

Study of private property expropriation for public interest in Iran's legal system

Farzin Nami^{1,2}, Mehdi Hatami^{2,3,*}

¹Department of law, College of Law, Kermanshah Branch, Islamic Azad University, Kermanshah, Iran

²Department of law, College of Law, Kermanshah Science and Research Branch, Islamic Azad University, Kermanshah, Iran

³Assistant Professor, Department of Law, University of Kurdistan, Iran

Abstract: Ownership is the most complete right that a human can have on a property and an owner can use his properties or leave them unused. But this phenomenon has faced some major limitations due to evolution and advancement of government functions and public needs. Therefore, property rights for a person can no more be accepted as an absolute right for the person. In the past, private land ownership was a holy and respected thing and the dominance principle (article 30 of civil code) was rarely limited or altered, but today, to maintain public interests and protect the poor, private property –particularly land property- has been limited in various ways and even private property expropriation for public interest maintenance, has taken different legal forms. With the increase of population and public needs, the necessity to have property expropriation for urban and civil development and housing and planning for such things, is felt more. In case it's necessary and needed to implement governmental plans, government organizations can acquire private properties of people through some specific procedures. The nature of lands acquisition rights, is considered a compelled deal in case of owner intransigence, unilateral obligations and even in case of the existence of transience, and a reason for it can be forced sale of the owner, and the issue of persons property acquisition is one of the tools for acquiring ownership for the government. If there is a conflict between public needs and personal interest, property expropriation becomes reasonable.

Key words: Acquisition; Public interests; Property expropriation; Private property; Dominance principle

1. Introduction

Study of private property expropriation for public interest, requires the determination of private property nature, public interests and corresponding rules. In other words, protection of public rights is performed by applying government governance rights, and in this case, appliance of superior authority to owners, will expropriate their properties for public interests. Property expropriation should be done via law and should accompany compensation by government. Private property expropriation has a different definition in different cases, but in the case of public interests, deduction by a regulator is affected by attention to some specific rules. In Iranian rights article 30 of civil code (each owner, has every right to exploit his property except for cases which the law has banned) it's written that: ownership is a right that a person has compared to an object or property, and can limit any type of use for it and use it in any way, except for uses that the law has banned. In Islamic rights, contrary to Roman rights, there's no word of acquisition of property rights, the religious ethics, consider wealth to be God's trust in human hands so he can property use it and in the doomsday, the records of use for the wealth must be given to the main owner. Harming others is not permitted, even if it's done in the name of justice (no harming is

allowed in Islam), and anywhere that dominance encounters the rule of "no harm", the rights will be given to the no harm rule, so the incentive of unselfishness dominates selfishness. Constitutional law is the legacy of such teachings, and our legal spirit in ownership, should be cleaned from capitalism violence. Property expropriation of peoples' property was given in the fifteenth principle of the amendment to the constitution's constitutional law for the first time; in this principle it was written: "no property can be taken from an owner without a legitimate permission, and that can only be done after the determination and confirmation of the right price". But with the ever increasing advance of societies and public needs in various areas, sometimes it's needed to expropriate immovable properties to satisfy those needs. In the Iranian constitutional law enacted in 1980, no mention has been made to property expropriation. Generally, in Iran, no single law governs property expropriation and because of this issue, sometimes, there is no coordination between property expropriation laws and corresponding authorities and procedures for dealing with it. A government expropriates property for public interests under legal criteria, although the theory of public interests is more like a political matter than a legal one. Since property expropriation by a governor, doesn't require owners authority, it is done unilateral way and the owner's authority won't be playing any role in it. Therefore, they say that "the sentence to force

* Corresponding Author.

land sale to government is a secondary sentence and is against the principle, and the existence of chaos in society is the foundation of such sentence, and the revival and approval of the existence of public services and interest have caused this exception." does not seem so correct, because this requirement, is not a second sentence and is a primary sentence and since it's a governmental sentence, it's of high priority primary sentences except the sentencing issues reaches a level of necessity in which case, the governmental sentence will be of secondary sentences, because there is no exception in there, although due to the society's interest, these sentences are not constant and permanent and there's always a possibility to change them if the interest is fulfilled. As is concluded from the title of the law of land and properties purchase and acquisition for running public, civil and military plans of the government enacted in 1980, this law, determines the method required to purchase and acquire private lands and properties for running public, civil and military plans of the government. The legislator, has considered two methods according to this law for the property expropriation of private properties by the executive administration: first, properties purchase through agreement, or else, acquisition of the desired properties in case of disagreement; the latter case is of a compelling nature and according to article 8, the law, depends on some obstacles for reaching a deal. Therefore the primary principle in the execution of this law, is dealing and purchasing; the executive administration can expropriate its desired properties and rights as a result of some sort of agreement, and it cannot unilaterally expropriate them/it. The important issue here is compensation which has been mentioned in different laws. Therefore, finding an accurate criterion for the determination of a fair price is necessary. But given that the determination of it, nominally depends on the conditions of an expropriated property, in any case, with the consideration of consequences and the use of expert comments, the fair price shall be determined. Therefore, in this study, along with explaining the thoughts governing public rights superiority over private rights, we aim to investigate and analyze property definitions, property expropriation meaning and types of property expropriation including property expropriation for executing civil, plans, urban development plans and the difference between property expropriation and nationalization in Iranian legal system. Therefore, the following questions are designed for this study:

1. What's the reason for the dominance of public rights and interests over private rights and interests?
2. What are the most important types of property expropriation for public interests?
3. What are the most important principle and procedure of property expropriation for executing public and civil plans?

