public custom.

The word third is in the same way. To find this legal concept it should be elicited the functions of this word in the phrases such as “obligation in benefit of third”, “third entrance”, “summoning the third party”, “third person objection”. This word is used more common in these phrases, and these phrases are frequent in judicial literature especially in topics of judicial verdicts.

#### **Chapter two; Third person in civil law and civil procedure:**

Third person in civil law refers to the party besides the transacting parties who can possess the right and responsibility.

In civil procedure, the third person is not plaintiff or defendant in a legal folder, but through the process of trial may enter the case as a plaintiff or claimer or as a defendant. ([www.avanet.com](http://www.avanet.com)).

#### **Second part: Property confiscation**

##### **Chapter one: Definition of property confiscation**

The word confiscation means attachment, stop moving (Amid, Hassan, Persian Dic, Tehran, Amir Kabir pub, 1357, 13rd edition, p 353).

Confiscation in law terminology means: deprivation of Liberties of someone or property while waiting for confiscating removal. (Jafari Langroudi, Mohammad Jafar; law Terminology, Tehran, Ganj-e-Danesh, 1387, 19<sup>th</sup> edition, p181).

- The term properties means possessions
- Property in a legal terminology means something can be used and changed financially in trade

#### **Second chapter: kinds of property confiscation**

1. Security attachment
2. Judicial attachment

##### **1. Security attachment:**

When a verdict is issued, there are some conditions for it to be enforced; one of these conditions is, issuing the writ of enforcement and it should be announced to convicted person. According to the article no 34 of enforcement in civil judgment, the verdicted person has to perform the contents of the verdict by 10 days after receiving the announcement.

It is obvious that, the convicted person may conceal or transfer to others or general does something that winning party could not get his/her right, therefore as the sub article 1 of article 35 in enforcement of civil judgments prognosticates and anticipates the winning party can introduce the verdict properties before finishing 10 days to be confiscated, this sort of confiscation is known as a security confiscation or preventive confiscation. (Sadrazadeh Afshar, Seid Mohsen, C.P. and trade of public and revolutionary court, Tehran, Jahad Daneshgahi, 1384, 8<sup>th</sup> edition, p463, and Mohajeri, Ali, the complete explaining of enforcement of civil enforcement, Tehran, Fekr sazan, 1384, 2nd edition, VO: No 1, pages: 139,193).

#### **2. Judicial attachment (confiscation)**

As it is mentioned earlier, the convicted person has to perform the verdict by 10 days after announcing the verdict, but she/he may be ignore to perform and refuse to compensate. Here the winning party can appeal, based on article 49 of the enforcement civil judgments; to confiscate the convicted properties as much as the amount of convicting issue. Then, immediately there is a force to confiscate the convicted properties, this called judicial attachment (or confiscation). (Bahrani, enforcement of civil judgment, Tehran, Negha-e-Baieneh, 1383, 3<sup>rd</sup> edition and civil, Seid Jalal Aldiin, C.P, Tehran, Ganj-Danesh, 1372, 3<sup>rd</sup> edition, vol: 3, p; 77).

The enforcement of civil judgment defines the regulations on confiscation of movable and real state properties. Having discussed the general view of above topic, this study considers first the condition of third person, and its relation with enforcement and receiving the convicted issue, and then the position of government and municipality as a convicted person against winning party is analyzed.

#### **Season two, in the process of enforcement of judgment**

##### **Topic 1: the property is under the third person's possession**

The property which is going to confiscate is under the third person not the convicted person. It is possible that the relief sought by winning party is a defining property which the court defines the winning party's right to possess it and convicted person is required to deliver it. Therefore, in the process of

performing the judgment, the enforcement's agent has a duty to take the original convicted issue and delivers it to winning party.

**First speech: the under possession property is the original convicted issue**

When the convicted issue is the determinate original property, in the time of attachment and delivery the occupant in no one but convicted person, so, if delivery is possible base on article 42, the agent takes the original and delivers it to winning party. When the original convicted issue is destructed or is difficult to take it, base on article No 46 of (E.C.J), if both sides were satisfied and if not the court will define the compensating price such as cash and it should be delivered from convicted person if the monitory evaluation of damage about the original convicted issue is not possible, winning party can enforce the compensation claim.

