Implementing the Judgments Issued by the Administrative Justice Tribunal in Iranian Law

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ABSTRACT

The Administrative Justice Tribunal is the highest judicial administrative office in Iran which, according to article 173 of Constitution of Islamic Republic of Iran, is established under the supervision of the Head of Judiciary in order to investigate the people’s complaints, grievances and objections against the government officials, entities or regulations and to vindicate their rights. The jurisdiction and procedure of Administrative Justice Tribunal (hereinafter referred to as the “Tribunal”) is determined by law. The Tribunal investigates and issues judgment by going through regular legal formalities. After being finalized, the decision must be enforced. Enforcing the judgments of this Tribunal has been a serious and controversial issue after the Islamic Revolution. In this research we seek to investigate the procedure of enforcing these decisions and its important issues in accordance with the Former Law (The Law of Administrative Justice Tribunal 2006) and the New Law (Administrative Justice Tribunal’s Code of Organization and Procedure enacted on June 15, 2013).

INTRODUCTION

The implementation of the judgment is the step in which the attempts of the claimant and the authorities dealing with the claim are come to fruition. Without enforcing the judgment, no result is achieved; it means that only winning a case does not bring any benefit to the claimant but it’s the enforcement of the judgment which restores his lost rights. Thus this phase is of great importance. Particularly, the final aim sought by a claimant who brings action in the Tribunal is settling the abuse and grievances against the government officials or entities and also vindicating his rights. The futility of frequent recourses to government entities and the consecutive corresponding and confusion are the reasons which make the claimant choose this difficult and lengthy way to litigate his case in this judicial office. Generally, in order to enforce the judgments and particularly to enforce the judgments issued by the Tribunal, some sanctions have been provided, among which the Article 107 of the Administrative Justice Tribunal’s Code of Organization and Procedure enacted on June 15, 2013 states that: “All persons and entities referred to in article 10 of this Law are obliged to implement the Tribunal’s decisions immediately after its announcement” and subsequently in article 109 of the aforesaid Law, it has been provided that: “If after the publication of the judgment issued by the General Council of the Tribunal in the official gazette, the relevant authorities fail to enforce it, at the request of the beneficiary or the Chief Judge of the Tribunal and by the judgment passed by one of the Tribunal’s benches, the negligent will be condemned to suspension from government services for a term of three months to one year and to compensating the damages incurred.” The article 8 of the Law of Procedures of Public and Revolutionary Courts (in civil matters) also states that: “No official authority, agency or government department is authorized to change the court’s judgment or prevent its implementation, except the court which has issued the judgment or the higher authority, and that in cases which have been already provided in law”. Article 576 of the Islamic Penal Code has also imposed penal sanction for failure to implement the judgments; this article provides that: “If any of the government officers, agents and municipalities in any rank or authority abuses its authority and prevents the implementation of government written orders, national laws, judgments or orders given by judicial authorities or any order issued by the legal authorities, he/she will be condemned to suspension from government services for up to five years”.

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The following famous English proverb put emphasis on the importance of implementation of the judgments: “Justice delayed is justice denied”; delay in implementing justice implies failure in justice implementation”.

Since according to article 10 of the Administrative Justice Tribunal’s Code of Organization and Procedure, the parties against whom the Tribunal’s judgments are issued, are the government entities such as the ministries, government organizations, institutes and companies, municipalities, revolutionary organizations and institutions and their instrumentalities which are all obliged, as the executive, to the proper implementation of the laws and judgments issued by the judicial authorities, the necessity of an entity to implement the judgments was not felt formerly and thus not provided in former laws of the Tribunal. However, due to the negligence and resistance of the officials who, as the condemned parties, were bound to implement the decisions, the Department of Execution of Judgments was established necessarily with the means awarded in article 36 of the Former Law enacted on May 30, 2006 and then in article 9 of the Administrative Justice Tribunal’s Code of Organization and Procedure enacted on June 15, 2013. The article 9 of the aforesaid law states that: “In order to enforce and execute the verdicts issued by various benches of the Tribunal, a department of execution of judgments shall be formed under the supervision of the chief judge of the Tribunal or one of his assistants with a number of alternate judges to carry out the task of execution of the said verdicts.” In this article, the Former Law refers to the Law of Administrative Justice Tribunal enacted on May 30, 2006 and the New Law refers to the Administrative Justice Tribunal’s Code of Organization and Procedure enacted on June 15, 2013.