2. Theoretical framework

2.1. The meaning of private property expropriation

The meaning of property expropriation for public interest is that public administrations or municipals and also national institutions that aim to fulfill public needs, get the power to allocate immovable properties (like buildings and land) for public needs (like road and public building construction) in return for a fair payment.

For property expropriation and delivery of property to a requester, it's necessary to comply with some certain procedures that is special proceeding done by specific courts, because the implementation of it requires the compliance with public institutions interests and fast proceeding which cannot be expected from public courts.

In French laws, a requester of property expropriation, whether it is a public administration or municipals and or national institutes, draw their operation plan and send it to corresponding governorship, and include their reasons and full explanations in the plan. After this request is delivered, and necessary inquiries are performed, the law suit will be sent to a special property expropriation court.

After the court is done with the case, it issues a sentence for the property expropriation of the owner and transition of the property to the requester in return for a fair price. This sentence requires research and exploration before it's proceeded.

Property expropriation has been predicted in Iranian law and according to 15th amendment of the constitutional law; it should be done through law. In Iran, no single property expropriation law is enacted. In other words, Iranian public administration is defected in regards with preceding the lawsuits between the government and national institutes and people, and this lawsuit is usually settled in bureaucratic offices. The government council that is the last authority to precede the lawsuits has not been formed despite its enactment since 1961.

The first law enacted regarding property expropriation, was for passages development, which was enacted on 9/25/1927 as a single clause. This law stated: The ministry of finance is allowed to spend a sum of 135 thousand To mans of extra proceeds of 1961 for bringing river water from outside of Tehran in to the city and pay the compensations for the damages caused by road expansion and construction destruction of that same road.

The aforementioned clause, had only determined the payment of the damage caused by road expansion but had not explained the procedure to do it. Then on 11/14/1933 the law of passage and streets development was enacted. This law included the procedure. Finally, on 6/22/1921, the revision law for the passage and street law was enacted, which gave the duty to precede the differences between municipal and owners to problem settlement board consisting of three people including city community representative, court

representative and national ministry representative. The board's votes could not be rejected.

Then other laws and regulations were enacted for different things: that include, the laws for having a vice president enacted on April of 1958, owner and tenant enacted on June 1961, land reformation enacted on January 1972 followed by nationalization of jungles and pastures enacted on January 26 1963, workers receiving share of factory profits enacted on January 1973 and its enactment on 1965 June timetable and acquisition of required lands for the construction of Farahnaz Pahlavi (Latiyan) dam enacted on May 18th 1966, conservation and maintenance of underground waters enacted on 12/18/1968, renovation and urban development enacted on 12/18/1968, renovation of Abbas Abad enacted on 12/18/1970, all these laws are of laws which have property expropriation and threat predicted in them.

Among these laws, renovation and urban development enacted on 1969, is the most important in terms of urban development and municipality. This law has enacted some regulations for property expropriation and purchasing to execute civil and renovation plans and create urban facilities and develop and revise passages and supervise construction and application method of lands inside city boundaries.

According to this law, a municipality is obliged to publicly announce its plan starting date and details and approximate duration of its execution, within a month, and within 3 months following the announcement, the prices for the lands and properties of the owners shall be paid, and then they should be given a 2 month chance to evacuate their building, and then the municipality must destroy the properties. If owner(s) do not go to receive their payment, the plan will not be stopped.

3. Property expropriation method

3.1. Nationalization

Nationalization is one of the property expropriation methods, and in economics culture, acquisition and execution of an economic unit by government that was previously in the hands of private people or institutions or foreigners has been defined and this type of nationalization is the transition and removal and organization of private capitalism management. In the internationalization dimension, mostly, political motives and freedom from foreign domination have been considered. In the internal dimension, it was mostly caused by further authorization of government and countries began to nationalize private sector capitals. Socialist countries, got to extend public ownership and nationalization of industries for ideological reasons, and in other countries, government activity area was increased and the classic idea lost its position.

The act of nationalization, caused conflicts over legal regulations concerning nationalization in countries owning capital and in nationalizing

countries, and as one of the acquisition items, it requires rules and regulations.

A group of jurists, have defined nationalization with government's goal for it, and based upon that, they consider nationalization to be the tool to take away the power and wealth of the private sector rich class. Marcel Wallin, professor of administrative law in France, writes the following in the nationalization book (Emami, 1992):

"Nationalization is the removal of capitalism method, from the administration of an institute"

3.2. Properties confiscation

Properties confiscation is the confiscation of people properties as a punishment and by the order of law, and in other words, the removal of the property rights of a person as a punishment; according to the glossary of legal terms, confiscation means: government share in another person's property, including the financial debts in a partial or complete way. Acquisition of government in the properties of someone is usually happens when a complementary punishment ordered by law is required.

