

Custody types in Islamic Republic of Iran

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Abstract: 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. 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 vindicated person has to perform the contents of the verdict by 10 days after receiving the announcement. 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.

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Key words: Custody types, Islamic Republic, Iran, Third person, current laws

1. Introduction

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.

Chapter one: the characters of natural person

1-The exclusion of civil status to the birth and death of natural person.

2-The exclusion of natural rights to the natural person.

3-The exclusions of crime commitment to the natural person.

4-Real or natural person is one who has the right whether he/she may be avoided to get it because of incapacity or not. In fact the legal person is made base on the natural/real person's conciliation (Safai, sad Hassan, civil law, people and incompetents and Abo

Almohammad, Abu AlHamid, administrative law, Tehran, university of Tehran).

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)

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, 19th 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 vindicated 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, 8th 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). (Bahrami, enforcement of civil judgment, Tehran, Negha-e-Baieneh, 1383, 3rd edition and civil, Seid Jalal Aldiin, C.P, Tehran, Ganj-Danesh, 1372, 3rd 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.

4. Discussion

1-Third person in civil law refers to the party besides the transacting parties who can possess the right and responsibility. Confiscation in law terminology means: deprivation of Liberties of someone or property while waiting for confiscating removal.

2-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 vindicated person has to perform the contents of the verdict by 10 days after receiving the announcement.

3-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.

4-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.

5-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.

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