



Interpretive logic of the General Assembly of Iran's Administrative Justice Court in Taxation lawsuits

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Abstract

Obtaining the interpretive method (interpretive logic) of the General Assembly of the Administrative Court of Justice in tax disputes will provide the power to predict the performance of researchers, government agencies, taxpayers and tax lawyers, as well as creating the context to strengthen the talents and correct weaknesses of this organ in the interpretation of laws. This study seeks to answer the question of based on what approach the General Assembly of the Court of Administrative Justice interprets tax laws and what are the advantages and disadvantages of the interpretive logic of this institution? This study showed that this assembly has used all source-oriented and goal-oriented interpretive approaches, but its use of source-oriented approach is more than other approaches (i.e. teleological approaches), which is one of the strengths in the board's interpretive logic. However, one of the points to be criticized is: first, the non-observance of the "hierarchy in the use of linguistic methods", such as the preference of "ordinary interpretation" over "technical interpretation". Second, the slight use of a goal-oriented approach will also lead to a stagnation of this assembly in the interpretation of the rules.

Keywords: *Court of Administrative Justice; Tax Lawsuits; Judicial Interpretation; Legislative Purpose*

Introduction

According to Articles 170 and 173 of the Constitution of the Islamic Republic of Iran, the "Court of Administrative Justice" has jurisdiction to hear people's claims against government approvals and government officials. Competence that will ensure the rule of law in government agencies. In this regard, the "General Assembly of the Court of Administrative Justice" plays a key role because it has the authority to overturn government decisions that are found to be illegal. One of the lawsuits mentioned with this board is the complaint against tax approvals, which is very important due to their frequency. An important factor that shows the quality of the General Assembly's votes in this regard is the method of interpretation of tax laws by this Board. If the interpretive method (logic) of this board causes more tax justice and the conclusion of economic policies, this institution can be considered successful, otherwise, some reforms must be implemented. Another reason for the importance of understanding the Board's

interpretive method is that it will enable researchers, government agencies, taxpayers, and tax attorneys to anticipate its performance.

Numerous studies have been conducted to critique the procedure of the General Assembly of the Court of Administrative Justice, which in some cases has referred to the method of interpretation of laws by the Court¹, but no independent research has been done on what method and logic the General Assembly uses to interpret tax laws.

In the first part of this research, we have summarized the types of interpretive methods and included them in the form of two general approaches, "source-oriented" and "goal-oriented". In the second section, we examine a number of "General Board rulings of the Court of Administrative Justice" on tax claims and determine the method of interpretation used by the General Board. In the final section, we have critiqued and analyzed the interpretive methods of the General Assembly and explained its strengths and weaknesses.

1- Methods of Judicial Interpretation in Iranian Law

Regarding interpretive methods in Iranian law, we see different categories from various sources². Despite the variety of these methods, all of these cases can be included under two general approaches, "source-oriented and goal-oriented." Although other methods such as "systematic approach" can be proposed, but this method can be considered as a Trans-categorical method, because its purpose is to interpret the law based on the constituent elements of the same legal system (jurisprudence, legal principles, introduction of law and other legal principles and materials³) and therefore it includes all previous methods and categories and is not considered a new method.

A) Source-oriented approaches

The history of creating the source-oriented approach goes back to the 1791st, when some constitutional scholars theorized about the US Supreme Court's interpretation of the Constitution, thus forcing judges to act upon the main meaning namely what the legislators intended to come up with. (Kay, 2009, 70) This approach is not limited to the interpretation of constitutions but is currently used in judicial interpretation and it can even be claimed that most of the Iranian judiciary tend to use this approach. Different interpretive methods can be included in the mentioned approach, which we will describe in the following:

1. The method of linguistic interpretation

Emergence of linguistic approaches or the same approaches that focus on legislative words dates back to the early nineteenth century, when the French Civil Code, or Napoleon Code, was enacted. Nevertheless, it can be argued that literal interpretation or explicit reference to the law has been an approach that has been pursued for centuries. In fact, one of the ancient roots of this approach can be considered as the religious basis of laws and in fact goes back to submission to the law due to worship of divine commands. (Sane'i, 1389: 422)

Proponents of this approach do not focus on out of context factors such as the historical context or the details of the lawmakers' negotiations. Their purpose is not to seek out what the legislature means, but only what the law means. (Holmes: 1899: 420)

¹ More examples can be found in these references: (Alam al-Huda and Mehr Poor, 1396), (Aghayi Tough, 1397) and (Ostovar Sangari, 1390).