Confiscation can be general or specific.

General confiscation is: cases where a person commits economic crimes, and in this case, all of his properties will be confiscated.

Specific confiscation: It's usually done in a form of implementing law to execute legal punishments and take security measures to expropriate property of some properties and not all properties (Jafari Langarudi, 1993).

3.3. Property expropriation for civil, urban development and housing

The goal of property expropriation can be the implementation of civil, military or public plans. In the legal bill of purchase and property and land acquisition for the execution of public, civil and military plans of government and municipalities, enacted on February 6th 1980 in the Revolution Council, article 1 states: "whenever municipalities, banks, public universities and organizations for whom, the inclusion of law requires the mentioning of their name, and are hereafter called "executive administration", get to need legal or natural persons lands, and the credit for it is already provided by the executive administration or budget plan organization, the executive administration can purchase and acquire the desired land through any organization based on the regulations written in this law". Or maybe the aim of helping will be to eliminate housing problem and prevention of price raise for lands. Article 1 of urban land law states: "to achieve the goals, in the principles of 31-43-45-47 of Iranian constitutional law, the government has been assigned to provide public needs for housing and public urban facilities, and to prevent land price raising as a commodity, and to move towards the country's economic interests, and to direct capitals

to the infrastructural production sectors of the country (agricultural and industrial)".

4. Public interests in view of scholars

4.1. The meaning of public interest and authority in Rousseau's view

Rousseau suggests that the solution to the theoretical problem in the western society lies in the social deal with public authority. He believes that the vote of the majority, defect the right of the minority, so he proposes a public authority that is based on public interest. In other words, public authority is formed when public interests are fulfilled.

The meaning of public authority is the public authority of citizens that do not govern their private interest but govern public interest. That is, everyone's authority for public interest. In this case, a collective authority is formed that rules common benefit and interest. In Rousseau's view, there's a difference between everyone's authority and the authority of public. Everyone's authority is based on everyone's interest. When everyone's interest is fulfilled, everyone's authority will also be formed and everyone's interest is of two types: public interest and private interests. Therefore it's possible that everyone's interest could be public interest or private interest.

Rousseau says that since everyone's interest is impossible, we should aim for public interest that is shared by everyone. Public interest tied personal interest with society's interest. Rousseau says we should consider our decision making basis on public interest and leave our private interests.

4.2. The meaning of public interest in Jeremy Bentham's view

In Bentham's view, society's interest is nothing but the people constituting it. Therefore, a person and his interest precede society's interest. And the reason for that is that the main society axis is person. A society is nothing but the collection of its constituting elements that means every single individual, who have created the society while maintaining their independence and identity. Moreover, his rights and demands are ethically superior to the society's demands; therefore, ontological individualism forms the fundamentals of ethical and political individualism. Liberal ethical individualism, does not consider "value" to depend on the real world, rather, it knows it as a result of human authority. One of the aspects of the differences between liberalism and religion originates from here, that the imagination of "good" is meaningless and incomprehensible and human choice can fill it (Namazi, 1995).

4.3. The meaning of public interest in Stuart Mill's view

John Stuart Mill, an English philosopher, believed a desire public interest to lie in the evaluation of original ethic. He and his followers, consider public benefit and profit to be ethically desirable without the consideration of private interest and without using it to reach personal benefits. In the ethical evaluation of actions, this group pays attention to interests and losses of a work type and also the criterion of highest profit for maximum number of people. For this reason, if there's a conflict between personal interest and public interest, then the priority will be given to the public interest.

4.4. The meaning of public authority

Public authority, in its margins, is the idea of a life energy, an irresistible power inclined towards a unique goal that is public interest. "Public authority" is derivation of a greater concept that is "authority". The two expressions are naturally interdependent, but they should be distinguished, because they cannot be placed in a single area of public rights.

The meaning of "authority" is a meaning belonging to fundamental laws that is fundamentally government's rights. To speak of a government's authority, is to speak of the governance and in the primary interpretation, it's the "principles principal" of public rights. Since, governance is the innovation and regulation of applicable laws, or in an older interpretation, "legislation for everyone and anyone in a particular way" is of a fully elementary method, and since there can be no government without governance, and vice versa, then power, is intrinsic to a government.

4.5 Government governance or the absolute power of legislator

Government governance or the absolute power of legislator is one of the most traditional teachings of western legal thought, but as a result of new phenomena, it's been facing some difficulties. Based on this traditional teaching, public power is limitless in legal terms. In the framework of this theory it's said that, public power cannot rule its own authority. But, a mention of an example shows that the theory of government governance or the absolute power of legislator has been weakened: According to Finland's supreme administrative court, Helsinki city was condemned to pay compensation for the damages it caused because of urban development public activities (Gorji Aznadriyani, 2011).