There is a case which possibly the original convicted issue is under the possession of someone else not convicted person in this case there is a serious question whether avoiding the enforcement of judge base on article 35 (E.C.J) and considering the presumption of possession or regarding the winning party's entitlement which is mentioned in the verdict, let this entitlement encompasses the presumption of possession and ignore the right of occupants and take the originals and delivers it to winning party; in order to answer this question the duty of enforcement agent in this situation should be regardless of final duty, should be scrutinize, these two aspects will be analyzed here after.

**First chapter: The duty of enforcement's agent**

While processing the enforcement action on the original convicted issue, if it is under the possession of other person not convicted person, there are two situations with which agent faces, if the third person shows no reaction against the agent about the property under her/his possession, and lets the agent to deliver the property to winning party, there is other way, if third person claims to have right for property, asks the agent to forbear the enforcement, these two aspects will be analyzed separately.

**A) No reaction from third person**

If the third person is the occupant of original convicted issue, although he/she has possession presumption, he/she dose not react against the agent in order to deliver convicted issue to the winning party, and the agent confiscates the convicted issue. Here is the question whether the third person's silence and taking the property from occupant, barred any rights about property which is certain by the time of attachment forever?

Regarding the anticipating third objection against the verdict and considering the article 44 (E.C.J), and legal principal, the third person can object to relocate the verdict between the convicted person and winning party. If the revocation has been done successfully, base on article 39 (E.C.J), the original property would be reimbursed by the order of executive court, therefore the third person's silence who is occupant of original convicted property, against the enforcing actions does not annihilate the third party right about convicted property. (Shams, Abdollah, Law Research magazine, vol: 21-22, p47).

According to the concepts of article 44 (E.C.J), even the third person is going to claim any right about the convicted property without any reason presenting, the agent does the process in which there is a silence from third person.

Although this concept is inferred from article 44 (E.C.J) it seems that the agent, against the third person claims even without reason, should avoid confiscating the property and does the process in an order which is defined in mentioned article. (Shams, p48).

**B) Third person claims to have the right of property**

Although the legislator differentiate between presenting the reason and no reason at all, in article 44 (E.C.J), as it was mentioned, based on possession's presumption the agent should be his duty regarding the article 44 (E.C.J).

The other note is that, in principle the enforcing action on convicted property even if is under the third person possession is nonsense, therefore, even if the convicted property is under the third person's occupation should be delivered to winning party, but regarding the verdict which is between the convicted person and winning party and furthermore there is no rule to extend the verdict to the third people who always can object against this delivery of convicted property which is under their occupation, the legislator explains certainly in article 44 of E.C.J if third person claims on convicted property presenting the reason, the agent is forced to stop his action, of course the regulations of this article is the exception on mentioned principal in article 24.

In fact arbiter or agent cannot stop the enforcement after stating it, except in situations that the court which order the verdict of confiscation, issues the stop verdict or order of postpone, or present the bill of receiving convicted property by winning party or his written assent to stop or postpone the confiscation. Therefore regarding the article 44 of E.C.J if third person has a claim on convicted property while giving or presenting document or reason, the agent of enforcement should

stop confiscation meanwhile this stopping enforcement is limited to some condition regarding the time and continuing, indeed the agent gives a time of one week to third person to present.

#### 4. Discussions

##### A) kind of occupant's action

Actions will followed by the trial in special meaning by the court delivered into two sets:

First sets: Bring an action to the judiciary in an primary level and appeal for verdict which needs to present the petition with defined conditions.

Second sets: Making complaint about the verdict and demand to relocate that and issue the verdict again, opening the way end up to the judicial and making duty to consider and distinguish rightful from right less people and end up the hostility by issuing the verdict can be done by any of the ways above. In fact, when the third person goes to judiciary based on article 146 and article after that from E.C.J, can ended up with the stopping confiscation if the judiciary finds the reasons so powerful to issue a verdict, while the action explained in article 44 of E.C.J, should be presented by 15 days in the department of enforcement, this is the action to postpone the enforcing the judgment which is totally different with that.