Enforcing the judgments in accordance with the Former and New Law:
1. The organization of enforcing the judgments:
   The Department of Execution of Judgments is now constituted of 9 judges and several expert and experienced staff with categorizing the cases based on the following skills:
   1. Research and cultural affairs (within the jurisdiction of Bench 1);
   2. Military and security affairs (within the jurisdiction of Bench 2);
   3. Land and environmental affairs (within the jurisdiction of Bench 2);
   4. Engineering and technical affairs (within the jurisdiction of Bench 2);
   5. Financial and economic affairs (within the jurisdiction of Bench 4);
   6. Insurance and social affairs (within the jurisdiction of Bench 3);
   7. Ministry of Labor (within the jurisdiction of Bench 3);
   8. Employment and administrative affairs (within the jurisdiction of Bench 4);
   9. Agencies and institutions (within the jurisdiction of Bench 4);
   10. Municipalities and the related commissions (within the jurisdiction of Bench 5) [1].

2. Dispatching the case to the Department of Execution of Judgments and the jurisdiction of executive authorities:
   Previously, according to the Former Law of Administrative Justice Tribunal 2006 and in accordance with the Chief Judge’s circular in order to execute the judgment issued by this authority, after the issuance of final judgment and its announcement by the bench, at the request of the person in whose the judgment was issued for the non-execution of the verdict, the bench issued executive notice and insured its announcement to the judgment debtor [2]. This further announcement seeks the establishment of the judgment debtor’s refusal and its dispatch to the Department of Execution of Judgments. The judge who execute the verdict, primarily in implementing the section one of the article 36 of the latter law of the Tribunal, while issuing the executive announcement and determining the deadline, shall summon the judgment debtor who is the highest authority of the agency, organization, institution or corporation, and the summoned person, in case of failure in executing the verdict and presenting the report to the Department of Execution of Judgments within the determined deadline, shall attend personally at the time determined or if he/she has a legitimate excuse, send his/her plenipotentiary representative so that the latter be bound to obtain the consent of the person in whose favor the judgment was issued or to comply with the judgment, within the reasonable respite. In case of failure in giving commitment or implementing the verdict within the committed term, his/her refusal to implement the verdict will be established [3]. This procedure was amended in New Law (Law enacted in 2013) so that, according to article 108 of New Law of Tribunal’s Benches, after announcing the judgment to the judgment debtor, a copy of that together with the case (without the complainant’s request) shall be dispatched to the Department of Execution of Judgments and the judgment debtor is required to take measure to implement it completely or obtain the consent of the person in whose favor the judgment was issued within one month and report the result in written form to the Department of Execution of Judgments. In case of the judgment debtor’s compliance with these judgments, according to article 110 of this New Law, the Department of Execution of Judgments shall report the issue to the Tribunal. Subsequently, the Chief Judge of the Tribunal shall refer the case immediately to the bench that issued the final judgment. The mentioned bench is required to investigate the issue of the refusal out of turn and issue the appropriate judgment and dispatch the case to the Department of Execution of Judgments for further
measures. In this regard, according to note 3 of the latter law, the bench that investigates the refusal shall first make call on the person or persons in default and explain the case to them. If the person in default calls for moratorium, he/she will be granted a respite of one week at maximum for the implementation of the judgment and its announcement to the Tribunal, otherwise or after the expiration of the deadline, he/she shall become subject to the provision provided in article 112 of this law.