5. Property and its variants

5.1. Definition

5.1.1. In Iranian law

As can be deducted from article 30 tax law in civil rights, "any owner has every right to use and exploit what he owns except for things the law has banned"

(Hoseini Nik, 2011), it is concluded that, ownership is a right that a person has on a property and can use it in any way possible, except for things the law has banned".

The definition that civil law has given for property is for individual property, which can be possessed by everyone in society. Therefore, property rights are of financial rights and it's been defined as "a privilege that the laws of any country, gives to its people to satisfy their material needs" (Ahmadi Bahrami, 1998). And it's because, property right, is created regarding a person and an object. Therefore, property is an objective right. But it should be noted that there are two principles in objective right, that are the object and the owner, but property is only meaningful when it's about others or in other words, the society respects this right.

In the definitions offered by jurists each of which, have defined property with a specific view, we realize that we are faced with 4 factors in property right.

The first factor: it's the owner or the owner of the right that can control the object and can implement its right directly and actually, the owner has full authority to use the object.

The second factor: a legal relation that is confirmed by a law and is demonstrated as a support of property right.

The third factor: "the issue of right", that the owner dominates.

The fourth factor: other and or in other words, property become meaningful when it's about others and society respects it.

5.1.2. In Imami jurisprudence

Property finds an extensive meaning in Islamic jurisprudence and Imami jurisprudence, such that an interest and relation is formed from the dominance of a person over an object, and if this relation is absolute, or in other words, if the dominance is comprehensive, it will be interpreted as property. Therefore, in Islamic jurisprudence, property is: "The dominance of a person over and object from all aspects" (Abdalhamid, 1991). Of course, absoluteness of property has also been threatened in Islamic jurisprudence. For example; some jurists have said that if a land is uncultivated, it becomes a public property. This idea has been left obsolete and considers the acquired property as permanent. Despite this fact, the current laws are inspired by this theory. Here it should be said that jurisprudence has defined property in different ways, but they can be placed in the three categories of dominance, competence and relation between owner and property.

5.2. Property variants

Property, points to the special relation between an owner and a property, which shows the possibility of the owner seizing the property, this relation and dominance is sometimes real, that

means, an owner, has real dominance over a property, such as God's acquisition over creatures, and sometimes it's credit, it means that only an imaginary relation is assumed between an owner and a property, which what's apart from the owner, is considered as what's related to him.

5.2.1. Real property

God has real dominance over the entire universe, and this shows the real meaning of his real property. God doesn't need Koran or narrative reasons to prove this real property, and it is considered as an obliged matter of his creator nature. God's real property is Islamic most important property structure philosophy basis that is mentioned in many verses of Koran, which reason that God's real property, is of his creator nature, that means, because he is the creator of everything, he is also considered as their owner, for this reason, this property is absolute and includes all sorts of exploitations. But the role of this property in the formation of an institution, originates from the universe. Human's special creation by God that is called as "nature" in Koran, is a clear example of God's real property effect in the realization of the appearance of property institution. A human will enjoy the elements of "the tendency to allocate objects to himself" and also "good knowing of this allocation if it's the result of some effort" by paying attention to this special creation. And these two elements provide the proper conditions for the visualization and credit of property relation for the person. And this is how; credit property is created for a human.

5.2.2. Credit property

According to past matters, it should be said that human's property over properties is fully of credit type and is not a principle, but, his property is due to his succession ordered by God. And this credit property includes the following:

6. Financial property

6.1. Personal assets property

Human, is a creature that needs some tools to continue his life depending on his specific lifestyle and nature and in the past, people used animal skin, hunting tools or agricultural tools, or a place to rest. As societies developed, the limit of their demands and expectations were also developed.

It can be said that any individual, requires a set of tools and facilities to survive, and he tries to obtain them, therefore it's said that everything that people possess, are considered as personal properties. In article 30 of tax law, it's written that any owner, has every right to exploit his property in any way he want, except for uses the law has banned. Therefore,

personal property is a right through which people can have property dominance over assets to their own advantage.

6.2. Public assets properties

These are properties, that no one really possesses them so they are limited at using them. The owner of such properties, are all Muslims, whether they're living, or are to be born. In public property, people's use of public riches, is followed by direct government supervision, that's why it's supervised the Muslims' leader, and it can be given to individuals, and the incomes earned from it can be spent for things that benefit everyone. Article 23 to 26 of tax law, have focused on public assets, and according to them, public assets, are assets without any specific owner and also, public roads and alleys that are not a dead end, cannot be privatized and belong to the public (Beheshtiyani, 2011). Also, according to article 25 of tax law, no one can acquire properties used by the public and are left without any specific owner such as bridges, inns, public water storage facilities, and old schools and public gas fields and aqueducts, therefore public assets are assets that cannot be privatized and the public use them, and no one is allowed to privatize it, and government only controls it. Therefore, public assets are not private and belong to the public.

6.3. Government assets properties

Government assets are assets under the control of a government under laws and regulations, and the government uses them to carry out its duties. Government, like natural and legal persons possess some properties that they tenure and govern, for public affairs management. According to article to of government assets regulation enacted on July 18th 1993 by the board of ministries, government assets is assets purchased by ministries and public institutions and are acquired in any other legal way and these assets can be movable or immovable.