² More examples can be found in these references: (Langroodi, 1382: 293-311), (Saket, 1387: 377-383) and (Katooziyan, 1390).

³ For more study on this interpretive method, refer to: (Ja'fari Tabar, 1383: 195- 204)

Adherence to legal words and the search for the real or predestined will of the legislature is the most fundamental foundation of this school. The judge has no duty in interpreting the laws except discovering the will of the legislator from the appearances of the words of the law and the expediency of acting according to the appearance of the law is superior to other interests (Sahebi, 1376: 50)

In the linguistic method, to determine the meaning of words, one must first use the "legal meaning". The legal meaning is the meaning specified in the laws. If there is no legal meaning, the "technical meaning" should be used in the second step; the technical meaning is the meaning that experts call knowledge. Finally, "ordinary meanings" can be used if there is no technical meaning for a word. ⁴It is necessary and very important to observe the hierarchy and prioritization of these steps, because the legal meaning determines the legislator's intention more than the other two methods, and the technical meaning shows the legislator's intention more than the conventional meaning. This is a point that we will express in the final part of this article as one of the weaknesses of the Court of Administrative Justice of Iran.

2. The method of logical interpretation

This method is also one of the types of source-oriented approaches, because in it we also seek to understand the legislative meaning, which is done with the help of: other articles, titles of legal chapters, etc., and therefore it is also called "article by article" interpretation. The pillars of logical interpretation include: 1- Assessing legal materials with subsequent and previous materials 2- Considering the context and arrangement of other materials 3- Considering the reason for the provision of the article 4- Paying attention to the title (main titles and sub-titles) of the interpreted article. (Ja'fari Langroodi, 1389: 172)⁵

B) Goal-oriented approaches

In this method - which can also be called the teleological method - the interpreter seeks to understand the "purpose of the law". In this method, if it is possible to attribute a general goal to the law, that law is interpreted in such a way that it achieves that goal in even minor cases. This goal can be considered as an evaluative approach in the sense that it prefers an interpretation that serves the ultimate goal of the law because it should not provide an interpretation of the law that violates its purpose and is self-defeating. The "purpose of the law" itself can be identified in two ways: a) the subjective method, which is the discovery of the actual purpose of the legislature, which is obtained with the help of preliminary works done before the law was drafted or obtained from legislative terms used at the beginning of the law; B) the objective method: which seeks a reasonable goal that can be attributed to an objective legislator (goals of a wise legislator). (Ja'fari Tabar, 1383: 205-207)⁶

According to what has been said, in the subjective method, historical considerations and in the second method, the current requirements are examined. The first is a return to the past and analyzes the will of the legislator at the same time, but in the second approach, this will is dynamic and the law is interpreted according to the present. (Jakab: 2013: 1246) Of course, in comparison with the source-oriented approaches, all the goal-oriented methods should be considered dynamic in their kind. That is why this view is presented in the Canadian legal system as the "living tree" doctrine, according to which the interpretation should not stop at the original meaning of the document, but interpretation should be dynamic and comprehensive. (Hogg, 2006: 55)

⁴ Refer to: (Ja'fari Tabar, 1383: 148-149)

⁵ This approach has been mentioned as one of the best interpretive approaches because the principle of rule of law is performed in a better form. (Katoozian, 1391: 16-17) also for more study refer to: (Qara'i, 1347: 105)

⁶ This source knows the second approach that can be used in the teleological logic as one of the argument from substantive reasons that is the same political, moral, economic and social considerations which are valuable and provide the legal order. Due to the close relation of this approach with the objective approach, we don't mention it here separately.

2- The Extent of Using Different Interpretive Methods in Tax Claims of the Administrative Court of Justice

After mentioning a brief description of judicial interpretation approaches in Iranian law in the previous section, we now examine the extent to which the General Assembly's tax rulings conform to the above methods. Finally, using the contents of this section, we will review the performance of the General Assembly of the Court of Administrative Justice in the final part of the article.