3. Report of the refusal:

After passing the steps mentioned according to the Former Law, say: 1. The announcement of the verdict by the bench that has issued the judgment; 2. The recourse of the person in whose favor a judgment was issued to the bench and his statement regarding the non-execution of verdict by the judgment debtor even after its notification to him/her; 3. The dispatch of the executive notice at the request of the person in whose favor a judgment was issued by the bench that has issued the judgment in order to execute the verdict within the specific respite; 4. The non-execution of the verdict within the deadline determined by the bench that has issued the judgment stated by the person in whose favor a judgment was issued; 5. Notifying the Chief Judge of the Tribunal or his assistants of judgment debtor’s refusal to implement the verdict by the judge of the bench that has issued the judgment; 6. Dispatch of the case to the Department of Execution of Judgments in order to pursue the executive operation by the Chief Judge of the Tribunal or his assistants’ order; 7. Sending notification with specific deadline by the Department of Execution of Judgments and the resistance of the judgment debtor against the judgment issued; 8. Summoning the person against whom a judgment was passed and obtaining a letter of undertaking from him/her to execute the verdict.

After passing these steps, the refusal must be reported as follows: The Department of Execution of Judgments due to non-execution of judgment (in case of impossibility of blocking the account of the party against whom the judgment was issued and withdrawing funds from the said account in the amount of the judgment debt, or impossibility of cancellation of the deeds contrary with the judgment issued by the Tribunal) caused by force majeure resulted from the relevant official’s resistance against the final judgment, with the establishment of the refusal to the implementation of the verdict by the party against whom the judgment was issued, shall draft the report of his refusal which has close similarity to drafting the indictment and considering the case shall submit it to the Chief Judge of the Tribunal in case of refusal to execute the judgment issued by the General Council or to the bench that has issued the judgment, in case of refusal to comply with the judgments issued by the benches. The report of refusal includes a brief of the case with full specifications of the person in default such as his name, surname and position and the measures taken in pursing the case including implementation of article 35 of Law of the Administrative Justice Tribunal by the bench that issued the judgment and the measures taken by the Department of Execution of Judgments in enforcing the article 108 of New Law such as correspondence and dispatch of the unanswered notices and granting sufficient respites for the enforcement and the express statement of the Judge in the Department of Execution of Civil Judgments in order to establish the refusal of the person against whom the judgment was issued and the request for implementing the article 112 of the Law of Administrative Justice Tribunal [4]. In New Law, according to article 110, in case of refusal to comply with the final judgment, by the individual or authority against whom the judgment was passed, the Department of Execution of Judgments shall notify the Chief Judge of the Tribunal of the issue of refusal.

The Chief Judge of the Tribunal shall refer the case immediately to the bench that issued the final judgment. The mentioned bench is required to investigate the issue of refusal out of turn and shall issue an appropriate judgment and dispatch the case to the Department of Execution of Judgments for further measures. In cases which the implementation of the judgment requires a decision made by Council, Board or a commission consisted of two or more individuals and the members fail in implementing the judgment, all the members involved in refusal to comply with the judgment issued by the Tribunal shall be found in default. The bench that investigates the refusal shall primarily dispatch summons to the person or persons in default and explain the issue to them. If the party in default calls for moratorium, he/she will be granted a respite of one week at maximum for the implementation of the judgment and its announcement to the Tribunal, otherwise and in case of expiration of the respite, he/she will become subject to article 112 of this law.

4. Refusal to comply with the judgments issued by the General Council:

According to article 8 of the New Law, the General Council of the Tribunal may hold sessions with the presence of at least two thirds of the judges of the Tribunal. The meetings shall be presided by the Chief Judge of the Tribunal or his deputy in judicial affairs. Verdicts of the General Council shall be issued with a majority of the votes of the judges present in the session. The main duty of this Tribunal is issuing conclusive judgment in cases where contradictory and different judgments have been issued by several benches of the Tribunal in identical and similar cases. According to the Tribunal’s Law of Procedures 2000, the judgments issued by the General Council are binding on Tribunal’s benches and all the judicial and administrative authorities concerned. The sanction of this article has been provided in article 45 of the Tribunal’s Former Law which states that: “If,
after publication of a judgment through Official Gazette, the authorities in charge refuse compliance with the provisions of the judgment, they shall be condemned, upon demand by a beneficiary or the Chief Judge of the Tribunal and after issuance of a judgment by one of the benches of the Tribunal, to suspension from their positions for a term of three months to one year or to payment of cash penalty from one million (1,000,000) to fifty million (50,000,000) rials and to compensating the losses and damages resulting from their refusal.” This sanction has been adjusted and repeated in new law adopted in 2013 by elimination of the cash penalty. Pursuant to the note of this article, the beneficiary’s demand shall be presented by a plaint submission. The individuals who become aware of non-execution of the judgments issued by the General Council concerning the cancellation of the decree, can notify the Chief Judge of the Tribunal of the issue so that the latter take measure to follow up the issue through the Tribunal’s benches.