-Movable are: work tools, chair, computer, watch etc. and government automobiles

-Immovable are: buildings, gardens, lands.

6.4. A review of private property

The purpose is a private relation between a human and a property, that bans others, or it's such that it limits others intervention except when necessary. A human property on water he takes from a river or woods he gathers from a jungle (Jameh Bozorg, 1980).

Private property is that a property be related with a person or some people. Therefore, private property is of different types:

1- Individual property: it's a case in which a person owns something alone.

2- Group property: it's a case where a property is collectively for a certain group of people, such as

when a specific group, take up an industrial or agricultural activity, and the final products, will be shared. And since this group is certain people, this type is also a form of private property.

3- Assumed and joint property: The fact that property is sometimes individual and sometimes collective makes property be divided into the two groups of assumed and joint; when a person owns all of an object, his property is called assumed, and it's against joint property, in which people share everything and the shares are abrupt. This sharing is called joint property. Of course, share in an asset, is sometimes in a "joint" and sometimes in an "everyone's got a certain amount" form, which are legally different. Some differences in Khums, under the title "society participation in exact assets", are different from "join" matter, (Gary, translated by Sauchi, 2002).

7. Lands property threatening

7.1. First statement- Laws on jungles and pastures nationalization

Private property existed on jungles until before the enactment of the nationalization law in 1963, and by the pass of time, government only applied its supervisor role in private jungles exploitations, for example, it conditioned trees exploitation to offering a forestry project, and giving this case to jungle issues experts, and in such cases, for jungle exploitation, it obliged jungle owners to provide the necessary facilities and equipment and employ corresponding experts.

Enactment of the nationalization law, attitude and approach to jungle changed. In article 1 of the law, which was the center for expropriation of jungle properties owned by private owners, it was written:

Since the enactment of this legal issue, all the lands of all jungles, pasture and natural forests of the country, are considered as being public properties and belong to the government, and it doesn't matter if someone has already owned them and has proof of ownership.

Even though the legislator of this law, has given the property rights of private jungles to the government, it included an exception for this law in clause 2 of article 2 of this law, and it excluded jungle areas surrounding agricultural lands located at Iran's northern plateau and are under proof of ownership of people, therefore, in a limited way, it enacted a special sentence for jungle masses under the ownership of individuals, but conditioned the exploitation of these jungles to the compliance with public regulations of jungles and pastures laws.

7.2. Second statement- Laws on declaration of uncultivated

Before and after the Islamic Iranian revolution, legislators, have enacted several laws for limiting individuals property on lands, and all the laws before

the Islamic revolution were enacted in 1962 by article 2 of land reform law that declares any person's property all over the country, to be one tenth of six dengue and issued a law to extradite more and sell more of it.

And after the Islamic revolution, the legislator, with the enactment of laws such the one enacted in 1987 by the Expediency council under the tile, solving the problem of uncultivated lands enacted on August 18th 1988, which required land owners to cultivate their lands under agricultural conditions, or lease or sell uncultivated lands within a year period. In case it's not done within one year, the case is considered a disclaimer. And in addition to that, some limitations are considered in the law of agricultural lands use and conservation enacted on 1995 and its amendment enacted on 1980.

7.3. Third statement-Law on state registration

The legislator, in article 41 of regulation of law on state registration stated that uncultivated lands, jungles and pastures registration will not be accepted from people, no registration request will be accepted from people for properties that don't have a specific owner such as roads and street, uncultivated lands and mountains, marshlands, woodlands, meadows and forests and public cemetery and stream bed and water streams and rivers branching from them, wells, and natural streams, and any natural route whether it's on surface or underground.

7.4. Property acquisition, quality and expropriation in Iranian law

8. Acquisition

Acquisition for fulfilling public needs has certain goals, and the purpose of it, is to use an asset for something that's been clarified in the law but didn't exist before. In such acquisition, the price for an asset should be paid to the previous owners, and the owner can know about the payment before the property acquisition and receive the payment (Saljugh, 2006).

9. Acquisition history and definition

Acquisition means to acquire and own a property and the authority of the giver and receiver is really important in it. Such that, in contrast to contract which are intervened by both sides authorities, in acquisition it's the authority of the requester that dominates the deal. Because this requester who is an executive administration, will have no choice but to use other lands and properties to implement its plan and the reason for this is the existence of an enacted plan and the necessity to execute it, and if there was no necessity to execute the plan, the executive administration could not go to the land and properties owners.

With the development of government and its task to execute public and civil plans and the possibility to do that on peoples lands and properties, and the necessity for the execution of the plans and the possibility of a disagreement between owners and executive administration and the possibility for the lack of compliance by executive administration, made the legislator set some special laws for the implementation of plans on peoples lands and properties and expropriation of property, so first in 1961, a law was enacted on this issue but it was terminated with the enactment of the acquisition bill in 1980.