2.1. The extent of using source-oriented methods

The General Assembly of the Court of Administrative Justice has made the most use of source-oriented approaches among the various interpretive approaches, and the "linguistic method" has been used the most among the types of this approach. To prove this subject, there are many examples, some of which we will examine:

Case 1) in the first case, we see the use of the linguistic method by the General Assembly of the Court. The General Assembly has used the legal meaning of the words instead of using the technical meaning or the ordinary meaning of the words; that is, he has preferred the method of legal interpretation (use of legal definition) to the method of technical or ordinary interpretation (use of technical or ordinary definition). The subject of this case is a complaint from a letter from the Food and Drug Administration of Iran, according to which: "Only those drugs that are on the official drug list of the country are subject to VAT exemption." An appeal against this letter to the Court of Administrative Justice alleges that this letter is against the law because in paragraph 9 of Article 12 of the VAT Law, "types of drugs" are exempt from tax, while in this letter, only some of the drugs are exempt. Finally, the General Assembly of the Court of Administrative Justice in Judgment No. 245-246 dated 23/3/1396 interpreted the word "medicine" - mentioned in paragraph 9 of Article 12 of the Law on Value Added Tax - and for this interpretation, the "legal definition" has been used. In this vote, it is stated that according to Article 3 of the Law on Medical Affairs and Drugs and Food and Beverage, approved in 1374, pharmaceutical items are announced and published only by the Ministry of Health, Treatment and Medical Education (Food and Drug Administration). Thus, the General Assembly used its legal definition to interpret the word "medicine", whereas if it used the technical or ordinary definition of the word "medicine", it would have achieved different results⁷.

Case 2) The General Assembly of the Court of Administrative Justice has used the linguistic method in another case; and in this case, it has preferred the legal interpretation to the technical and ordinary interpretation. The subject of this case is the complaint against the Circular No. 18871 of the Tax Affairs Organization, which in this circular considers "all managers of legal entities" to have joint and several liability for paying income surtax of legal entities. The complainant alleges that this circular is against the law because Articles 198 and 202 of the Direct Taxes Act only give responsibility to "responsible managers" - not all managers. Finally, according to the decision of the General Assembly No. 736/87 dated 10/29/1387, according to the definition of "legal person managers" in the Commercial Code, this circular has been declared illegal⁸. In this opinion, the General Assembly has invoked the legal definition of managers in commercial law, while if it used ordinary or technical interpretation (ordinary or technical meaning of manager), its meaning will spread to all managers - even irresponsible managers without the right to sign.

Case 3) The General Assembly of the Court of Administrative Justice in another case, abandoned the goal-oriented approaches and instead used the linguistic method, and has selected the method of technical interpretation among the various linguistic methods (using the technical meaning of words). It is

⁷ To see this vote refer to: The General Assembly of Court of Administrative Justice in address: <https://divan-edalat.ir/aho-detail/9461>

⁸ To see this vote refer to: The General Assembly of Court of Administrative Justice in address: <https://divan-edalat.ir/aho-detail/7572>

noteworthy that if this board had used the teleological method, we would have seen completely different results, which we will critique in later sections. The challenging subject in this case is the definition of the word "radius". Pursuant to paragraph (d) of Article (132) of the Law on Direct Taxes, production units located within a radius of one hundred and twenty kilometers from the center of Tehran province will enjoy tax incentives. The subject of this case is a complaint against Article (1) of the Executive Regulations approved by the Council of Ministers, according to which the "radius" was determined as "air distance". In this case, the General Assembly announces in its vote No. 560 dated 6/14/1396 according to the geometric definition of the radius, which is: a straight line that is connected to a point in the circle from the center, so that the radius is interpreted equivalent to air distance is not against the law⁹. In this opinion, the General Assembly paid attention to the expert statements in the letter of the country's surveying organization, which was issued in accordance with the rules of "surveying engineering science" and therefore is an example of using the method of technical interpretation (technical meaning). Using this interpretive method, which has caused the goal-oriented approach to be forgotten, can be criticized, which will be described in the next section of the article.