In the other side, the note of article 147 E.C.J lets the winning party to confiscate other property without any circumstances even the third person permission, while base on article 44 E.C.J, when the convicted property is allocated property, it should originally be taken and deliver to the convicted person. Regarding these two cases lack of possibility for third person to enforce by the objection, is the issue for articles 146, 147 E.C.J which is known as an objection of third enforcement. The other possible action is to bring an action to judiciary for taking the verdict of postpone base on the articles following the article 48 C.P; this is impossible obviously since issuing the postpone verdict which is in process of enforcing is not applicable except the higher court which seems impossible based on current regulations. The higher court cannot be the reference for lower cases and the court which enforces the verdict is in process of stopping the enforcement not postponing the enforcement among all other methods, compelling is especial for judgments in absentia and absent convicted person, therefore in this case there is no watch to act upon.

Substantive and procedural revisions are specific to parties of lower actions such as convicted person or his deputy and the concept of deputy since has incompatibility with the occupant's claim is not right here. Restoration of judgment is specific to parties in main action, therefore the only way remains for third person, is the third person objection which is

central issue in articles 417 to 425 CP. Base on the article 417, CO, if a verdict has issued about the conflict in court which disturbs the right of third person, her or his agent can object against the verdict while enforcing the verdict, the specified original property which is the right of winning party is under occupant's possession that claims on a right about it, therefore third person finds the enforcement disturbing of his right and regarding the definitive effects of verdict, although it is relative, there is no way for third person but acts on revocation; this action is not possible, unless the objection has raised base on 417 to 425 of CP. (Rezaifar, Mehdad; [www.Moshavere.net](http://www.Moshavere.net))

##### B) Qualified court:

The objection of third person base on article 419 CP should be claimed by the statement and consider all aspects of statement of complaint the objection should be stated to the court which issued the verdict, therefore the occupant of convicted issue is obligated to recourse the court which is issuing the verdict by a week and prefers the objection. To define the righteous reference, if the objective verdict was issued in Supreme Court, the reference which the petition should be stated in is the Supreme Court, referring the case to the Supreme Court, which is the most qualified reference; the public court does not have any prevention of the case. This idea is defendable referring to the sub article 3 of article 434 and 494 of CP.

##### C) Court Decision Making

A third person who objects the verdict has generally two different goals; First: To postpone the accomplishment of verdict unless it would not be accomplished by the time of objection.

Second: To cancel the part of verdict, which disturbs the third person's right, the occupants or third person who occupies the original convicted property should state the objection by a week, the statement of claim should be in a way that the possibility of postpone verdict by 15 days from the expire of the week should be applicable.

Third person objection is one which does not have suspended effects; in other word the objection of third person does not stop performing the verdict. Base on article 424 CP if the objection were against the risk or danger which destroy the property in future that will not be refundable, the court of issuing verdict after getting suitable complication from third objectors, issues the enforcement to postpone the performing verdict for defining time.

Therefore the third person who is occupant not only should state the claim in a week to the court but also receive the enforcement of postpone in 15 days from expire of a week mentioned. Although this postpone



is impossible unless presents the compilation and gives this compilation to the court of issuing verdict.

It is obvious that the enforcement of verdict even the occupant could get it does not clarify the duty of third person claim forever, but qualified court considers the objections from third person as defined for the first trial and issue the verdict. If an issued verdict was finalized the circumstances of objection and consequently delivering the property and getting it from third person will be defined. Therefore, if the third person action were refused, the enforcing verdict does not relocate and the original convicted property will be taken from third person and will be given to winning party. Base on the article 39 E.C.J the enforcement verdict by the other of court in which the verdict perform under supervision, gets back to the time before the performing since the cancellation of verdict in CP is vice versa to the verdict cancellation in civil law which back retrogressive.

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