10. Laws supervising acquisition

10.1. First paragraph – Baladieh formation law

The Baladieh formation law was enacted in the first round of national assembly act in 1908. This law was the first step to create municipalities, and since it was taken from French and Belgium law, relatively high independence was considered for municipalities and urban communities.

In paragraph 7 of article 1, that states municipality goals and principles, supervision to ensure that urban passage matches with the map, and required measures are taken against any fire or catastrophes, are put on the shoulders of municipality's Baladieh. Nevertheless, several of its articles were not executed in time until in 1931; it was cancelled by Baladieh law. Anyway, there's no mention of land and properties acquisition by executive administrations (government or municipalities).

The law on the construction and development of roads and streets: the first urban development law, that was very elementary and was titled "The law on the construction and development of roads and streets", was enacted in 1934, and some measures were taken to construct and develop public streets and parks, transform graveyards located at the center of some cities to public parks. This law was revised in June of 1946.

10.2. Second paragraph- law on lands acquisition for the execution of urban development plans (legal bill of lands acquisition for the execution of 2011 urban development plan)

In June of 1961, with the enactment of the parliament and the executive regulation of the law in the November of that same year by the committee of ministers, after some revisions were applied in that same November and a new revision was enacted by the committee of ministers, a new revised regulation with 17 articles was enacted instead of the previous regulation in March 1968.

In article 1 of this legal bill was written: the government is given permission to acquire lands and properties it considers necessary for implementing its plans, and destroy them after paying the fair

prices for them to the owners. The fair price would be determined by the expert committee consisting of three people, one selected by the government, another by the owners and the other by the general attorney and in other areas, by the city attorney of each location, and the majority vote of the committee must be executed, whenever the owner(s), do not declare their expert within 15 days since the starting day announced by the government, the general attorney or city attorney, will perform its duties as mentioned above[†]. If the desired property enjoys improvement of any type, and for unhealthy or old locations areas construction renewal, the total sum and improvement will be determined and paid as mentioned above. In the executive regulation of the law related to lands acquisition, law execution duty is given to department of HUD.

10.3. Article 3 - Iran's electricity organization law

Articles 16 to 19 of Iran's electricity organization, are specifically aimed at lands, properties and assets purchase and acquisition of natural or legal persons, needed by ministry of energy and its subsidiary institutions and organization.

10.4. Article 4- Urban renovation and development

The urban renovation and development law was enacted in 1969, and announced to municipalities, with the aim of revising different urban fabrics structure reformation, provision of public needs, creation and development of entertainment parks, revision and construction of communicational roads and streets, renovation of locations, care for proper development of cities according to urban plans.

This law was enacted in a general form for urban development, it determined some rules for evaluation of buildings and lands in terms of annual fees, and some rules were set for adjusting 5 year civil and capital plans for municipalities (article 15), providing executive plans of urban development operations and evaluations of properties that are on the execution route of the plans, and the evaluation of cost and enactment of the plans (article 16), proceeding of complaints of people regarding this type of evaluation and quality of compensation to people whose property is on the plan execution path and undergo losses, and receiving value fees of people, whose property becomes more valuable after the implementation of this plans (articles 17 and 18), using private sector facilities and urban renovation (article 22), considering authorities related to supervision of usage method of lands insider city boundaries and constructional and urban development quality based on a comprehensive plan

[†]Clause 2 of article 1 of lands acquisition law bill for urban development plans execution, enacted on July 8th 1960

(article 23), acquisition of properties and lands for the provision of public needs of city in return for paying their price to the corresponding owners (articles 31 and 32), and in fact, a part of the law replaced the law on roads development enacted in 1942, so the roads development law was terminated.

10.5. Article 5- lands, buildings and facilities purchase law for ancient monuments conservation (enacted on 12/17/1948)

The aim of the enactment of the law is to conserve and repair ancient monuments and make them look better and do diggings and carry out ancient researches. For this purpose, the ministry of art and culture, can acquire its desired properties in case it needs to purchase lands, buildings and facilities of legal persons article (1)

10.6. Article 6- lands reformation

What governed agricultural lands property until 1961, was civil code regulations, that allowed that with the revival of uncultivated, acquire any desired amount, and also an owner was allowed to under civil codes and compliance with registered procedures (given that according to articles 46 and 47, settlement of deals for immovable properties had become mandatory) exploit his property in any way he wanted. At this time, for the moderation of wealth and motivation of farmers to get interested in agricultural lands, a revolution occurs in Iran's agricultural lands legal system, and a major part of the property rules about agricultural lands becomes terminated and non-executable.

10.7. Article 7- Law on environment conservation and improvement

Based on article 17 of the law, if the properties and land and improvement, are located at the area pointed in paragraph a of article 3, the organization can according to lands, facilities and buildings purchasing regulations article 47 enacted in November, purchase whatever it needs.

11. Fundamentals of private property expropriation and limitation

The present era should be called the era of the evolution of economic relations, is resulted from the development of economic and social activities which based on a collection of social, legal and juristic deals, its property and methods, have taken a credit and contractual form (Mohagheghdamad, 2001).