Case 4) another case is related to the use of linguistic method in which instead of using the technical meaning, the ordinary meaning of words is the criterion. The subject of this case is a complaint against the Circular No. 81 dated 7/20/93 of the Tax Affairs Organization, according to which any increase in the shareholders' equity of commercial companies is considered as income, and accordingly, the company's loss set-off from the partners' current account¹⁰ should also be considered income. Finally, according to the decision of the General Assembly No. 348 dated 20/4/1396, because income generation is when benefits are created for the company, so clearing the company's losses from the current account of the partners cannot be considered income¹¹. In this vote, the General Assembly issued its vote citing the ordinary meaning of "income". While according to the definition of accounting science and accounting standards in Iran, any increase in equity of shareholders should be considered income.

Accordingly, the technical and professional definition of the word income (technical interpretation) is different from the ordinary meaning of this word, and the General Assembly has used the ordinary meaning of income as a criterion, which we will examine in the next section of the article.

2.2. The extent of using teleological methods

Case 1) The General Assembly in its vote No. 154/82 dated 4/22/1382 has used the teleological method because the most important part of this vote is to refer to the "legislative purpose of approving Article 81 of the Law on Direct Taxes." The challenge in this case is whether the farmers' tax exemption will apply to all farmers or only to non-nomadic farmers. In this vote, the General Assembly pointed out that the purpose of the legislature was mainly to protect agricultural and livestock products in general, so it considered tax exemptions for all individuals and considered the deprivation of nomadic farmers illegal¹².

Case 2) Another case is related to the complaint against the decision of the Cabinet of Ministers No. 53456 dated 12/7/1381, according to which, only in case of public benefit incomes, they will enjoy tax exemption if a tax return is prepared and sent for these incomes. The complainant claims that this decree is against the law because in Article 139 of the Law on Direct Taxes, unconditional public benefits are declared unconditionally exempt. Finally, the General Assembly in vote No. 240 dated 2/5/1391 has invoked the purpose of the Cabinet of Ministers on this resolution. According to the board, the purpose of the cabinet was to oversee the preparation of tax returns by making sure that revenues were spent exactly

⁹ The General Assembly of Court of Administrative Justice in address: <https://divan-edalat.ir/aho-detail/9581>

¹⁰ The partners' current account is an account that is merely used for receiving and paying in cash by company to the partners and shareholders.

¹¹ The General Assembly of Court of Administrative Justice in address: <https://divan-edalat.ir/aho-detail/9471>

¹² The General Assembly of Court of Administrative Justice in address: <https://divan-edalat.ir/aho-detail/469>

on charities¹³. In fact, in this vote, the General Assembly focused on the main purpose of the resolution, and if it used the linguistic method, it would have reached a completely different conclusion, because by standardizing the words of the law of direct taxes, no condition can be considered for exemption of public utility income.

3- Criticizing the Interpretive Logic of the General Assembly of the Court in Tax Claims

In the previous two sections of the article, we became acquainted with the various methods of judicial interpretation in the Iranian legal system, and then examined the extent to which they were used by the General Assembly of the Court in tax claims. In fact, according to this study, the "interpretive logic" of the General Assembly of the Court of Administrative Justice will be emerged. We are now looking to critique this interpretive logic and analyze its strengths and weaknesses:

3.1. Lack of using a fixed and single interpretive logic

Examining the various opinions of the General Assembly in the previous section, it was found that the above mentioned board has used almost all interpretive approaches and methods related to it. "Diversity in interpretive methods" in itself cannot be considered a weakness of the board, but this diversity can even be one of the strengths of the general board; provided that the "purpose of this diversity" is specified. If the purpose of diversity in interpretive methods is to harmonize the law with the new policies of the economic system, this diversity is defensible and correct. Examining the history of public law in general, and the history of administrative law in particular, one can see the interrelationship between "changes in constitutional law and the structure of power" and changes in "interpretive schools." (Yavari et al., 1396: 137) The same issue is conceivable in the developments of the country's economic policies. With a change in the country's economic policies, a change in interpretive methods - in a way that the law is interpreted in line with those policies - is a good thing. One of the new and important economic policies in Iran is "reducing the reliance of the country's budget on oil revenues" and "focusing on tax revenues."¹⁴ These new policies could lead to the selection of interpretive methods by the judicial courts, which would make it possible to collect taxes. Of course, this should not be in a way that violates the rights of taxpayers or unfairly expands their tax authority.