However, “how to distinguish the refusal” and “who is the authority in default” were not provided and answered in Former Law. Thus based on the criterion applied in benches for the implementation of the issued judgments, according to which the Bench’s Office notified primarily the party in whose favor the judgment was passed of the issued judgment, it was inferred that the Office of the General Council is the competent authority which notify the authority concerned, upon demand by the beneficiary, and grant a reasonable respite for implementation and if, after the granted respite the beneficiary notify the refusal to implement the judgment by the authority that shall execute the judgment, by establishment of the refusal, in order to refer the case to benches, the issue shall be notified to the Chief Judge of the Tribunal [5]. In note 2 of article 108 of New Law, the appellate benches of the Tribunal are defined explicitly as the authorities who shall investigate the refusal to comply with the judgment issued by the General Council.

5. **Refusal to comply with the judgments issued by the Bench of Cognizance:**

   According to article 10 of the Law of Administrative Justice Tribunal 2006 “In cases where according to the following articles of this law, appeal may be sought of the judgments issued by various benches of the Tribunal, the appellate benches shall comprise a judge or an alternate judge and four counselors. Verdicts (judgments) in appeal shall be issued with the agreement of at least three members. Appellate benches, in addition to above power, shall have jurisdiction to examine and investigate other cases, as well.”

   Subsequently, the article 18 of the aforesaid law provided that: “If the Head of Judiciary or the Chief Judge of the Tribunal find a verdict issued by the Tribunal in explicit contravention of the Rules of Holy Sharia or a law, the case shall be referred to a bench in charge of cognizance of cases. The said bench of cognizance, in case it finds the objection reasonable, it shall declare the issued verdict as null and void and shall proceed to issue an appropriate judgment.”

   But who is the authority that shall investigate the refusal by the party against whom the judgment was issued and which authority shall issue the judgment of the suspension from government services? Considering the article 37 of the Law of Administrative Justice Tribunal, some believe that it is the appellate bench which is the competent authority to issue judgment for the investigation of the refusal to comply with the verdict by the judgment debtor and finally to issue judgment for the suspension from government services. Others consider the bench that has primarily investigated the issue, as the competent authority to investigate the refusal to comply with the verdict by the party against whom the judgment was passed. The second idea seems much reasonable since even if the judgment is passed to appellate benches, the authority that shall execute it, is the Court of first instance which has issued the judgment [6]. At the present time, according to article 65 of New Law, all the judgments issued by the Tribunal’s benches of first instance are appealable in appellate benches, upon demand by one the parties or their attorney, deputy or legal representative and according to article 120 of the abovementioned law, the current Tribunal’s benches of cognizance shall be dissolved after the investigation of present cases.