Changes that have occurred in it during the pass of time in the meaning of property expropriation, have fully changed its primary meaning, because these corresponding laws and regulations have tried to develop its articles and increase its examples. Property expropriation was primarily only done on

immovable assets, but later, the needs in new societies, made some new developments in it. Such that its concept has sometimes included immovable objective rights (easement and usufruct), and sometimes even non-material rights.

Threatening private property, in conflict with public property by a government or public institutions has reasons; of these reasons are the legal fundamentals existing in laws, for example, based on the 22 and 40 principle of the constitutional law enacted in 1980, in cases which a person wants to use his property right against public interest, it becomes legal to threaten it; in civil code, according to article 30 and 31 of the code, threatening of private property is accepted, and because of these articles, in articles like private property conflict with public property, the government can remove a person's property from his ownerships. The legal bill for the lands and properties purchase and acquisition for the implementation of public, civil and military plans of the government enacted in 1980, also allowed the executive administrations to expropriate a person's private property to execute their plans under the conditions set in the law.

Another juristic basis is the rule of interest, based upon which, the government, as a representative of the public in the case of a conflict between private and public property, prefers public interest, and threatens private property. Another basis is the rule of justice, by which, the government is considered as a trusted institution of people, which should always be just and solve conflicts between public and private property, and justice requires that in cases which endanger public interests, private interests are limited.

Another basis based upon which, private property is limited, is the theory of public originality, and of course, in Islamic system, both a person and public are original, but if there's a conflict between these two regarding public or private property, then public property will be superior to private property as the former one is the sum of the interests of each of individuals.

12. Public interest principle

Public interest principle has been offered as an explained principle of government intervention and legal system intervention in ethical and free authority of free people. This principle is one of the most important and controversial concepts in the area of philosophy, ethics, politics and law. A government's actions are only explainable by the support of this principle, and on the other hand, the public interest explainable principle can be the basis of many government actions which seem as unexplained and lawless actions of peoples' authority.

Interest, is a measure that the Islamic government takes to comply with the Islamic society's material and spiritual interest in alignment with the holy religion's goals (Hashemi, 2002).

13. Conclusion

1. In Iran's constitutional law, as the most superior legal document, by considering the dominance rule, individual's property and dominance over the properties are protected. Principle 22 of constitutional laws based on this rule. It's written in this principle that: "life, salary, house, and jobs cannot be taken, except for cases the law allows", or in principle 47 it's mentioned that "legitimate property of a person is respected and its conditions are determined by the law".

2. In article 31 of civil code, like article 30, in completion of property rights, it's states that "no property can be taken from someone without law, and this rule applies to other cases, even in business, and the legislator has protected property rights by the existence of such rule.

3. In regulations concerning public plans by municipality, the legislator has paid a lot of attention to this rule and that is the fact that intervention in property rights by municipalities in many cases has led to compensation paying. This situation was nothing but a respect and protection of people's rights on their own properties and it was nothing but attention to the dominance rule.

4. In article 3 of the legal bill of purchasing and acquisition method of lands and properties for the implementation of government public, civil and military plans, it's stated that: "fair price of lands, buildings, constructions, facilities and other damages, is determined through an agreement between executive administration and owner(s) of the right" and in the single article of the law on buildings calendar and the properties needed by municipalities it's stated that "in all laws and regulations in which municipalities are allowed to acquire, buildings, properties and legal lands, in the case of a disagreement between the municipal and the owner over the price of the property, the price should be paid by newest prices. What's clear and can be claimed is that how much attention our legislator was paying to property rights and when implementing public plans by municipalities, how much attention he was paying to the dominance and governance of property owners over their properties. This means that the articles of this law should be considered as the primary rule for the enactment of these laws as a strong basis for the enactment of these laws, the property value and rights, should be saved in legal interpretations.

5. There are rules in Islamic jurisprudence that support property rights, and ban harassment of these rights by any person, and make the oppressor compensate for what they have done. Of these rules is the rule of liability, by which, a person who has obtained someone else's property should end his domination. Our legislator has paid attention to this theory and rule when establishing regulations concerning elimination of property rights and public rights harassment.

6. In any case, someone who has illegitimately dominated someone else's asset, should return the

asset to the owner of it, and just leaving the asset as it is, is not enough, the position of the owner requires it. Returning of an asset to someone else, even his parents or children is not enough unless they are his representatives.

7. Therefore, in establishing the rights related to property rights, it can be expected that the legislator does not easily give the permission of dominance to property rights to people, and it won't matter if the dominating person is a legal person or not. For this purpose it's necessary to conduct further investigations to determine the amount of the role of this rule, in public and private laws and regulations.

8. Articles, 301, 303 and 303 of civil law, have set some regulations to protect property rights and owner, and all these show that property rights is a respected issue, and it's considered as a fundamental of support of property rights against public requests and expectations interpreted as public rights. And if the oppressor is a legal institution, this rule will do the same thing. Then therefore, it should be said that this rule has an important role in protecting property rights against municipal public plans executions, and the legislator has banned any type of oppression on property rights by public authorities and considers any intervention in these rights to depend on some conditions including the satisfying of the rights owner.