On the other hand, if the reason for the diversity in interpretive methods is not one of the above cases, this diversity cannot be defended. Because, in principle, interpretive methods should have a fixed pattern. In other words, it needs to be significantly clear and predictable, either when the General Assembly prefers goal-oriented methods to source-oriented methods or when one method of linguistic approach is preferred over another. Now, these points cannot be easily deduced from the tax votes of the General Assembly.

3.2. Maximum focus on source-oriented approaches

As we have seen in the cases of the General Assembly, this Board has used more source-oriented approaches than the goal-oriented approaches. The General Assembly has used almost all methods related to the source-oriented approach; that is, methods of linguistic, logic, and so on. The function of this board seems to be defensible because the linguistic methods, by adhering to the legal texts, cause "the accuracy of the interpreters", "the stability of the law", "prevent the influence of personal inclinations in interpretation" and "respect for the will of legislator". (Nikogoftar Safa, 1387: 199) In addition, this approach is in line with the practice of the Guardian Council (the institution that interprets the constitution). This institution considers the meaning of "interpretation" to be the expression of "legislative intent" or "the main intention of the legislator at the time of enacting the law."

¹³ The General Assembly of Court of Administrative Justice in address: <https://divan-edalat.ir/aho-detail/8310>

¹⁴ Refer to: Paragraphs 17 & 18 of General Policies in the field of Resistance Economy.

Another important point is the need to prioritize the use of source-oriented methods. As mentioned in the first part of the article, to understand the interpretation of words, one must first use the legal meaning of the words, and if there is no legal meaning, one must use the technical meaning and finally the ordinary meaning, respectively. In most of the decisions of the General Assembly of the Court, the mentioned order and prioritization have been observed. For example, the interpretation of words through "legal meanings" (legal interpretation) has taken precedence over "technical and ordinary interpretation". We saw an example of this issue in the lawsuit No. 245-246 dated 23/3/1396. In this vote, the General Assembly determined the definition of the word "medicine" with the help of Article 3 of the Law on Medical Affairs and abandoned the ordinary meaning. Also, in the vote No. 736/87 dated 10/29/1387, the Commercial Code is considered as the source of definition of "managers of a legal entity" and the technical and ordinary meaning of this term has been omitted. However, in some cases, this prioritization has not been observed and the use of "ordinary interpretation method" has preceded "technical interpretation", which seems to be criticized. For example, in the vote No. 348 dated 4/20/1396, the ordinary meaning of "income" is the criterion, while according to the hierarchy described, the General Assembly should define the concept of "income" according to the principles of accounting standards (technical interpretation).

3.3. The need for disciplinary use of teleological approaches

Although for some reason the use of source-oriented approaches takes precedence over goal-oriented approaches, it should not be forgotten that the source-oriented approach ignores economic and social requirements and conditions and can even lead to legal and social backwardness. In addition, in this method, jurists are forced to attribute their personal views to the opinion of some lawmakers in order to justify their views, and they present their acceptable views in the name of the legislator. (Katoziyan, 1387: 523)

The silence of the law on new issues is also very likely. Accordingly, some laws, such as the Swiss Civil Code of 1907, give judges a relatively broad discretion to take into account the rapid problems and changes of time by interpreting them broadly. The law even obliges judges to put themselves in the place of the legislator in case of law defects, and in other words to express the will of the legislator¹⁵ (Kallsen, 1387: 129) and perhaps for these reasons that since the second half of the nineteenth century, linguistic approaches - some of which have in fact been called "machine jurisprudence process" - have been unpopular. (Habibi, 1373: 51) As mentioned, unfortunately, the Court of Administrative Justice in many of its rulings tends to provide verbal interpretations. Such interpretations cannot fill the gaps and ambiguities of the new law (Yavari et al., 1396: 179) and consequently will keep the judicial interpretation away from its legal goals.

The objective example of this case is vote number 560 dated 14/6/96. In this opinion, in order to interpret the word "radius", the General Assembly only paid attention to the rules of "surveying engineering science" and ignored the "legislative goals" for establishing this exemption. The purpose of the legislature in determining the radius and distance for the exemption was to pay attention to the degree of access to cities and, consequently, the degree of enjoyment of the facilities of those urban centers. Accordingly, if we consider the word radius to mean air distance, is it consistent with this goal? Notable point is that the directive that had been enacted before this enactment had correctly identified the purpose of the legislature and had used the "land route" as a criterion for determining the radius and distance. Even in this circular, it did not use the "highway route" as a criterion, because due to the transportation of the products of the units by truck and trailer, the traffic of these vehicles is prohibited in the highway¹⁶.