6. **Refusal to comply with injunctions:**

   If the bench investigating the complaint, pursuant to plaint submitted by the complainant, establish that the enforcement of decisions or final judgments passed or refraining from carrying out duties, on the parts of the government units including the ministries, government organizations, institutes and companies, municipalities, revolutionary organizations and institutions and their instrumentalities, shall cause damages that will be impossible or extremely difficult to remedy and compensate, based on the emergency nature of such claim and according to article 15 of the Law of Administrative Justice Tribunal 2006, shall issue injunction to halt the acts, decisions and verdicts or shall order that the government authorities continue fulfillment of their obligations and duties, as the case may. Considering the article 18 of the Law of Tribunal’s Procedures 2000, this decision will be in verdict form and the manager of the Bench’s Office is required to notify the issue to the authority against whom the complaint was lodged. If, after serving the injunction issued to the authority against whom the complaint was lodged, pursuant the notification given by the complainant of the refusal to implement the injunction by the defendant, the violation of the party against whom the complaint was lodged be established, according to article 26 of the Law of the Administrative Justice Tribunal, the bench that issued the injunction
shall condemn the party in default to suspension from his position for a term of six month to one year and to compensating the damages incurred. Considering the fact that by virtue of the note 1 of article 13 of the Law of the Administrative Justice Tribunal, determining the amount of the damages is within the jurisdiction of the Public Court, similar to the judgments issued for the refusal to implement the judgments issued by the benches and General Council, the judgment issued for the compensation is not enforceable. In article 15 of the Administrative Justice tribunal’s Law of Procedure, it had been provided that: “The refusal to comply with injunction issued shall be reported to the Chief Judge of the Tribunal by the bench that has issued the injunction and the Chief Judge of the Tribunal, after the establishment of the violation, will take measure according to article 21.” [7]. In article 34 of the New Law adopted in 2013, it has been provided that “If the complainant, in his complaint or thereafter shall claim that the acts, enforcement of decisions or final judgments passed or refraining from carrying out duties, on the part of authorities mentioned in Article 10 of this law, shall cause damages that will be impossible or extremely difficult to remedy and compensate, he/she can call for the issuance of injunction.” After lodging the main complaint, the request for issuance of injunction must be presented to Tribunal before the termination of investigation. This request does not require the payment for the court expenses. By establishment of the emergency of the issue, the bench investigating the case shall issue an injunction to halt the acts, decisions and verdicts or an order to fulfill the duties.

Conclusion and Recommendations:
Providing for the Department of Execution of Judgments deserves praise. Most of the ambiguities in implementing the judgments are arisen from failure in adopting the new and former regulation of the Law of the Administrative Justice Tribunal. Enacting the worthy and appropriate regulation can avoid the issuance of the judgments which have ambiguous demands and the need for recourse to expert after the investigation of the bench issuing the judgment will be eliminated. The investigation in Tribunal is carried out differently from those conducted in courts. In courts, the complexity and difficulty which come after the issuance of the verdict have been provided for and we do not encounter almost any problem in execution step. However, in Tribunal, usually investigation in bench is carried out within a period of time which is shorter than that required for executing the judgments in the Department of Execution of Judgments. Thus, it seems that the rectification should be entered in a substantive investigation through the determination of the amount of demand by the Tribunal’s expert or experts. The judgments should be explicit and well specified and beside the words lodge a complaint, it must be expressed that the party against whom the judgment is issued, is required and bound to perform which actions.

The other point is that, where the authorities that should implement the judgments are two or more organizations and in the plaint, the complaint is lodged only against one of them, without the other organization the implementation of the verdict is either impossible or void. By pointing out in initial steps that in order to enforce the judgment issued, the other organization or organizations must be mentioned in plaint as the parties against whom the complaint is lodged, the bench can refuse the claim so that the complainant draft and submit his plaint properly and the complainant and benches’ time be also saved. As an example in this regard we can assume a case, in which a labor brings action against his employer which is a government company, seeking to require the latter to calculate his years of service and thus to pay his labor insurance premium to the Social Security Organization and since he does not lodge his complaint against the Social Security Organization to require this entity to accept the premium insurance of the past years and accept these years as his insurance record, the judgment issued in this case will not benefit the party in whose favor the judgment is issued, because the main party that shall execute the verdict is the Social Security Organization which is not the party to complaint.

Finally, considering the judgment to bind the party against whom the judgment is issued to employ the party in whose favor the judgment is passed, the type of employment and the formalities required must be stipulated explicitly in the judgment issued.

REFERENCES

[2] Erfan, M., Knowing the Administrative Justice Tribunal’s Regulations Sections 85, 86. Ma’va Journal, No 670