9. Our legislator, inspired by liability rules, has protected property rights against illegitimate dominance and non-municipal ban on these rights. For example, in the bill for purchasing method and acquisition for executive administrations, including municipalities, to have a possibility to intervene in any property, they should come into some agreement with property owners through some preset procedures in tis law, and then pay the property price; otherwise they won't have the right to acquire the property.

10. In law on buildings calendar method, properties and lands desired by municipalities in cases with unknown owner, or cases which property proof is not given and there is conflict over property, the possibility of reaching an agreement with property rights owners doesn't exist, and the existence of such problems, is not considered as a permission by the legislator to the municipal to intervene and confiscate the properties, even if the plan must be executed, and the legislator has made acquisition of other peoples' rights to require the provision of property rights.

11. With the use of governor's governance on government assets rule, our legislator can assign a governor for properties. This same thing holds true in the enactment of law for the settlement of conflicts between property rights and public rights, and there's great possibility that governance over a property for a person, with the use of reasoning and rejection and refusal is forged and given.

12. The no harm rule in the laws related to the implementation of public plans has been used to establish a law for the compensation of damage by giving superiority of public rights over property

rights. This rule cannot be clearly seen in the regulations related to the settlement of the conflict between property rights and public rights. In the case of a possibility of damage to public rights, with the limitation of property rights to public rights advantage, damage can be prevented.

13. Given the concerns of public needs and governance of public rights rules on private rights, it can be concluded that society's need and identification of its example by public institutions in this regard, obliges any owner to follow this identification, and society's interest, will leave no chance for profit evaluation, therefore, owners are expropriated and they should accept it.

14. According to governmental jurisprudence fundamentals, and with a belief to the superiority of public rights over private rights, it can be concluded that public administrations and executive administrations acquisitions, is a form of government governing type, which has a mandatory nature.

15. Without the determination of what's to be done about urban and rural properties acquisition required by civil plans, especially in villages without a guiding plan, the uncertainty of a village's boundaries can violate public and peoples' rights.

16. A lack of the determination of improvements built by people after the initiation of executive operation and before the acquisition of lands and individuals' properties will make abusers; builds some improvements after the initiation of the executive plan, which will cause losses.

17. Failure to determine the improvement existing in national lands or lands located at river banks and entitlement of individual to receive the losses of these improvements.

18. Ambiguity of law regarding competent authority, in terms of public competence or incompetence for dealing with people's lawsuits against the government in implementing civil plans, and their conflict with the Court of Administrative Justice act, that causes paradoxical votes be issues regarding competence.

19. Regarding properties and lands acquisition by government and municipalities, the Court of Administrative Justice Act will only precede administrative decisions and actions that have no promotional aspect, and in the case of the violation of procedures of acquisition, it terminates the executive operation.

20. Individuals properties acquisition by the government and municipalities, although in some cases leads to limitations and property expropriation, but since it is necessary for the conduct of public and civil plans, it is inevitable.

14. Suggestions

1. Prediction of specific courts of expropriation or determination of special branches in courts, to proceed peoples' lawsuit against the government, resulting from executing public and civil plans that

leads to the acceleration, specialization and reduction of proceeding procedure period.

2. Through cultural policy making and public culture promotion for the supremacy of public law and society's interest over private properties and interest through collective media specially general council of cities, and also with the use of proper propaganda and training, we can create a new and effective approach for the improvement of society's performance in the implementation of common share public and civil plans.

References

- A. GorjiAznadriyani, in search of fundamental laws (Tehran, Junple Publications, 2nd edition, 2010).
- A. HosseiniNik, civil law, 14th edition, (Tehran: Majd science and culture community publications, 2010).
- Abul Ahmad Abdulhamid, Iranian administrative law, fourth Edition (Tehran: Tus publications, 1990)
- Emami, S. pleadings of the course of financial rights, public law, first semester, 1992-1993.
- Hamid AhmadiBahrami, rights abuse, first edition (Tehran, Etelaat publications, 1998).
- Hashemi. S. Expediency Council, Qom, cultural research studies center of Qom's Hozeelmiye, first edition, 2003.
- JafariLangarudi, M. Law terminology, Ganjedanesh publications, Tehran: sixth edition, 1993.
- John Gary; Liberalism, translated by M. Sauji, (Tehran: foreign ministry publications, 2002), p 101.
- Land acquisition legal bill for the implementation of urban development plan, enacted on (17/4/1961) pp 192-195, 1961 law collection, official newspaper No. 3498.
- M. Jamebozorg; lands acquisition by government and municipalities, first edition (Hamedian: Moslem publications, 1990).
- M. MohagheghDamad, jurisprudence rules, civil part 1 (Tehran: Semat Publications, 2002).
- M. Saljugh; private international law, 2nd Vo. 4th edition (Tehran: Mizran publications, winter 2005), p 347
- Namazi, H. economic systems, ShahidBeheshti university publications, Terhan, first issue, 1995.
- S. M. Beheshtyan, investigation of the order governing property rights against municipality public plans (Tehran: TarheNovinAndishe publications, 2011), p 34