¹⁵ Due to Article 1 of Swiss Civil Code: The law rules on all affairs that are in the realm of verdict while there is no law the judge should announce his vote based on the ordinary rights otherwise based on the regulations that he was supposed play the role of legislator.

¹⁶ The base address of Tax Affairs Institute of Iran:
<http://www.intamedia.ir/Pages/Action/LawsDocShow/1/4/1/132/1498>

Of course, despite the importance of the teleological approach, its permanent use cannot be prescribed. Because the purpose of the legislature in many cases is ambiguous and controversial, and therefore it is necessary to use the goal-oriented approach in a "disciplined" manner, and therefore we used the term "disciplined use" in the title of this section.

One of the criteria that must be observed in this case is to determine the criterion for recognizing the purpose of the legislator as "subjective method". As stated in the previous sections, when using the subjective method, we focus on the "actual purpose of the legislator." The actual purpose of the legislature can be discerned by "historical scrutiny" or "legislative terms used at the beginning of the law", so more confidence will be given to the interpreter to discover the real purpose of the legislator.

Given the fact that the lack of attention of the General Assembly to the goal-oriented approaches cannot be considered a definitive and permanent reason for the inattention of this board to the goal-oriented approach. Because perhaps this committee could not determine the legislative purpose of some legal articles in a clear and definite way.

Conclusion and Suggestions

Examining several examples of the opinions of the General Assembly of the Administrative Court of Justice in the field of taxation showed: First, this board has used both source-oriented and goal-oriented interpretive approaches and has used all the methods that exist in the source-oriented approach. This diversity of the use of different interpretive methods can be considered as the result of changes in the country's economic policies and budgeting system, especially the focus on tax revenues, because it is necessary to coordinate interpretive methods with the economic policies of a country and implement these policies. Therefore, this diversity in interpretive methods cannot be considered as a definite weakness, but it can also be considered as a strength.

Second, the General Assembly of the Court has made more use of the "source-oriented approach". This procedure, because it focuses on the words of the law, will prevent fragmentation in the presentation of interpretations and the interference of the interpreters' tendencies in the matter of interpretation. Therefore, this issue will be one of the strengths for the interpretive logic of the General Assembly of the Court in tax claims. The practical benefit of this procedure is that the performance of the General Assembly of the Court will be predictable for all persons associated with the Court of Administrative Justice - such as government institutions, taxpayers and tax attorneys.

Apart from the above, which were mentioned as strengths in the interpretive logic of the Court, in some cases, we also saw a violation of the observance of the "hierarchy in the use of methods of the source-oriented approach". An example of this was the ordinary definition of the word "revenue" over the technical definition of this word "in accordance with the principles of accounting standards". The more specialized the subject matter of a lawsuit, the greater the need for maximum technical interpretation. Accordingly, since various specialties such as economics, accounting, banking, etc. are involved in "tax claims", the ordinary interpretation of concepts will not find much attention.

Another point is that the benefits of a source-oriented approach should not lead to its constant use. Because "legal and social backwardness" and "rapid changes of time compared to fixed laws" are the consequences of the constant use of this approach. This is where the need for the General Assembly to make greater use of its "teleological interpretive approaches" comes into play. We saw an example of this in a case in which he used "mapping engineering science" to define the word "radius" and consequently considered "radius" to be equivalent to "air distance". While the purpose of the legislator to make the existence of tax exemption conditional on the existence of a certain distance from urban centers is to understand the extent to which production units have urban facilities. Therefore, "radius" should be considered as "land road distance".

Of course, the attempt to "discover the real purpose" depends on the fact that - instead of a typical method - he used the "subjective method" to discover the legislative purpose. It is suggested that in order to accurately and easily identify the purpose of the legislator, one should adopt documents along with the main text of the laws in which it has specified the important goals of the legislator and these documents should be approved as an appendix along with the laws to gain legal status and citation and used by judicial authorities such as the General Assembly of the Administrative Justice Court.

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